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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)	Case No. 12-1230-EL-SSO
Authority to Provide for a Standard Service Offer)	
Pursuant to R.C. § 4928.143 in the Form of an)	
Electric Security Plan.)	

INITIAL BRIEF
OF
INTERSTATE GAS SUPPLY, INC.

I. INTRODUCTION

This case is before the Commission upon the application of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy” or the “Companies”) for authority to establish a standard service offer (“SSO”) pursuant to Section 4928.143, Revised Code, in the form of an electric security plan (“ESP”). The application, which was filed April 13, 2012, was accompanied by a Stipulation and Recommendation (“Stipulation”) submitted by FirstEnergy, the Commission staff (“Staff”), and a number of parties to Case No. 10-388-EL-SSO, the proceeding in which FirstEnergy’s current ESP was established.¹ The Stipulation, which contains the specifics of the proposed ESP, essentially provides for a two-year extension to the current ESP, the significant differences being a modification of the competitive bidding schedule for the procurement of generation supply for the Companies’ SSO load and an extension of the recovery period for renewable energy credit

¹ See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143 Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO (Opinion and Order dated August 25, 2010).

costs.² Thus, the Stipulation relies, in large measure, on the benefits of the current ESP to meet the Section 4928.143(C)(1), Revised Code, test that a proposed ESP, including its pricing, terms, and conditions, is more favorable in the aggregate than the expected results of a Section 4928.142, Revised Code, market-rate offer (“MRO”) SSO.

The hearing in this matter commenced June 4, 2012 and concluded June 8, 2012, with attorney examiners Gregory Price and Mandy Willey presiding. Intervenor Interstate Gas Supply, Inc. (“IGS”) hereby submits its initial brief in accordance with the briefing schedule established by the attorney examiners at the conclusion of the hearing.³

IGS supplies electric and natural gas service to nearly one million households in eleven states, and has been duly-certified by this Commission to provide both competitive retail electric service (“CRES”) and competitive retail natural gas (“CRNG”) service in Ohio.⁴ IGS currently provides CRNG service to customers in the service areas of all the major Ohio gas distribution utilities under their choice programs.⁵ Although IGS is authorized to provide electric service to customers in the service territories of all Commission-regulated Ohio electric distribution utilities and currently serves residential customers in the Duke Energy Ohio, Inc. (“Duke”), AEP Ohio, and Dayton Power and Light Company service territories, IGS has not, to date, entered the FirstEnergy market.⁶ IGS is not unique in this regard.

As discussed in detail *infra*, there are some 30 to 35 CRES providers that have authority to provide service in the Companies’ service territories, but, at this juncture, only five CRES

² See Application, 1.

³ See Tr. IV, 156.

⁴ See IGS Ex. 1 (Parisi Direct), 1.

⁵ *Id.*

⁶ *Id.*

providers are actively soliciting residential customers in the FirstEnergy market. As IGS witness Vincent Parisi explained, a primary reason robust competition has been slow to develop in the FirstEnergy service territory is that the Companies do not offer a purchase of receivables (“POR”) program to CRES providers, which creates a significant barrier to entry for suppliers whose focus is residential and small commercial customers.⁷ Thus, IGS has participated in this proceeding for the sole purpose of proposing that the Companies be required, as a term of the ESP, to implement a purchase of receivables (“POR”) program for suppliers to which they provide consolidated billing service. Intervenor Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, “Direct”) and the Retail Energy Supply Association (“RESA”), which like IGS, were not signatories to the Stipulation, have also proposed that a POR program be made part of the ESP.

Although FirstEnergy has attempted to portray these proposals as a parochial issue driven strictly by CRES provider self-interest,⁸ the fact is that POR programs have significant benefits, not only for CRES providers, but for customers and the host utilities, and serve to promote and enhance retail competition, an outcome consistent with Ohio’s stated energy policy as set forth in Section 4928.02, Revised Code. Indeed, as discussed herein, the Commission has long been on record as recognizing that POR programs are an important adjunct to consolidated billing. Thus, although IGS witness Parisi and RESA/Direct witness Teresa Ringenbach took great pains to explain the benefits of POR programs and to demonstrate the positive effect of such programs on competition, in view of the Commission’s prior pronouncements with respect to this subject, IGS does not believe that the substantive merits of POR programs are actually in issue in this case.

