BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. §4928.143 in the Form of an Electric Security Plan.	))))))	Case No. 14-1297-EL-SSO

INITIAL BRIEF OF OHIO SCHOOLS COUNCIL, OHIO SCHOOL BOARDS ASSOCIATION, BUCKEYE ASSOCIATION OF SCHOOL ADMINISTRATORS, AND OHIO ASSOCIATION OF SCHOOL BUSINESS OFFICIALS dba POWER4SCHOOLS

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I. INTRODUCTION

The Ohio Schools Council, Ohio School Boards Association, Buckeye Association of School Administrators, and Ohio Association of School Business Officials are a regional council of governments and three non-profit organizations comprised of public school boards and public school administrators who seek to share best practices and information concerning the operation of educational institutions. These groups' members include all of Ohio's 612 public school boards of education, as well as 55 educational service center boards and 49 career technical center boards. Among their services, they offer their members group purchasing programs for a number of goods and services, including an electricity purchasing program, for which they do business as "Power4Schools." Power4Schools is designed to reduce the schools' cost of electricity, which is purchased through FirstEnergy Solutions ("FES"), a competitive retail electric service ("CRES") provider, under a master contract. Savings on the cost of electricity are passed on to school district participants. Power4Schools operates throughout the state, and within the FirstEnergy distribution companies' (the "Companies")[1] service territories. Power4Schools' electricity program has served school districts educating nearly 600,000 Ohio school children and, to date, has saved participating schools an estimated $20 million since its inception.

Power4Schools is opposed to the Companies' proposed electric security plan ("ESP IV") because it will cause Power4Schools to pay FES twice for electric generation, and because it will disrupt the competitive generation market under which Power4Schools has been so successful in saving money for the benefit of its public school districts, their taxpayers and, most importantly, for the benefit of the 600,000 pupils its members educate.

[1] The Companies are Ohio Edison Company, the Cleveland Electric Illuminating Company, and The Toledo Edison Company.

II. POWER4SCHOOLS WILL PAY FES TWICE FOR ELECTRIC GENERATION IF THE RETAIL RATE STABILITY RIDER IS APPROVED AS A PART OF ESP IV.

Central to the Companies' proposed ESP IV is its so-called "Economic Stability Program" under which the Companies will subsidize uneconomic[2] generation assets owned by the Companies' affiliate, FES. Specifically, the Companies propose to purchase the output of FES' Davis-Besse Nuclear Power Station, the W.H. Sammis Plant, and entitlement to a portion of the output of the Ohio Valley Electric Corporation (collectively, the "PPA Plants"). The purchases would be made under a proposed eight-year purchase power agreement ("PPA") between the Companies and their affiliate, FES (the "PPA Proposal"). All of the energy, capacity, and ancillary services purchased under the PPA would then be sold by the Companies into the wholesale market operated by PJM Interconnection, L.L.C. ("PJM"). The Companies propose that the full costs of the resources, plus a return on invested capital, net of the associated market revenues, would be recovered from customers through the nonbypassable Retail Rate Stability rider ("Rider RRS").

Although the Companies contend that Rider RRS will result in a net benefit to customers of $561 million over the eight-year term of ESP IV,[3] compelling evidence of record shows that customers will pay a charge of up to $3.6 billion over the same time period. OCC/NOPEC witness Wilson testified that consumers would pay up to $3.6 billion in charges under Rider RRS; P3/EPSA witness Kalt testified that customers would be charged up to $858 million (net present value); and Exelon Generation ("ExGen") witness Campbell testified that the Companies would save $2 billion to $2.5 billion if ExGen were to provide the Companies the same amount

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[2] Companies Ex. 28 (Moul Direct) at 2 - 3…"The economic viability of the Plants [under the PPA Proposal] is in doubt. Market-based revenues for energy and capacity have been at historic lows and are insufficient to permit FES to continue operating the Plants and to make necessary investments. . . . Markets have not, and are not, providing sufficient revenues to ensure continued operation of the Plants."

