FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service.	)))))))	**Case No. 10-2586-EL-SSO**

POST-HEARING REPLY OF FIRSTENERGY SOLUTIONS CORP.

Mark A. Hayden (0081077)
Counsel of Record
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308
Telephone: 330-761-7735
Facsimile: 330-384-3875
Email: haydenm@firstenergycorp.com

David A. Kutik (0006418)
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190
Telephone: 216-586-3939
Facsimile: 216-579-0212
Email: dakutik@jonesday.com

Grant W. Garber (0079541)
JONES DAY
P.O. Box 165017
Columbus, OH 43216-5017
325 John H. McConnell Blvd, Suite 600
Columbus, OH 43215
Telephone: 614-469-3939
Facsimile: 614-461-4198
Email: gwgarber@jonesday.com

ATTORNEYS FOR FIRSTENERGY SOLUTIONS CORP.

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I. INTRODUCTION

Despite parties' various objections to elements of Duke's proposed MRO, no party disputes the following: market prices for retail generation are significantly lower than Duke's current legacy ESP price, and they will continue to be lower for the next two years, at least. *See* pp. 7-8, *infra*. Accordingly, no party disputes that the more Duke's SSO price is derived from market prices, the lower the SSO price will be. *See id.* Further, all parties agree that two policy objectives should help guide the Commission's decision here: consumers should be protected from high rates; and any increases in generation rates should be achieved gradually. Thus, by any reckoning given the likelihood of lower market prices, and by the plain terms of R.C. 4928.142, the Commission should modify Duke's proposal to implement a full transition to market prices in year two of the MRO.

Astonishingly, several parties—including customers or parties purporting to represent customers—seek to avoid this outcome and the lower prices that would result. In doing so, they attempt to impose statutory limitations on the Commission's discretion that do not exist, and read the evidence in ways that the record does not support (to the extent they cite evidence at all). As demonstrated below, and as Solutions proposes, R.C. 4928.142(E) gives the Commission discretion to order a transition to full market prices in year two of Duke's proposed MRO. And as demonstrated below, the unrebutted record evidence, which shows that market prices are and will remain lower than Duke's legacy ESP price, requires that the Commission exercise that discretion. The Commission should approve Duke's proposed MRO, subject to the modifications proposed by Solutions.

II. ARGUMENT

A. The Commission Should Approve The Accelerated Version Of The Blending Period As Proposed By Solutions.

In their initial briefs, a handful of parties challenge Duke's proposal that the Commission decide now to shorten the period of blended auction and legacy ESP prices. Those objections fall broadly into three categories: (i) the statutory blending period prescribed by R.C. 4928.142 must last a minimum of five years; (ii) the Commission cannot make the decision to alter the default blending proportions now, at the outset of the MRO period; and (iii) there is no "abrupt or significant change" warranting modification of the default blending proportions. As set forth below, all of those objections fail.

1. There is no requirement that the blending period last at least five years.

Some parties suggest that Duke's proposed MRO is unlawful because R.C. 4928.142(D) requires that an SSO price consisting of a blend of both competitively bid and legacy prices last a minimum of five years. *See, e.g.*, Ohio Energy Group ("OEG") Br., p. 2. These parties devote substantial effort to discussing the nature of the default blending proportions prescribed by R.C. 4928.142(D). *See, e.g.*, Greater Cincinnati Health Council ("GCHC") Br., pp. 7-10 (discussing legislative history of R.C. 4928.142(D); Kroger Br., p. 7 (discussing effect of "not more than" modifier in R.C. 4928.142(D)).

Such arguments are beside the point. No party disputes that R.C. 4928.142(D) establishes the default blending proportions to be followed during the first five years of an MRO in the event the Commission does not modify those proportions. But neither Duke nor Solutions is proposing an unmodified blending period. Rather, Duke and Solutions ask that the Commission modify the default blending proportions pursuant to R.C. 4928.142(E). And under

that provision, the Commission retains full authority to "alter" the default blending proportions "notwithstanding any other requirement of [R.C. 4928.142]."

Nor is there any requirement that the blending period last a minimum of five years. There is simply no language in R.C. 4928.142(E) that expressly says that the MRO blending period is a "five-year minimum." In fact, the only time-related limitation in R.C. 4928.142(E) is a ten-year ***maximum*** on the blending period. The Commission may shorten the blending period to less than five years because, under that provision, the Commission may "alter" the default blending proportions by either increasing or decreasing the market portion of the SSO price, effective in the second year of the MRO. *See* Solutions Br., pp. 11-12; *infra.*, pp. 3-5. By increasing the market portion of the SSO price to 100%, the Commission thus has discretion to end the period of blended prices earlier than five years. By focusing narrowly on the default blending proportions in R.C. 4928.142(D), those parties tell only half the story and ignore the Commission's clear authority to modify those proportions pursuant to R.C. 4928.142(E).