⁷ See IGS Ex. 1 (Parisi Direct), 5-6; *see also* RESA/Direct Ex. 3 (Ringenbach Direct), 4.

⁸ In this regard, IGS respectfully submits that, even if this were true – which it is not – its proposal would be on no different footing than the numerous terms of the ESP that confer benefits on specific signatory parties – benefits on which FirstEnergy relies to meet the Section 4928.143(C)(1), Revised Code, “more favorable” test.

Because FirstEnergy did not present a witness to rebut the testimony of Mr. Parisi and Ms. Ringenbach, IGS must await FirstEnergy's brief to see what tack it will take with respect to the IGS and RESA/Direct POR proposals. However, in light of the history of this issue in Ohio, any claim by FirstEnergy that POR programs are conceptually inappropriate should be given the short shrift it deserves.

As both Mr. Parisi and Ms. Ringenbach point out, the Commission, years ago, required all gas distribution utilities with choice programs to purchase the receivables of competitive suppliers to which they provide consolidated billing service.⁹ Moreover, in its July 19, 2000 finding and order in Case No. 00-813-EL-EDI (the "EDI case"), the Commission stated as follows:

We see no reason why the purchase of supplier accounts receivable in the competitive electric industry should be treated differently than in the natural gas industry where the Commission has already established its policy. Therefore, an electric utility that is providing consolidated billing for a supplier should also provide the optional service of purchasing the supplier's accounts receivable at a negotiated discount.¹⁰

IGS expects that, on brief, FirstEnergy will make much of the fact that it secured a waiver of the requirement that it offer a POR program as a result of a stipulation approved by the Commission in *WPS Energy Services, Inc. and Green Mountain Energy Co. v. FirstEnergy Corp., et al.*, Case No. 02-1944-EL-CSS (the "WPS/Green Mountain complaint case").¹¹ Indeed, IGS is well aware that attorney examiner Price pointedly asked what has changed since

⁹ See IGS Ex. 1 (Parisi Direct), 9; RESA/Direct Ex. 3 (Ringenbach Direct), 6.

¹⁰ *In the Matter of the Establishment of Electronic Data Exchange Standards and Uniform Business Practices of the Electric Utility Industry*, Case No. 00-813-EL-EDI (Finding and Order dated July 19, 2000), at 15.

¹¹ See *WPS Energy Services, Inc. and Green Mountain Energy Co. v. FirstEnergy Corp., et al.*, Case No. 02-1944-EL-CSS (Opinion and Order dated August 6, 2003).

that waiver was granted in 2003.¹² This is obviously a fair question and one that warrants an answer without further ado.

As IGS witness Parisi explained, a fundamental feature of a properly-conceived POR program is a mechanism to assure that the host utility is fully compensated for the risk of non-collection it assumes in purchasing the accounts receivable of the CRES provider.¹³ Typically, the utility is made whole in this regard either through a discount rate applied to the purchase price of the receivables or via an uncollectible expense rider that provides for the recovery of uncollectible expense from the utility's customers.¹⁴ As noted above, the Commission has required all Ohio gas distribution utilities with choice programs to offer to purchase the receivables of competitive suppliers to which they provide consolidated billing service. These gas distribution utilities all have uncollectible expense riders in place. Thus, on the gas side, utilities are fully compensated for assuming the risk of non-collection associated with the purchase of receivables through this mechanism and, accordingly, purchase the receivables of competitive suppliers at no discount.

In contrast, until relatively recently, no Ohio electric distribution utility had a bad-debt tracker. Thus, in 2000, when the Commission ordered electric utilities providing consolidated billing service to a CRES provider to offer to purchase the provider's receivables in the EDI case, the only mechanism available to protect the utility from the risk of shopping customer default was to discount the purchase price of the CRES provider receivables. On paper, requiring the parties to negotiate the POR discount was a reasonable approach, but, in practice,

¹² See Parisi AE Examination, Tr. II, 213- 214.

¹³ See IGS Ex. 1 (Parisi Direct), 18.

¹⁴ See IGS Ex. 1 (Parisi Direct), 5.

as evidenced by the 2002 WPS/Green Mountain complaint, the inability of the FirstEnergy and CRES providers to reach agreement as to the appropriate discount rate rendered the requirement that the FirstEnergy offer to purchase the receivables illusory.