[3] Companies Ex. 155 (Mikkelsen Fifth Supplemental) at 12

of energy and capacity instead of their affiliate, FES.[4] Indeed, even the Companies acknowledge that customers will incur significant charges for the FES generation through 2019, and that net charges under the latter years of ESP IV are more speculative to identify.[5]

Power4Schools position is clear. It already has entered into an agreement for electric supply with FES to serve its member school districts through 2019.[6] As set forth in this brief, it is unreasonable and unlawful to require Power4Schools to pay FES for electric supply twice.

III. THE COMPANIES' PPA PROPOSAL IS CONTRARY TO STATE AND FEDERAL LAW AND OHIO POLICY.

A. The Companies' PPA Proposal Violates Ohio's Successful Competitive Generation Market Structure.

In 1999, Ohio Senate Bill ("S.B.") 3 became law. It deregulated the generation market, ending the use of cost-based rates for generation services in the state of Ohio. Since the enactment of S.B. 3, market forces are used to determine which power plants should be operated, which power plants should be retired if they are inefficient and uneconomic, the amount of revenues generators receive, and the price customers will be charged.

Approval of the Companies' proposed ESP IV will constitute a reversal of Ohio's policy that market competition should determine customers' price of generation. Under the Companies' proposal, captive customers will be charged the full embedded costs of the power plants under the PPA Proposal, plus a rate of return. Captive customers will incur these charges regardless of whether the power plants under the PPA Proposal are profitable or competitive in the marketplace. The Companies—until recently some of the strong proponents of Ohio's move to deregulate generation—now seek to "re-regulate" and force customers to subsidize unprofitable

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[4] OCC/NOPEC Ex. 9 (Wilson Second Supplemental) at 12; 3P/EPS Ex. 12 (Kalt Second Supplemental) at 17; ExGen Ex. 4 (Campbell Second Supplemental) at 6.

[5] Companies Ex. 33 (Ruberto Direct) at Att. JAR-1.

[6] See *Power4Schools v. FirstEnergy Solutions*, Case No 14-1082-EL-CSS, Entry (November 18, 2015).

generation, without the accompanying checks and balances of traditional cost-based regulation, and in violation of S.B. 3.[7]

Moreover, Ohio's legislature has limited the Commission's jurisdiction over electric light companies only to when they are "engaged in the business of supplying electricity for light, heat, or power purposes ***to consumers within this state***."[8] It excluded regional transmission organizations ("RTO"), such a PJM, from the Commission's jurisdiction. With these restrictions, the legislature clearly intended to limit the Commission's authority to retail service. Indeed, consistent with R.C. 4905.03(C), R.C. 4928.141(A) requires electric distribution utilities to "provide consumers" with a "a standard service offer of all competitive ***retail*** electric services." Emphasis supplied.

This regulatory structure recognizes that the Federal Power Act ("FPA") vests exclusive jurisdiction over wholesale electric prices in the Federal Energy Regulatory Commission ("FERC").[9] FERC, in turn, created the RTOs (such as PJM) to oversee wholesale electric service in multistate markets.[10] Rider RRS encroaches on FERC's exclusive jurisdiction and, in doing so, harms the Companies' customers through its effects on PJM's energy and capacity markets.

The U.S. Supreme Court recently affirmed that wholesale electric service compensation is within FERC's exclusive jurisdiction in its opinion in *Federal Energy Regulatory Commission*

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[7] OCC Ex. 25 (Rose Direct) at 15, explaining why the oversight provisions proposed with Rider RRS are considerably inferior to the oversight traditional cost-based regulation.

[8] R.C. 4905.03.

[9] See 16 U.S.C. 824(b)(1); *Nantahala Power & Light Co. v. Thornburgh*, 476 U.S. 952, 966; *PPL EnergyPlus, LLC v. Solomon*, 766 F.3d 241, 251 (3rd Cir. 2014).

[10] *PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467, 472 (4th Cir. 2014).

v. Electric Supply Association.[11] Moreover, because wholesale electricity compensation is within the exclusive jurisdiction of FERC, the Commission is preempted from approving Rider RRS.[12]

B. The Companies' PPA Proposal is Not Needed – PJM is Responsible for Maintaining Generation Resource Adequacy in its Footprint, Which Includes Ohio.