2. The Commission may decide now to alter the blending proportions in the second year of the proposed MRO.

Some parties suggest that R.C. 4928.142(E) precludes the Commission from deciding to alter the default blending proportions now. They further suggest that, in any case, it would be unreasonable for the Commission to do so. *See, e.g.*, OEG Br., pp. 2-7; Staff Br., pp. 3-11; GCHC Br., pp. 10-16; Kroger Br., p. 8. Both of these arguments fail.

Fundamentally, there is no limitation as to when the Commission can decide to alter the blending proportions pursuant to R.C. 4928.142(E). In fact, that provision is silent as to the timing of the decision itself. Certain parties argue that the prefatory clause "[b]eginning in the second year" prohibits the Commission from making the decision until the second year of the MRO. Specifically, GCHC argues that "[g]rammatically, the placement of the phrase

'[b]eginning in the second year' at the head of the sentence indicates that it modifies the phrase 'the commission may,' identifying the time at which the Commission may act." GCHC Br., p. 10. But this analysis carelessly omits a critical word. R.C. 4928.142(E) does not say "beginning in the second year . . . the Commission may act." It says, "beginning in the second year . . . the Commission may ***alter*** prospectively the proportions . . . ." Thus, "beginning in the second year" indicates when the "altering" may first take place, which is "beginning in the second year."

Nor does this interpretation render superfluous the word "prospectively," as GCHC suggests. *See* GCHC Br., p. 10. The word "prospectively" indicates that whenever the Commission makes the decision to alter the blending proportions, whether at the outset of the MRO, in year two of the MRO, or later, that decision must apply only to those proportions that have not yet gone into effect. Indeed, R.C. 4928.142(E) specifically defines "prospective" in this way, indicating that alteration of the blending period is "limited to an alteration affecting the ***prospective*** proportions used during the blending period and shall not affect any blending proportion previously approved and applied by the Commission under this division." *Treadway v. Ballew*, No. 18984, 1998 Ohio App. LEXIS 4758, *8 (9th App. Dist. Oct. 7, 1998) ("[W]hen use of a word or phrase in one portion of a statute is ambiguous we look to other uses of the same word or phrase in that same statute . . . ."), *citing State ex rel. Bohan v. Indus. Comm'n of Ohio* (1946), 146 Ohio St. 618, syll. 1. Because Solutions' proposal—that the Commission decide now to alter the blending proportions in year two and beyond—does not call for the Commission to alter proportions "previously approved and applied," that proposal is consistent with R.C. 4928.142.(E). Moreover, even if the Commission determines that R.C. 4928.142(E) does not authorize modifications to the blending proportions at the outset of Duke's MRO, that

statute certainly allows the Commission to order modifications at the beginning of the second year of the MRO, effective for all auctions that occur later in that year.

Notwithstanding this reading of the plain terms of the statute, certain parties suggest that the Commission's decision to alter the blend now would be unreasonable. These arguments also fail. For example, some parties contend that the Commission should not rely on the market price forecasts provided by Duke witness Judah Rose. They argue that it is unreasonable to approve a modified blending period based on an "educated guess" or "prophecy" regarding future prices. *See, e.g.*, OEG Br., p. 4; GCHC Br., pp. 12-13; OPAE Br., p. 4. This significantly misconstrues the evidence. Mr. Rose's analysis is not mere prophecy. Rather, his projections of future wholesale prices are based on forward power prices—*i.e.*, ***actual prices*** that already have been paid for future delivery of power. *See, e.g.*, Rose Dir., p. 20:1-6 (Duke Ex. 4). Notably, Mr. Rose was the only witness who provided any analysis of future prices; there is no record evidence contradicting that testimony. *See* Cincinnati Br., p. 12 ("No other witness in this case has offered any price projections."). Moreover, as set forth in Solutions' initial brief, the Commission routinely relies on forecasts of data in making important regulatory decisions. *See* Solutions Br., p. 13 (discussing long-term forecast reports and rate case filing requirements). As Staff witness Raymond Strom acknowledged, in deciding whether to modify the default blending proportions in ***any*** situation, the Commission necessarily must rely on forecasts of future market prices. *See* Tr. Vol. V, 1066:12-15 (Strom Cross). The Commission thus may properly rely on Mr. Rose's analysis to approve an accelerated version of Duke's proposed blending period.