In 2009, FirstEnergy, as a result of its initial ESP proceeding, Case No. 08-935-EL-SSO, became the first Ohio electric utility to receive Commission approval to implement an uncollectible expense rider.¹⁵ However, unlike the gas distribution utilities whose uncollectible expense riders have always applied to both distribution and commodity service and are paid by both SSO and shopping customers, FirstEnergy was authorized to establish two separate bad debt trackers: a non-bypassable rider, Rider DUN, to recover all distribution-related uncollectible expense, and a bypassable rider, Rider NDU, to recover non-distribution (*i.e.*, generation-related) uncollectible expense associated with SSO customer defaults.

A few months later, Duke was authorized to implement a distribution-related uncollectible expense rider in a distribution rate case as a result of a stipulation adopted by the Commission in that proceeding.¹⁶ In its subsequent application in Case No. 10-2586-EL-SSO for approval of a MRO-based SSO (the “Duke MRO case”), Duke requested authority to implement a by-passable generation-related uncollectible expense rider of the type previously approved for FirstEnergy in Case No. 08-935-EL-SSO.¹⁷ Several intervening CRES providers contended that the proposed generation bad-debt tracker should be expanded to cover the

¹⁵ See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 08-935-EL-SSO (Second Opinion and Order dated March 25, 2009), at 11-12.

¹⁶ See *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Rates*, Case No. 08-709-EL-AIR (Opinion and Order dated July 8, 2009), at 10.

¹⁷ See *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 (Opinion and Order dated February 23, 2011), at 58-61.

uncollectible expense of shopping customers, arguing that making the rider non-bypassable would permit Duke to purchase the accounts receivable of CRES providers at zero discount, thereby eliminating an ongoing controversy over the formula for calculating the discount contained in Duke's tariffed POR program.¹⁸ Although the Commission rejected Duke's application for an MRO-based SSO on the ground that it did not comply with applicable statute, the Commission expressly endorsed the concept of making the generation-related uncollectible expense rider non-bypassable, citing the fact that such a measure would further the state policy of promoting competition:

In considering the proposed creation of Rider UE-GEN, the Commission is mindful that, as proposed by Dominion and RESA, as an unavoidable rider, Rider UE-GEN furthers state policy by promoting competition. Specifically, if Duke purchases accounts receivable at no discount, this will likely increase CRES providers' usage of Duke's billing service. Additionally, greater access to consolidated billing for CRES providers, without a purchase of accounts receivable discount, creates a level playing field and allows greater freedom for customer shopping without undergoing a second credit evaluation by a CRES provider, thus promoting shopping among low-income consumers. Therefore, the Commission would support the creation of Rider UE-GEN as an unavoidable rider, designed to recover bad debt associated with customers taking generation service through the SSO and from CRES providers. Moreover, the Commission recognizes that if Duke recovered Rider UE-GEN consistent with the process set forth by Duke in its reply brief, it would resolve any issues regarding Duke's PAR.¹⁹

After its application for approval of an MRO-based SSO was rejected, Duke, which had supported the CRES providers' POR proposal in Case No. 10-2586-EL-SSO,²⁰ followed up with an application in Case No. 11-3549-EL-SSO for approval of an ESP-based SSO (the "Duke ESP

¹⁸ *Id.*

¹⁹ *Id.*, 60-61.

²⁰ *Id.*, 60.

case”).²¹ Consistent with the Commission’s comments in its order in the MRO case, the Commission-approved stipulation that resolved the Duke ESP case provided that the generation-related uncollectible expense rider would be non-bypassable by customers of CRES providers participating in the Duke POR program and that Duke would purchase the receivables of such providers at no discount.²²

It is also important to note that the evidence in this case shows that FirstEnergy operating subsidiaries in Pennsylvania, Maryland, and New Jersey now offer POR programs to competitive suppliers to which they provide consolidated billing service.²³ Further, as a part of the Commission-approved stipulation that resolved Case No. 10-388-EL-SSO, FirstEnergy agreed to a form of a POR arrangement that would apply in certain limited circumstances.²⁴

So, what has changed since FirstEnergy was granted a waiver of the requirement to offer a POR program in the WPS/Green Mountain complaint case? Plenty. First, the Companies now have generation-related uncollectible expense riders that can readily be expanded to cover shopping customers’ uncollectible expense, a measure that would fully protect the Companies from risk of non-collection associated with the purchase of CRES provider receivables and eliminate the controversy over the appropriate POR discount rate that led to the WPS/Green Mountain complaint. Second, in the Duke MRO case, the Commission again went on record as endorsing POR programs as promoting competition and creating a level playing for CRES providers. Third, Duke, which, unlike FirstEnergy, complied with the 2000 order in the EDI

²¹ See *In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 11-3589-EL-SSO (Opinion and Order dated November 22, 2011).