The Companies urge the approval of its proposed Rider RRS, in part, to ensure adequate generation supply.[13] However, PJM is responsible for ensuring adequate resources to meet customer demand requirements in Ohio. PJM's Reliability Pricing Model ("RPM") ensures there are sufficient capacity resource products available to maintain system reliability. The RPM market provides incentives for existing efficient sources of capacity to remain in the system and to attract new investments. PJM's market signals have succeeded in meeting PJM's demand requirements, plus a reserve margin. In fact, according to the results of the recent 2017/118 Base Residual Auction, the reserve margin was 20 percent, 4 percent above PJM's target.[14]

To further improve the design of the capacity market to maintain and attract development and ensure reliability, FERC approved PJM's Capacity Performance proposal on June 9, 2015.[15] The purpose of the Capacity Performance product is to increase the performance incentives for capacity resources.[16] If units fail to perform, they will have to pay substantial penalties to those

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[11] No. 14-840, slip. op., Kagan, J., (January 25, 2016).

[12] *PPL EnergyPlus, LLC v. Nazarian,* 753 F.3d 467, 472 (4th Cir. 2014); *PPL EnergyPlus, LLC v. Solomon,* 766 F.3d 241, 251 (3d Cir. 2014).

[13] *See* Companies' Ex. 13 (Strah Direct) at 2.

[14] Sierra Club Ex. 73 (Supplemental Comings) at 31.

[15] *PJM Interconnection, L.L.C., et. al.*, 151 FERC ¶ 61,208 (June 9, 2015); IMM Ex. 2 (Bowring First Supplemental) at 3-4.

[16] IMM Ex. 2 (Bowring First Supplemental) at 3-4.

units that do perform when called.[17] Thus, PJM is meeting its responsibility to maintain adequate generation supply resources.

Subsidizing uneconomic generation through Rider RRS will undermine the PJM market signals critical to maintaining and attracting adequate generation supply. As noted by PJM's Independent Market Monitor ("IMM"), "Rider RRS is not consistent with competition in the PJM wholesale power market."[18] The IMM further noted that Rider RRS will "make it difficult or impossible for generating units without subsidies to compete in the market."[19] As a result, Rider RRS "would negatively affect the incentives to build new generation."[20]

C. Assuming, *Arguendo*, That Benefits Exist to Support the PPA Plants in the Short Run, Such Benefits May be Achieved Through Lawful and More Reasonable Alternatives.

Through Rider RRS, the economic risks associated with the generation facilities under the PPA Plants will be shifted away from the Companies and FES and onto ratepayers. Approval of Rider RRS by the Commission would be a reversal of Ohio's march to a fully competitive electric market, contrary to the law and the public interest. As a consequence, the health and vitality of the wholesale and retail competitive markets will be put at risk, adversely affecting consumers—including financially strapped Ohio public school districts—and deterring investment in new, unsubsidized generation facilities in Ohio.

The Companies claim that the Economic Stability Program is designed to provide its customers with a number of benefits. These include rate stability, the promotion of reliable retail electric service, and the local economic benefits from the continued operation of the plants under

[17] Id.

[18] Id. at 5.

[19] Id.

[20] Id.

the PPA proposal.[21] If it is believed that these benefits can be achieved through the PPA Proposal and Rider RRS, there are alternative, better ways to achieve these goals without shifting the entire risk to ratepayers as proposed by Rider RRS. For instance, FES could directly enter into bilateral contracts with customers interested in the purported rate stability of the PPA Proposal and Rider RRS. This approach would make available a longer-term contract to customers seeking a market hedge without imposing the arrangement on all customers and would be more consistent with Ohio's commitment to retail choice.[22]

The record also supports private or self-financing of the generating facilities under the PPA Proposal. The Companies' projections indicate that Rider RRS will result in hundreds of millions of dollars in total credit to customers over the term of the PPA Proposal.[23] If this projection is accurate, it should be more than adequate to support FirstEnergy's own financing of the power plants under the PPA Proposal, if that additional financial support is needed. Further, FES is part of a broader corporate organization within FirstEnergy Corp. that would allow for intra-company lending. If the Companies' projections of the eventual profitability of the plants under the PPA Proposal are accurate, then other members of the FirstEnergy Corp. family should be eager to provide intra-affiliate lending to FES.[24] Finally, Company Witness Lisowski indicated that FES has over $500 million in cash on hand, an amount that should be more than sufficient to cover the plants' temporary revenue shortfalls projected by the Companies.[25]

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[21] Companies' Ex. 13 (Strah Direct) at 3.