Similarly, OEG alleges that the Commission should not approve a modified blending period now because market rates may "soar well above SSO rates in 2014." OEG Br., p. 7. This

is mere speculation, without a shred of evidentiary support.[1] Nothing in the record suggests that market prices will increase above Duke's legacy ESP price in 2014 or beyond, much less "soar" above it. In fact, the evidence indicates that the opposite is true. As noted above, Mr. Rose's projections are based in part on forward power prices—actual prices paid for future delivery of power. *See, e.g.*, Rose Dir., p. 20:1-6 (Duke Ex. 4). Were there a material risk or belief that market prices will "soar" above Duke's legacy ESP prices, the forward prices incorporated into Mr. Rose's analysis would reflect that belief. As it stands, Mr. Rose projects the retail market price to approach—but not exceed—the legacy ESP price. Rose Dir., p. 44 (Duke Ex. 4). In fact, after 2014, the market price is as likely to be below the legacy ESP price as above it. *See* Tr. Vol. I, pp. 139:18-22 (Rose Cross) (agreeing that it is reasonable to expect market price to "change over time"). Further, no party disputes that by incorporating staggered auctions of multiyear products, Duke's proposed MRO is structured to mitigate volatility in the MRO price. *See* Tr. Vol. III, 623:4-17 (Wathen Cross) (stating that proposed staggered MRO auctions will "eliminate any unforeseen change" in prices and will "smooth out the prices").[2] The Commission should decide now to modify the default blending proportions beginning in the second year of Duke's proposed MRO.

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[1] In fact, OEG's witness Baron testified that he had no reason to dispute Mr. Rose's testimony regarding future market prices. *See, e.g.*, Tr. Vol. V, p. 949:20-24.

[2] OEG also complains that Mr. Rose's projections are "overly simplistic and likely to be in error" because, for example, the Rider PTC-FPP has been volatile over the past several months, ostensibly complicating the task of estimating the future legacy ESP price. OEG Br., p. 5. But Duke proposes that Rider PTC-FPP be frozen as of December 2011 (Ziolkowski Dir., p. 6:7-10 (Duke Ex. 17)), and Solutions suggests that the Commission improve on this proposal by ordering Duke to utilize the average PTC-FPP charge over the eight quarters preceding December 2011. *See* Solutions Br., pp. 15-16. OEG's complaints about the difficulty of estimating the legacy ESP price are unfounded.

3. The Commission should order a full transition to market in year two of the MRO because of the significant change between the full market price and the blended price in that year.

Revised Code Section 4928.142(E) authorizes the Commission to modify the default blending proportions "to mitigate any effect of an abrupt or significant change in the electric distribution utility's standard service offer price that would otherwise result in general or with respect to any rate group or rate schedule but for such alteration." As GCHC acknowledges, "mitigate" means "to cause to become less harsh," or "to make less severe or painful." GCHC Br., p. 11 (citing Merriam-Webster dictionary definition).

Here, the Commission should mitigate the change in Duke's SSO price beginning in year two of the MRO by ordering a full transition to market prices in that year. No party disputes that the prices resulting from the recent FirstEnergy Ohio SSO auctions are a good proxy for the price Duke could obtain in an MRO auction. *See* Tr. Vol. V, pp. 917:24-918:7 (Higgins Cross); Tr. Vol. V, p. 1106:12-16 (Strom Cross); Tr. Vol. III, p. 613:16-19 (Wathen Cross); Tr. Vol. III, p. 575:5-8 (Bailey Cross). Specifically, in their October 2010 auction, the FirstEnergy Ohio operating companies obtained prices in the range of $54.55 per megawatt hour ("MWh") to $56.58/MWh, and in the January 2011 auction, those prices ranged from $54.92/MWh to $57.47/MWh. *See In re Procurement of Standard Serv. Offer Generation for Customers of Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co.*, No. 10-1284-EL-UNC, Finding and Order dated Oct. 22, 2010, ¶ 6, Finding and Order dated Jan. 27, 2011, ¶ 6. Judging from that proxy, Duke's MRO auction price is likely to be significantly lower than its legacy ESP price, which is 7.34¢ per kilowatt hour ("kWh"). *See* Rose Dir., p. 13:10-11 (Duke Ex. 4).

Transitioning to full market prices in year two of the MRO is consistent with R.C. 4928.142(E). Under the default blending proportions, Duke's SSO price will become 7.14¢/kWh

in year two of the MRO and 7.22¢/kWh in year three. *See* Rose Dir., p. 44 (Duke Ex. 4). But using the lower, full market prices in those years and beyond will "mitigate"—*i.e.*, make "less harsh or painful"—that price change. Specifically, rather than pay 7.14¢/kWh and 7.22¢/kWh in those years, Duke's customers would pay between 5¢/kWh and less than 6¢/kWh—a savings of approximately 20-30%. *See* Tr. Vol. III, p. 612:7-19 (Wathen Cross). Because transition to full market prices in year two and beyond will mitigate the change in the SSO prices that would otherwise result, the Commission should approve Solutions' proposed accelerated blending period.