²² *Id.*, 18, and 32-33.

²³ Ridmann Cross, Tr. I, 250; Ridmann Redirect, Tr. II, 18.

²⁴ See IGS Ex. 1 (Parisi Direct), 15-16; IGS Ex. 1A (Corrections to Parisi Direct), Ex. 6.

case by establishing a POR program, has since been authorized by the Commission to implement a non-bypassable generation-related uncollectible expense rider, thereby permitting Duke to purchase the accounts receivable of CRES providers participating in its POR program at no discount – the precise result advocated by IGS witness Parisi and RESA/Direct witness Ringenbach in this case. Finally, despite FirstEnergy’s opposition to the POR program proposed by IGS and RESA/Direct in this case, FirstEnergy operating subsidiaries now offer POR programs in other states and FirstEnergy has agreed to a form of a POR program in Ohio.

Plainly, in view of this history, the proposition that FirstEnergy should be required to implement a POR program as a part of its ESP is not a radical, self-serving proposal as FirstEnergy has attempted to suggest. The POR program IGS, RESA, and Direct are proposing in this case is identical to the POR programs the Commission approved years ago for gas distribution utilities with choice programs and recently approved for Duke on the electric side. Further, the fact that the Companies already have generation-related uncollectible expense riders in place makes expanding these riders to make them non-bypassable a much easier call for the Commission than it was in Duke, where a totally new uncollectible expense rider had to be implemented to effectuate the purchase of CRES provider receivables at no discount. Moreover, as discussed *infra*, there is reason to believe that the Rider NDU rate may go down as a result of making it non-bypassable, thereby conferring a benefit on the Companies’ SSO customers. Finally, like the Duke ESP proceeding, this case provides the Commission an opportunity to align FirstEnergy’s practices with the POR policy the Commission has previously established and continues to endorse. If the Commission allows this window to close without revisiting the waiver approved in the WPS/Green Mountain complaint case, this barrier to competition in the FirstEnergy residential and small commercial market will remain, notwithstanding the

Commission's prior pronouncements regarding the positive impact a POR program has on the competitive marketplace and the associated benefits to customers.

II. ARGUMENT

A. THE COMMISSION HAS JURISDICTION TO MODIFY THE PROPOSED ESP TO INCLUDE A REQUIREMENT THAT FIRSTENERGY OFFER A POR PROGRAM TO THOSE CRES PROVIDERS TO WHICH IT PROVIDES CONSOLIDATED BILLING SERVICE.

The threshold question is, of course, whether the Commission has the authority to modify the proposed ESP by including a requirement that FirstEnergy implement the POR program proposed by IGS and RESA/Direct. IGS submits that this question has already been squarely answered by the attorney examiner's May 17, 2012 entry in this docket. By a motion to compel filed May 9, 2012, Direct sought an order requiring FirstEnergy to produce, among other things, certain information that Direct alleged was relevant to its proposal to modify the ESP as proposed in the Stipulation to require that FirstEnergy offer a POR program to enhance the competitive market in the FirstEnergy service territory. In rejecting FirstEnergy's contention that information relating to its handling of accounts receivable was irrelevant and that the POR issue was beyond the scope of this proceeding, attorney examiner Willey found as follows:

Moreover, the fact that the Companies have not included provisions related to POR does not preclude non-signatory parties from advocating that a POR program be included in the ESP, as long as such program is authorized to be part of an ESP pursuant to Section 4928.143(B), Revised Code. Accordingly, parties are entitled to seek discovery of information which is reasonably calculated to lead to the discovery of admissible evidence that is relevant under the three-prong test as well as Section 4928.143, Revised Code.²⁵

²⁵ Attorney Examiner's Entry dated May 17, 2012, at 4.

Although IGS believes that the attorney examiner's ruling is dispositive of the threshold jurisdictional issue, the Commission may hear again from FirstEnergy on brief regarding this subject. Thus, in what may be an abundance of caution, IGS would offer the following observations.