[22] ExGen Ex. 1 (Campbell Direct) at 15.

[23] Companies Ex. 155 (Mikkelsen Fifth Supplemental) at 11 (projected benefits of $561 million over the eight year term of Rider RRS).

[24] Tr. VIII at 1669 5-10.

[25] Tr. VIII at 1965; *see also* Tr. VIII at 1727. 3-26.

If the Commission is convinced that a multi-year PPA arrangement will offer greater rate stability for customers, then the Commission should consider a competitive bidding process. A PPA arrangement that is the product of a transparent competitive bidding process is a superior alternative to the affiliate backroom deal the Companies currently propose. A competitive process would help guarantee that customers are paying the lowest cost for the benefit of rate stability. Also, a PPA arrangement that is the product of a competitive bidding process is consistent with the Commission's recent orders directing all Ohio utilities to use competitive processes to procure energy.[26]

A recent Exelon Generation Company ("ExGen") proposal illustrates that a competitive bidding process to procure the PPA is superior to the PPA Proposal between the Companies and FES. ExGen's proposal offers an eight year bundled fixed price for up to 3,000 MW of energy and capacity delivered to the Companies' territories.[27] The energy and capacity would be delivered from 100% zero carbon resources from nuclear, hydro, solar and wind assets in PJM.[28] ExGen's proposal does not unduly shift the risk to customers. For example, ExGen indicated that it would be responsible for 100 percent of unit performance risks, including the capacity performance risk.[29] In contrast, the Companies' proposal requires its customers to bear the burden of the capacity performance risk.[30] In all, ExGen's competitive offer would be expected to provide well-over $2 billion in savings for customers.[31]

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[26] ExGen Ex. 4 (Campbell Second Supplemental) at 3.

[27] ExGen Ex. 4 (Campbell Second Supplemental) at 6.

[28] Id.at 7.

[29] Id.

[30] Id., at 8, citing the cross examination of Companies witness Ruberto, Tr. XIII at 2809 at 6-12.

[31] Id. at 6.

These alternatives to Rider RRS and the Companies' PPA Proposal illustrate that the Companies' proposal has little to do with the benefits claimed by the Companies. By only offering a proposal that places all risk onto ratepayers, the Companies make clear that their only concern is with their own financial interests and not the interests of customers.

IV. STANDARD OF REVIEW

The Ohio Supreme Court has articulated a three-part test to evaluate a proposed settlement before the Commission:[32]

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties, where there is a diversity of interests among the stipulating parties?
2. Does the settlement package violate any important regulatory principle or practice?
3. Does the settlement, as a package, benefit ratepayers and the public interest?

The Stipulated ESP IV fails each of these three prong and should be rejected by the Commission.

A. The Stipulated ESP IV is Not a Product of Serious Bargaining and a Diverse Group of Interests Strongly Oppose It.

At first blush, the signatory parties to the stipulated ESP IV give the appearance of representing a diverse set of interests. However, even a cursory examination quickly reveals that they represent anything but a diverse group. The signatory parties did not bargain on behalf of large customer classes, as reflected by the narrowly-tailored benefits provided to the various signatory parties, as discussed in third prong of this test.

Standing in stark contrast is the diverse group of intervenors that oppose the stipulated ESP IV and that represent large groups of customer classes. These include: the Ohio Consumers' Counsel (representing the interests of 1.9 million households in the Companies' service territories); the Ohio Manufacturers' Association (representing a large and diverse group of small, medium, and large businesses); the Northeast Ohio Public Energy Council

[32] *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126 (1992).