Notwithstanding the potential for lower generation prices, certain parties object to the modified blending period. But their arguments misconstrue the statute. For example, OEG and Staff suggest that the "abrupt or significant change" referenced in R.C. 4928.142(E) must actually occur before the Commission can alter the blending proportions. *See* OEG Br., p. 4 ("The statute contemplates that ***an actual*** change of circumstances ***actually*** occur.") (original emphasis); Staff Br., pp. 10-11 ("[D]etermination to alter the proportions is supposed to be made based on actual circumstances that exist at some future time."). That interpretation is flatly contradicted by the plain language R.C. 4928.142(E). The statute does not provide for mitigation of "an abrupt or significant change" that "***does*** result" or "***is*** resulting." It provides for mitigation where a change "***would otherwise*** result." The use of the conditional tense clearly indicates that the change need not "actually occur" before the Commission can act. Rather, the change need only be anticipated to occur (through, for example, analysis of price forecasts). Revised Code Section 4928.142(E) does not require customers to be burdened with unnecessarily high prices before the Commission can act to mitigate those prices, and arguments to the contrary should be rejected.

Further, GCHC misstates the "abrupt or significant change" analysis. It argues that because Duke's SSO price under the default blending proportions would increase only 1.1% from year two to year three, there is no need for the Commission to modify the blend. *See* GCHC Br., p. 13. But this argument ignores the market price during those years, which indisputably is lower by 20 to 30%. GCHC essentially argues that the Commission should be satisfied with the default blending proportions because the year three default price (which is significantly higher than the market price) is slightly lower than the year two price (also significantly higher than the market price). But a comparison between only SSO prices under a default blend is needlessly narrow and is not required by the statute. GCHC fails to explain why the Commission cannot "mitigate" SSO prices by ordering a transition to market and allowing customers to access lower prices. The Commission should reject GCHC's invitation to ignore lower market prices.

For its part, Kroger suggests that the "mathematical logic" of R.C. 4928.142 implies that the competitively bid portion of the SSO price can be adjusted downward only, and not upward. Kroger Br., p. 6. This is wrong for two critical reasons. First, nothing about R.C. 4928.142(E) limits the Commission's discretion only to "decreasing" the competitive portion. Rather, the statute authorizes the Commission to "alter" that portion—*i.e.*, to decrease ***or*** increase that portion. Kroger does not attempt to argue otherwise. Second, Kroger's "logic" ignores the situation that exists today, where market prices are lower than the legacy ESP price. As Kroger suggests, where the market price is higher, then mitigating the overall SSO price could mean decreasing the competitive portion of the blend. But today (and over the next several years), where the market price is lower than the legacy ESP price, mitigation of the overall SSO price

requires the Commission to increase the competitive portion of the blend. Accordingly, Kroger's purported "logic" is wrong.

OPAE argues that the Commission should decline to modify the blending proportions because of an allegedly low level of residential shopping in Duke's service territory. *See* OPAE Br., p. 5. This argument fails on several levels. First, OPAE fails to identify any authority requiring that residential shopping meet a sufficient level (apparently known only to OPAE) before the Commission can modify the default blending proportions. Such authority simply does not exist. Moreover, but for OPAE's say-so on brief (with no record citation), there is no evidence of any deficiency in the competitive market in Duke's service territory, nor any evidence that residential shopping is unusually or unreasonably low. More fundamentally, OPAE's proposal would exacerbate the very "problem" it purports to identify. According to OPAE, because residential shopping in Duke's territory is too low, the Commission should refuse to open up more of Duke's SSO load to competition. In other words, "because competition is underdeveloped, there should be less competition." This is nonsense. Even accepting OPAE's unfounded allegation that residential shopping is too low, the best way to remedy this is to allow competitive MRO bidding for more of Duke's SSO load (with fewer restrictions on the bidding process, such as load caps and credit thresholds). OPAE's proposal—to hamstring non-shopping customers to higher prices—would exacerbate deficiencies in competition, not solve them.

B. The Commission Should Reject Staff's Proposed Load Cap.

In a mere two paragraphs, and with no substantive discussion, Staff proposes that the Commission impose a load cap on Duke's MRO auctions. *See* Staff Br., p. 26. Staff does not recommend a specific percentage for the cap, which it suggests be "subject to change" pursuant to "ongoing review" by the Commission. *Id.* Although Staff asserts that a load cap will

"encourage participation of bidders and assure diversity of supply in the auction," Staff does not discuss any record evidence, nor does it reiterate the reasoning provided at hearing by its witness Raymond Strom.

These are telling omissions. In fact, Staff has no evidence to support its load cap recommendation. There is no record evidence indicating that load caps "encourage participation of bidders" or "assure diversity of supply." Mr. Strom admitted on cross-examination that he neither performed such analyses nor spoke with any competitive suppliers regarding the effect of a load cap. *See* Tr. Vol. V, p. 1046:9-24. Staff's stated rationale for a load cap is mere conjecture.