First, there is no question that the Commission has the statutory authority to modify a proposed ESP. Section 4928.143(C)(1), Revised Code, provides, in pertinent part, as follows:

Subject to division (D) of this section, the commission by order shall approve or modify and approve an application filed under division (A) of this section 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. (emphasis added)

Second, as attorney examiner Willey correctly concluded, a POR program may be made a term of an ESP "as long as such program is authorized to be a part of an ESP pursuant to Section 4928.143(B), Revised Code."²⁶ Section 4928.143(B)(2)(d), Revised Code, expressly provides that ESPs "may include or provide for, without limitation, . . . (d) Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service" Further, as noted above, the Commission has previously approved an ESP for Duke that included terms relating to that company's POR program,²⁷ thereby confirming that, under the statute, a POR program proposal is, in fact, fair game in an ESP proceeding.

Third, FirstEnergy argued in its memorandum contra Direct's motion to compel that the issue of "(t)he Companies' handling of CRES accounts receivable has already been addressed,"

²⁶ *Id.*

²⁷ *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO (Opinion and Order dated November 22, 2011), at 32-33.

citing the stipulation approved by the Commission in the WPS/Green Mountain complaint case for the proposition that the Companies have been relieved from offering a POR program.²⁸

Although the attorney examiner did not expressly address this argument in granting Direct's motion to compel, it goes without saying that if the waiver granted in WPS/Green Mountain complaint case barred consideration of a POR program in this case, the attorney examiner would necessarily have found that the pursuit of a proposal to require FirstEnergy to establish a POR program was off limits in this proceeding.

Finally, as the attorney examiner emphasized in ruling on Direct's motion to compel, "under the three-prong test the Commission uses to determine the reasonableness of a stipulation, the Commission always carefully reviews the terms and conditions of a proposed stipulation to determine whether it is in the public interest."²⁹ IGS submits that this obligation takes on added significance where, as here, a party advocating the inclusion of a POR program in the ESP had no opportunity to participate in the negotiations that produced the Stipulation.³⁰ In the normal situation where settlement discussions follow the filing of an ESP application, IGS would at least have had a chance to put a POR program on the table for consideration by the parties and the Staff in a context in which IGS may have had some leverage, rather than being forced to attack the Stipulation after the fact on what is, admittedly, a narrow ground. Under these circumstances, fundamental fairness requires that the Commission take a long look at IGS's POR proposal to determine if modifying the proposed ESP to accommodate this proposal will further

²⁸ See *Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company Memorandum Contra Direct Energy Services, LLC and Direct Energy Business, LLC's Motion To Compel Responses To Discovery* dated May 14, 2012, at 7-8.

²⁹ Attorney Examiner's Entry dated May 17, 2012, at 4.

³⁰ In so stating, IGS does not intend to suggest that FirstEnergy affirmatively denied IGS the opportunity to participate in the settlement negotiations. However, because the invitees were limited to parties to the prior ESP case (see *Ridmann Cross*, Tr. I, 39), parties that intervened in this proceeding that were not parties to Case No. 10-388-EL-SSO were, as a practical matter, excluded from the discussions that led to the Stipulation.

Ohio's stated energy policy, add a qualitative benefit to the ESP, and better serve the public interest than the stipulated ESP that leaves in place the same barrier to competition that CRES providers currently face.

B. ADOPTION OF THE POR PROGRAM PROPOSED BY IGS AND RESA/DIRECT WILL FURTHER THE STATED OHIO ENERGY POLICY OF PROMOTING RETAIL ELECTRIC COMPETITION AND WILL PROVIDE BENEFITS TO CONSUMERS AND TO FIRSTENERGY.

1. The evidence demonstrates that POR programs enhance competition.

There is no question that the policy of this state is to encourage retail electric competition. Indeed, the Ohio energy policy set forth in Section 4928.02, Revised Code, includes, among other stated objectives, to:

(B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;

(G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment; *[and]*

(H) Ensure 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.

Moreover, in view of the Commission's discussion of the subject in the Duke MRO order, there is no question that the Commission understands that a POR program, coupled with a non-bypassable uncollectible expense rider that permits the host utility to purchase the receivables of CRES providers at no discount, "further state policy by promoting

competition.”³¹ Thus, although both IGS witness Parisi and RESA/Direct witness Ringenbach discussed, in detail, the manner in which POR programs promote competition, IGS will not burden the Commission by repeating that explanation here.³² However, lest it be thought that the barrier to competition posed by FirstEnergy’s failure to offer a POR program is merely theoretical, IGS invites the Commission’s attention to the evidence presented in this case that demonstrates that POR programs do, in fact, promote shopping and enhance competition.