(representing 164 communities in thirteen northern Ohio counties of Ashtabula, Lake, Geauga, Cuyahoga, Summit, Lorain, Medina, Trumbull, Portage, Huron, Columbiana, Mahoning, and Seneca, accounting for approximately 500,000 retail electric customers in the Companies' service territories); the Retail Electric Supply Association (representing competitive retail electric suppliers); the Sierra Club, Environmental Defense Fund, and the Environmental Law & Policy Center (broadly representing the environmental interests of all Ohioans); and the Electric Power Supply Association (resenting thousands of merchant-generated megawatts in PJM). The Commission should seriously consider this widespread opposition to Rider RRS, especially in contrast to the narrow, special interests of the signatory parties.

B. The Stipulated ESP IV Violates Numerous Regulatory Principles, Practices, and Statutes.

1. Rider RRS does not fall within R.C. 4928.143(B)(2).

As a threshold matter, the Commission is limited to including in an ESP only those items expressly listed in R.C. 4928.143(B)(2)(a) through (i).[33] The Companies claim that Rider RRS falls under R.C. 4928.143(B)(2)(d), which provides that an ESP may include:

> Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric:

Specifically, the Companies claim that Rider RRS falls within the above provision because it relates to "bypassability," or "default service," or as a "financial limitation on customer shopping." The Companies' arguments are without merit. The Commission already has rejected that riders such as Rider RRS do not fall within the "bypassability" provision of the

[33] *In Re Application of Columbus Southern Power Co., et al.*, 128 Ohio St. 3d 512, 2011-Ohio-1788 [¶¶ 31-35], 945 N.E.2d 655.

statute.[34] In addition, Rider RRS does not relate to default service because it is not associated with an event of default under R.C. 4928.141. Finally, under the plain language of the statute, only the provisions related to physical limitations on customer shopping can be included in an ESP, considering that the term "shopping" is synonymous with a customer "switching" service providers.[35] As a matter of statutory construction, the word "financial" cannot be read into the statute.[36]

2. If the Commission finds that Rider RRS falls within the provisions of R.C. 4928.143(B), then the proposed ESP fails the statutory test for approval provided in R.C. 4928.143(C).

Under R.C. 4928.143(C)(1), the Commission may approve or modify and approve an ESP only if it finds "that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code." In applying the test, the Commission traditionally considers "quantitative" and "qualitative" factors.

In this proceeding, the Companies have quantified the benefits of ESP IV to be $621.1 million. This sum is comprised of $51.1 million that the Companies have agreed to provide certain signatory parties for their own, self-serving parochial interests. The remaining amount is made up of the Companies' speculative projection that Rider RRS will provide $ 561 million in benefits to consumers over the eight-year term of ESP IV.

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[34] *See In Re Ohio Power*, Case No. 13-2385 (Order, February 25, 2015), at 22.

[35] See, *e.g.*, R.C. 4928.40(A)(1) ("…such ***shopping incentives*** by customer class as are considered necessary to induce, at the minimum, a twenty per cent load ***switching rate by customer class*** halfway through the utility's market development period but not later than December 31, 2003." [Emphasis added.]

[36] *In Re Columbus S. Power*, 138 Ohio St.3d 448, 2014-Ohio-462, 9 N.E.3d 1064, ¶ 26.

On the other hand, as explained above, compelling evidence of record shows that customers will pay up to $3.6 billion over the same time period. OCC/NOPEC witness Wilson testified that consumers would pay up to $3.6 billion in charges under Rider RRS; P3/EPSA witness Kalt testified that customers would be charged up to $858 million (net present value); and ExGen witness Campbell testified that the Companies would save $2 billion to $2.5 billion if ExGen were to provide the Companies the same amount of energy and capacity instead of their affiliate, FES.[37] Accordingly, the Commission must conclude that the ESP is quantitatively less favorable than an MRO.

Power4Schools understands that the question whether the ESP v. MRO test can consider qualitative benefits is presently pending before the Ohio Supreme Court. Power4Schools agrees that the Court's precedent limits the Commission's consideration to "costs" or quantifiable benefits.[38] Thus, the quantitative analysis performed above is conclusive of this issue, requiring that the ESP be denied, or modified so that its costs are less than an MRO.