Tellingly, the examples cited at hearing by Mr. Strom do not support Staff's position. In his direct testimony, Mr. Strom cited New Jersey's statewide 35% load cap as supporting a load cap here. At hearing, he indicated that the load cap was specific to each New Jersey utility. *See* Strom Dir., p. 4:13-14 (Staff Ex. 2); Tr. Vol. V, p. 1048:2-5. He admitted, however, that his knowledge of the New Jersey load cap was "fairly fuzzy." Tr. Vol. V, p. 1048:1. No doubt *that* was true because a review of the actual New Jersey auction information shows his testimony to be demonstrably wrong. Specifically, under New Jersey's Basic Generation Service ("BGS") format, a single supplier is limited to a statewide load cap for all utilities of 16 tranches for the auction for industrial customers. *See* "Minimum and Maximum Starting Prices, Tranche Targets, and Statewide Load Cap for the 2011 BGS-CIEP Auction" (attached as Ex. A). Moreover, although the auction for small commercial and residential customers incorporates both statewide and utility-specific load caps, the utility-specific load caps are set by the utilities themselves, and at least one New Jersey utility has set its load cap equal to the maximum number of tranches it expects to procure (*i.e.*, effectively a 100% load cap). *See* "Minimum and

Maximum Starting Prices, Tranche Targets, and Load Caps for the 2011 BGS-FP Auction" (reflecting identical tranche target and EDC load cap for Rockland Elec. Co.) (attached as Ex. B); "Appx. A: Final BGS-FP Auction Rules," p. 12 ("The EDC will set its EDC load cap.") (excerpt attached as Ex. C).

In his direct testimony, Mr. Strom also cited three auctions proposed by the FirstEnergy Ohio operating companies as support for a load cap: the auctions proposed in Case Nos. 04-1371-EL-ATA, 05-936-EL-ATA and 10-388-EL-SSO. But those cases show that load caps often accomplish the opposite of Staff's stated goals of "encouraging participation" and "assuring diversity of supply." Of those three auctions, the two with the most stringent proposed load cap (65%) never resulted in actual procurement of power. As Mr. Strom admitted on cross-examination, the Commission rejected the results of the auction in Case No. 04-1371-EL-ATA, which involved only two rounds of bidding, because the resulting price was too high. *See* Tr. Vol. V, pp. 1048:13-1049:1. And the auction proposed in Case No. 05-936-EL-ATA did not take place at all, after "insufficient interest" by bidders, none of whom submitted initial applications to participate in the auction. *See id.* at 1049:2-14; *see also In re Application of Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co. for Approval of a Competitive Bidding Process for Retail Elec. Load*, No. 05-936-EL-ATA, Entry dated Sept. 6, 2006, ¶ 6.

Mr. Strom's citation to the auction in Case No. 10-388-EL-SSO also misses the mark. The load cap in that case did not originate from Commission order. Rather, it was jointly proposed by parties, including Staff, in a stipulation that initiated the case. *See* FES Ex. 5 ("Stipulation"). Moreover, Staff cannot rely on the Stipulation in recommending a load cap here. As with all such agreements, the purpose of the Stipulation was to reach a broad settlement of the

issues in Case No. 10-388-EL-SSO, and doing so required the accommodation of diverse interests and the compromise of legal positions and arguments by a variety of parties. *See* Tr. Vol. V, p. 1051:7-19. For that reason, the parties (including Staff) agreed that the Stipulation could not be cited in another proceeding (as Staff purports to do here):

> This Stipulation is submitted for purposes of this proceeding only, and is not deemed binding in any other proceeding, except as otherwise provided herein, nor is it to be offered and relied upon in any other proceedings, except as necessary to enforce the terms of this Stipulation.

FES Ex. 5, p. 34. Thus, Mr. Strom's citation to that case is improper here.

Moreover, even if the Commission considers the load cap proposal in that case (which it should not do), it does not support Staff's recommendation. In the Stipulation, the parties did not recommend that the Commission adopt a load cap. Rather, they merely suggested that the Commission consider it. *See* FES Ex. 5, p. 12 (stating that Commission "may order" a load cap). Further, Charles River Associates, International ("CRA"), an experienced and well-respected auction manager (also proposed to serve as manager of the Duke MRO auctions), registered strong objections to the mere suggestion of a load cap, noting in the Stipulation that it "believes that a load cap imposed on the competitive bidding process is unnecessary, risks the level of bidding participation in the auction, and is detrimental to the bidding process and its objectives." FES Ex. 5, p. 13 n.5. The evidence here does not show that load caps "encourage bidder participation" or "diversity of supply." Rather, the evidence shows that load caps do just the opposite.

In fact, in discussing past FirstEnergy auctions, Mr. Strom ignores the auction approved in Case No. 08-935-EL-SSO. That auction did not have a load cap. *See* Tr. Vol. V, p. 1057:2-4. It did, however, involve twelve participating bidders and nine winning bidders, and resulted in prices that the Commission deemed "reasonable" and "competitive." *See In re Application of*

Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co. for Authority to Establish a Standard Serv. Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Elec. Sec. Plan, Nos. 08-935-EL-SSO, *et al.*, Finding and Order dated May 14, 2009, ¶ 6. Unlike most of the auctions cited by Mr. Strom, the auction in Case No. 08-935-EL-SSO case was successful and competitive, and it did not have a load cap. There is only one outcome supported by the evidence in this case: the Commission should decline to impose a load cap on the Duke MRO auctions.