However, should the Commission wish to consider qualitative benefits, Power4Schools notes that the benefits alleged by the Companies are so insignificant that they cannot possibly outweigh the staggering costs of proposed Rider RRS.[39] Moreover, as shown below, many do not fall within R.C. 4928.143(B) as required by the above Ohio Supreme Court precedent, are funded by captive customers, and provide no benefit to customers in this proceeding (considering they only commit to take future action dependent on Commission approval in subsequent proceedings).

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[37] OCC/NOPEC Ex. 9 (Wilson Second Supplemental) at 12; 3P/EPS Ex. 12 (Kalt Second Supplemental) at 17; ExGen Ex. 4 (Campbell Second Supplemental) at 6.

[38] *See In Re Application of Columbus Southern Power Co., et al.*, 128 Ohio St. 3d 402, 2011-Ohio-958 [¶26], 945 N.E.2d 501; *In Re Application of Columbus Southern Power Co., et al.*, 128 Ohio St. 3d 512, 2011-Ohio-1788 [¶¶ 31-35], 945 N.E.2d 655

[39] Companies Ex. 155 (Mikkelsen Fifth Supplemental) at 10-14.

3. Rider RRS violates R.C. 4928.02(H) by subsidizing generation.

R.C. 4928.02(H) states that it is the policy of the state of Ohio to:

> [e]nsure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates.

It would be difficult to design a mechanism that violates this provision of state policy more egregiously than Rider RRS. R.C. 4928.02(H) prohibits the recovery of any generation-related costs through distribution rates. Rider RRS is a non-bypassable generation charge assessed through the Companies' distribution rates to all captive distribution customers in clear violation of R.C. 4928.02(H).[40]

4. It is unlawful for the Commission to collect additional transition costs or equivalent revenues from customers.

As part of Ohio's long transition to a fully competitive market, state law established a well-defined market development period and deadline for stranded cost recovery. Specifically, R.C 4928.39 defines transition costs by clearly stating that costs unrecoverable in a competitive environment are considered part of the transition costs.[41] During the market development period ultimately ending December 31, 2010, the Companies charged customers nearly $7 billion ($6,911,427,628) in transition costs to adjust to market conditions.[42]

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[40] See, also, *In Re Ohio Power Company*, Case No. 10-1454-EL-RDR, Finding and Order (January 11, 2012).

[41] *See* OCC Ex. 25 (Direct Testimony of Kenneth Rose), pp. 22-23.

[42] Id. at 18,, citing *In the Matter of the Application of FirstEnergy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues*, Case Nos. 99-1212-EL-ETP, 99-1213-EL-ATA, and 99-1214-EL-AAM, Opinion and Order (July 19, 2000), p. 71 (establishing the total allowable transition costs for the Companies).

After the market development period, however, utilities (and their affiliates) were to stand on their own in the competitive market, without additional subsidies from captive ratepayers for uneconomic competitive generation.[43] But, as Dr. Rose points out, "that's just what the Companies propose to do" through Rider RSS in this proposed ESP IV.[44] Rider RRS is nothing more than another form of transition charge through which the Companies seek to recover the costs of uneconomic generation. Rider RRS clearly violates R.C. 4928.38 and should not be approved.

5. Rider DCR inappropriately allows the Companies to avoid the scrutiny of a base distribution rate case.

It is prudent regulatory policy for a state utility regulatory commission to keep track of the earnings of a regulated electric distribution company on a regular basis. However, it has been nine years, since 2007, that the Companies have had a base distribution rate case before the Commission. By proposing a continuation of the Delivery Capital Recovery Rider ("Rider DCR") during the period of ESP IV and a continuation of the base distribution rate freeze until 2024, the Companies avoid having their authorized rate of return scrutinized and lowered. As indicated by OCC Witness Woolridge, interest rates and costs of capital have declined significantly since the Companies' base distribution rate case, with interest rates at 50-year lows.[45] Thus, the rate of return authorized in the last distribution rate case is stale, out of date and inappropriately applied given the reality of low costs of capital. The Companies are entitled to a fair rate of return, but Ohio's schools should not have to overpay an inappropriately high rate of return to the Companies.

[43] R.C. 4928.38; OCC Ex. 25 (Rose Direct) at 19.

[44] Id.