Revised Code Section 4928.142 also supports this outcome. As Mr. Strom admitted during cross-examination, there is no statutory requirement for load caps. See Tr. Vol. V, p. 1102:3.5. In fact, R.C. 4928.142(A)(1)(e) expressly contemplates that the least-cost bid process may result in a "winner or winners." Revised Code Section 4928.142(C) also contemplates "least-cost bid winner or winners," as well as a winning "bid or bids." By the plain language of the statute, then, an MRO auction can result in a single "winner" with a single winning "bid"—*i.e.*, a "winner" of 100% of the load in the auction. Staff's proposal ignores this statutory language. The Commission should not.

III. CONCLUSION

For the foregoing reasons, the Commission should approve Solutions' proposed modifications to Duke's proposed MRO.

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Respectfully submitted,

Mark A. Hayden (0081077)
Counsel of Record
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
Telephone: (330) 761-7735
Facsimile: (330) 384-3875
E-mail: haydenm@firstenergycorp.com

David A. Kutik (0006418)
Jones Day
North Point
901 Lakeside Avenue
Cleveland, OH 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212
E-mail: dakutik@jonesday.com

Grant W. Garber (0079541)
Jones Day
Mailing Address
P.O. Box 165017
Columbus, OH 43216-5017
Street Address:
325 John H. McConnell Blvd., Suite 600
Columbus, OH 43215-2673
Telephone: (614) 469-3939
Facsimile: (614) 461-4198
E-mail: gwgarber@jonesday.com

ATTORNEYS FOR
FIRSTENERGY SOLUTIONS CORP.

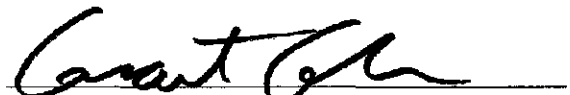
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Post-Hearing Reply of FirstEnergy Solutions Corp. was sent to the following by e-mail this 3rd day of February, 2011.

Amy B. Spiller Associate General Counsel Elizabeth H. Watts Assistant General Counsel Rocco D'Ascenzo Senior Counsel 2500 Atrium II P.O. Box 961 Cincinnati, Ohio 45201-0960 amy.spiller@duke-energy.com elizabeth.watts@duke-energy.com rocco.d'ascenzo@duke-energy.com	David F. Boehm Michael L. Kurtz Boehm, Kurtz & Lowry 36 East Seventh Street, Suite 1510 Cincinnati, Ohio 45202 dboehm@bkllawfirm.com mkurtz@bkllawfirm.com
Samuel C. Randazzo Joseph E. Oliker McNees Wallace & Nurick LLC 21 East State Street, 17th Floor Columbus, Ohio 43215 sam@mwncmh.com joliker@mwncmh.com	Steven Beeler John Jones Assistant Attorneys General Public Utilities Division 180 East Broad Street, 9th Floor Columbus, Ohio 43215 john.jones@puc.state.oh.us
John W. Bentine Mark S. Yurick Matthew S. White Chester Willcox & Saxbe, LLP 65 East State Street, Suite 1000 Columbus, Ohio 43215 jbentine@cwslaw.com myurick@cwslaw.com mwhite@cwslaw.com	Colleen L. Mooney David C. Rinebolt Ohio Partners for Affordable Energy 231 West Lima Street Findlay, Ohio 45840 cmooney2@columbus.rr.com drinebolt@aol.com

William T. Reisinger Nolan Moser Trent A. Dougherty Ohio Environmental Council 1207 Grandview Avenue, Suite 201 Columbus, Ohio 43212-3449 will@theoec.org nolan@theoec.org trent@theoec.org	Douglas E. Hart 441 Vine Street, Suite 4192 Cincinnati, Ohio 45202 dhart@douglasehart.com
M. Howard Petricoff Stephen M. Howard Vorys, Sater, Seymour and Pease LLP 52 East Gay Street P.O. Box 1008 Columbus, Ohio 43216-1008 mhpetricoff@vorys.com smhoward@vorys.com	Cynthia Fonner Brady Senior Counsel Constellation Energy Resources, LLC 550 W. Washington St., Suite 300 Chicago, Illinois 60661 cynthia.brady@constellation.com
Ann M. Hotz Kyle L. Verrett Jody M. Kyler Office of the Ohio Consumers' Counsel 10 West Broad Street, Suite 1800 Columbus, Ohio 43215-3485 hotz@occ.state.oh.us verrett@occ.state.oh.us kyler@occ.state.oh.us	Michael D. Dortch Kravitz, Brown & Dortch, LLC 65 East State Street Suite 200 Columbus, Ohio 43215 mdortch@kravitzllc.com
Terrence O'Donnell Matthew W. Warnock Bricker & Eckler LLP 100 South Third Street Columbus, Ohio 43215-4291 todonnell@bricker.com mwarnock@bricker.com	Mary W. Christensen Christensen & Christensen LLP 8760 Orion Place, Suite 300 Columbus, Ohio 43240 mchristensen@columbuslaw.org
Thomas J. O'Brien Bricker & Eckler LLP 100 South Third Street Columbus, Ohio 43215-4291 tobrien@bricker.com	Anne M. Vogel American Electric Power Service Corporation 1 Riverside Plaza, 29th Floor Columbus, Ohio 43215 amvogel@aep.com