[45] OCC Ex. 22 (Woolridge Direct) at 50.

6. Rider GDR is vague, asymmetric, and not authorized by Ohio law.

The Companies request the Commission to approve the creation of a new rider, the Government Directives Recovery Rider ("GDR"), for the purpose of recovering costs related to future government directives. This proposal violates a number of regulatory practices and principles.[46] First, it is overly vague, as none of the costs have been defined, leaving the Companies with an open-ended recovery vehicle. Second, Rider GDR, as proposed, is asymmetric because it is designed to recover costs due to government directives—but doesn't allow or facilitate the return of ratepayer money due to a government directive. Finally, R.C. 4928.143(B)(2)(a) through (i) identify the provisions the Commission may authorize in an ESP, and none authorize Rider GDR.

7. The Companies' seek to diminish the ESP II Legacy RTEP non-collection commitment benefit to consumers.

As part of the stipulation in the Companies' prior ESP case (ESP II),[47] they committed not to collect *PJM Regional* Transmission Expansion Plan costs ("Legacy RTEP") costs, even though the Companies would be charged these costs by American Transmission Services, Inc. ("ATSI").[48] Now, the Companies propose to count *MISO* Transmission Expansion Plan ("Legacy MTEP") costs toward the ESP II Legacy RTEP costs, *even though the Companies would not be charged by ATSI for the Legacy MTEP costs*.[49] The Commission should reject this proposal. The Companies are seeking to back out of their commitments made to their customers in the ESP II stipulation.

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[46] See Staff Ex. 6 (McCarter Direct) at 5; Staff Ex. 1 (Pearce Direct) at 5.

[47] *In Re First Energy Companies*, Case No. 10-388-EL-SSO.

[48] OCC Ex. 19 (Hixon Direct) at 4-5; see, also, ESP II, Order (August 25, 2010) at 32.

[49] Id. at 10.

Because the proposed ESP IV violates several regulatory principles, practices and statutes it must be rejected.

C. The Settlement Does Not Benefit Ratepayers and the Public Interest.

It is inconceivable how an ESP that will assess captive customers a nonbypassable surcharge of up to $3.6 billion benefits ratepayers or is in the public interest. It is even more inconceivable considering that PJM already is responsible, without assessing an additional surcharge, for assuring the system reliability that the proposed ESP IV ostensibly is supposed to provide. And it is completely unfathomable how ratepayers benefit when Ohio law expressly provides that such ratepayer-supported bailouts for uneconomic generation were to end years ago when the market development period expired.

Nevertheless, due to the unequal bargaining power of the Companies in ESP proceedings,[50] exacerbated by the Commission's Staff late agreement to settlement terms, a few parties have decided to negotiate various terms to the stipulation in this proceeding – not to serve the public interest, but their own narrow, parochial self-interests. These include discounts to large industrial users and payments to low-income interests that are funded with ratepayer dollars.[51] Moreover, many of the Companies' commitments are prospective in nature, subject to further Commission action, and provide no benefit to this proceeding. These include vague and unenforceable commitments for federal advocacy for improvement in the capacity markets, CO_2 emission reductions, grid modernization, and resource diversification.[52]

These commitments, as package, cannot by any stretch of the imagination, overcome the enormous costs and risks facing consumers from the onerous effects of Rider RRS. Ohio's

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[50] OCC/NOPEC Ex. 11 (Kahal Second Supplemental) at 7.

[51] Companies Ex. 8 (Mikkelsen Supplemental) at 12.

[52] Companies Ex. 155 (Mikkelsen Fifth Supplemental) at 13.

public schools are strapped financially. The Companies' proposal will have significant adverse consequences on Ohio's public schools by taking financial resources that could be directed to educate Ohio's school children and redirecting them to the Companies.

V. CONCLUSION

For the above reasons, Power4Schools respectfully requests that the stipulation be rejected and that the Companies proposed ESP IV be denied. Alternatively, Power4Schools requests that ESP IV be modified, at a minimum by rejecting Riders RRS, DCR and GDR, such that ESP IV's costs are more favorable than an MRO.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Initial Hearing Brief was served *via electronic mail* upon the parties of record this 16th day of February, 2016.

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