Matthew J. Satterwhite American Electric Power Service Corporation 1 Riverside Plaza, 29th Floor Columbus, Ohio 43215 mjsatterwhite@aep.com	Lisa McAlister Bricker & Eckler LLP 100 South Third Street Columbus, Ohio 43215-4291 lmcalister@bricker.com
Rick D. Chamberlain Behrens, Wheeler & Chamberlain 6 N.E. 63rd Street, Suite 400 Oklahoma City, Oklahoma 73105 rdc_law@swbell.net	Kevin J. Osterkamp Roetzel & Andress, LPA 155 E. Broad Street, 12th Floor Columbus, Ohio 43215 kosterkamp@ralaw.com
Barth E. Royer Bell & Royer Co., LPA 33 South Grant Avenue Columbus, Ohio 43215-3927 barthroyer@aol.com	Gary A. Jeffries Senior Counsel Dominion Resources Services, Inc. 501 Martindale Street, Suite 400 Pittsburgh, Pennsylvania 15212-5817



An Attorney for FirstEnergy Solutions Corp.

Exhibit A

bgs-auction.com

Search:

Minimum and Maximum Starting Prices, Tranche Targets, and Statewide Load Cap for the 2011 BGS-CIEP Auction

Please find below, for the BGS-CIEP Auction:

- the tranche targets for each EDC in this year's auction;
- the statewide load cap;
- the size and MW-measure of each tranche.

A tranche target is the number of tranches needed for a given EDC at the beginning of the auction. The tranche targets are set so that each tranche represents approximately 75 MW of CIEP Peak Load Share. There will be a statewide load cap of 16 tranches, which is the maximum number of tranches that a bidder can bid in the auction and serve statewide.

EDC	CIEPPeak Load Share (MW)	Tranche Target	Statewide Load Cap	Size of Tranche (%)	MW-Measure
PSE&G	1,924.71	26	16	3.85%	74.03
JCP&L	975.90	14		7.14%	69.71
ACE	327.90	5		20.00%	65.58
RECO	38.70	1		100.00%	38.70
Total	*3,267.21*	*46*	-	-	-

For the BGS-CIEP Auction, the statewide minimum starting price will be **$250/MW-day** and the statewide maximum starting price will be ***$300/MW-day***. *The statewide minimum and maximum starting prices are* levels for the CIEP Price.

In the first round of the BGS-CIEP Auction, prices will be set no lower than the minimum starting price and no higher than the maximum starting price. In their Part 2 Applications, Qualified Bidders will submit indicative offers at the maximum starting price and also at the minimum starting price. The number of tranches indicated by a Qualified Bidder at the maximum starting price cannot be lower than two. Please see the BGS-CIEP Auction Rules for further details.

November 12, 2010.

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Exhibit B

bgs-auction.com

Search:

Minimum and Maximum Starting Prices, Tranche Targets, and Load Caps for the 2011 BGS-FP Auction

Please find below, for the BGS-FP Auction:

- the tranche targets for each EDC in this year's auction;
- the statewide load cap;
- the load cap for each EDC;
- the size and MW-measure for each tranche.

A tranche target is the number of tranches needed for a given EDC at the beginning of the auction. There will be a statewide load cap of 20 tranches, which is the maximum number of tranches that a bidder can bid in the auction and serve statewide. An EDC Load Cap is a maximum number of tranches of BGS-FP Load for a given EDC that any one bidder can bid in the auction and serve for that EDC.

EDC	FP Peak Load Share (MW)	Tranche Target	EDC Load Cap	Statewide Load Cap	Size of Tranche (%)	MW-Measure
PSE&G	2,771.26	28	13		1.18	98.97
JCP&L	1,523.21	15	7		1.82	101.55
ACE	759.64	8	3		4.55	94.95
RECO	219.30	2	2	20	25.00	109.65
Total	*5,273.40*	*53*	-	-	-	-

With the 2010 Auction, JCP&L began transitioning to procuring more tranches so that the MW-measure of a tranche is closer to approximately 100 MW. JCP&L is adding three tranches this year.

For the BGS-FP Auction, the statewide minimum starting price will be **12.5 ¢/kWh** and the statewide maximum starting price will be **16.0 ¢/kWh**.

In the first round of the BGS-FP Auction, prices will be set no lower than the minimum starting price and no higher than the maximum starting price. In their Part 2 Applications, Qualified Bidders will submit indicative offers at the maximum starting price and at the minimum starting price. Please see the BGS-FP Auction Rules for further details.

** The Board has directed that JCP&L continue to serve 10 MW of its residential load using the St. Lawrence Project Power and, as necessary, purchases from PJM-administered markets. JCP&L will serve 10 MW in every hour. The FP Peak Load Share in the table above has been reduced by 10 MW.*

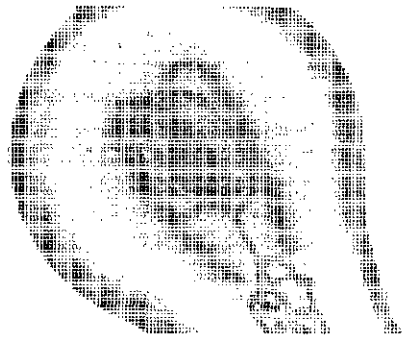

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Exhibit C

IX. APPENDIX B: FINAL BGS-FP AUCTION RULES

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served by a third party supplier that are eligible to take BGS on the CIEP tariff in force at that time. For example, from June 1, 2006 to May 31, 2007, the historical BGS-CIEP zonal data represent customers taking BGS on the CIEP tariff in force during the June 1, 2006 to May 31, 2007 period, while starting on June 1, 2011, the BGS-CIEP zonal data will represent customers taking BGS on the CIEP tariff in force during the June 1, 2011 to May 31, 2012 supply period. The FP and BGS-FP zonal data are then derived as residuals. Historical zonal data will be extended each month as new data become available.

The EDCs will also provide supplemental data to assist bidders. The EDCs will provide historical hourly load and/or load profiles for their customer classes and/or load profile groups as well as historical customer counts by customer class and/or load profile group. The EDCs will provide size distribution information consisting of one-time customer counts and historical aggregate energy usage for several groupings of customers who in the past were eligible to take BGS on an FP tariff but who are or will be required to take BGS on a CIEP tariff. These groupings may include: customers 750 to 999 kW, 1,000 to 1,249 kW, 1,250 to 1,500 kW, and 1,500 kW or greater. The EDCs will provide data as needed on large customers that the Board may decide will no longer be eligible to take BGS on an FP tariff in the future. The EDCs will provide monthly customer switching data (number of customers and estimated load) as currently provided to the Board, as well as additional historical customer switching data by customer class. The EDCs will also provide information on renewable energy portfolio standards, as well as data on inadvertent energy, 500kV losses, renewable energy from committed supply, and ancillary service charges.

No later than 10 days before interested parties first apply to participate in the Auction, the Auction Manager will announce the ***EDC load caps***, a ***statewide load cap***, a statewide ***maximum starting price***, and a statewide ***minimum starting price***. At the same time, the Auction Manager will provide the MW-measure of each tranche for each EDC, based on the percentage of the FP Peak Load Share that a tranche represents. An EDC load cap is a maximum number of tranches of BGS-FP Load that any one bidder can bid and serve for that EDC. The statewide load cap is a maximum number of tranches of BGS-FP Load that any one bidder can bid in the Auction and serve statewide. The statewide load cap cannot exceed the sum of the EDC load caps. An EDC load cap cannot exceed the statewide load cap. The

statewide load cap limits the impact that any one bidder may have on the Auction; an EDC load cap limits an EDC's exposure to default by any single supplier in a given supply period. The minimum and maximum starting prices establish the range of possible starting prices for the Auction: each EDC will choose a starting level for its price for round 1 of the Auction that is between the minimum and the maximum starting prices. The EDCs will agree on the statewide load cap, and on the statewide minimum and maximum starting prices. Each EDC will set its EDC load cap. Board Staff and the Board Consultant will review these decisions.

IX.B.2. Qualification Process

The application process is in two parts. All interested parties that have no impediments to meeting the PJM LSE requirements can submit a ***Part 1 Application***. There is no state licensing requirement. Interested parties will be asked to submit financial information so that the EDCs can assess their creditworthiness. In addition, each interested party will be asked to comply with other qualification criteria that will have been agreed upon by all EDCs, including agreeing to comply with the BGS-FP Auction Rules and agreeing to the terms of the BGS-FP Supplier Master Agreement. Each interested party will also be asked to agree that if the interested party is successful in its Part 1 Application it will keep confidential the list of other successful applicants and it will not assign its rights or substitute another entity in its place. This is to ensure that the entity that agrees to the BGS-FP Auction Rules in the Part 1 Application is also the entity submitting bids in the BGS-FP Auction, and to ensure that the entity that agrees to the terms of the BGS-FP Supplier Master Agreement is the entity that will execute the BGS-FP Supplier Master Agreement should the interested party become an Auction winner. In accordance with these Auction Rules, execution of the BGS-FP Supplier Master Agreement must occur within three days of Board certification of the Auction results and within that period the Auction winner will demonstrate compliance with the creditworthiness requirements set forth in the BGS-FP Supplier Master Agreement. Such creditworthiness requirements will take into consideration all BGS obligations held by the Auction winner, including those from past BGS Auctions.