In Illinois, Commonwealth Edison Company (“ComEd”) and Ameren recently implemented POR programs.³³ As Mr. Parisi pointed out, according to the migration statistics published by the Office of Retail Market Development of the Illinois Commerce Commission (“ICC”), the percentage of ComEd residential customers taking service from retail electric suppliers went from virtually zero to ten percent in the year the ComEd POR program has been in place.³⁴ Even more telling is the fact that there are now eighteen marketers making offers in the ComEd service area³⁵ as opposed to the five CRES providers that are currently soliciting residential customers in the FirstEnergy market.³⁶ Moreover, information presented on the ICC product comparison website shows that there over 65 products now being offered to ComEd and Ameren customers by retail suppliers,³⁷ whereas the Commission’s Apples-to-Apples chart shows that, in FirstEnergy’s Ohio service territory, only seven residential offers are currently

³¹ See Case No. 10-2586-EL-SSO (Opinion and Order dated February 23, 2011), at 60.

³² See IGS Ex. 1 (Parisi Direct), 5-6; RESA/Direct Ex. 3 (Ringenbach Direct), 4-5.

³³ See IGS Ex. 1 (Parisi Direct), 10.

³⁴ See IGS Ex. 1 (Parisi Direct), 11; IGS Ex. 1 (Parisi Direct), Ex. 2.

³⁵ See RESA/Direct Ex. 3 (Ringenbach Direct), 5-6; RESA/Direct Ex. 3 (Ringenbach Direct), Attachment A.

³⁶ See RESA/Direct Ex. 3 (Ringenbach Direct), 5; RESA/Direct Ex. 3 (Ringenbach Direct), Attachment A.

³⁷ See IGS Ex. 1 (Parisi Direct), 11.

available.³⁸ Similarly, in Pennsylvania, the two largest electric utilities with POR programs, PPL and PECO, have, respectively, thirty-four and thirty-eight marketers currently making offers.³⁹ Finally, in Ohio, there are eleven marketers actively soliciting residential customers behind Duke, the only electric distribution utility with a POR program, whereas the corresponding numbers for FirstEnergy, AEP-Ohio, and Dayton Power and Light Company are five, five, and six, respectively.⁴⁰ This evidence bears out Mr. Parisi's testimony that competitive suppliers that focus on residential service, all else being equal, are far more likely to enter a market in which the host utility offers a POR program than a market in which there is no POR program in place.⁴¹ And, because CRES providers must compete against one another and not just against the utility's SSO rate, as supplier participation increases, competition increases, which serves to drive prices lower and encourages the introduction of new and innovative products.⁴²

2. POR programs provide benefits to customers in addition to the price benefits associated with enhanced competition.

With consolidated billing, the prices for both the utility distribution charges and the CRES provider generation charges appear on the same bill. As Mr. Parisi explained, a customer that is delinquent on the distribution charges is usually also delinquent on the supplier charges.⁴³

This can lead to the scenario in which both the utility and the CRES supplier are pursuing the

³⁸ The attorney examiner granted IGS's request that the Commission take administrative notice of the Apples-to-Apples chart on the Commission's website. *See* Tr. I, 171-172.

³⁹ *See* RESA/Direct Ex. 3 (Ringenbach Direct), 5-6; RESA/Direct Ex. 3 (Ringenbach Direct), Attachment A.

⁴⁰ *Id.*

⁴¹ *See* IGS Ex. 1 (Parisi Direct), 10.

⁴² *See* IGS Ex. 1 (Parisi Direct), 10.

⁴³ *See* IGS Ex. 1 (Parisi Direct), 7.

delinquent customer for charges displayed on the same bill.⁴⁴ Under a POR program, the delinquent customer only has to deal with one party -- the utility -- rather than two parties, thereby reducing the stress and potential confusion that may result from being subject to separate collection activities for charges that appear on the same bill.⁴⁵ Further, as Mr. Parisi pointed out, in addition to simplifying collection efforts and the disconnection process, POR programs facilitate the offering of payment plans to delinquent customers, assure the application of tariffed protocols relating to disconnection, and provide the customer with a single point of contact for resolving inquiries and disputes based on the accuracy of meter readings and the like.⁴⁶

As the Commission recognized in its order in the Duke MRO case, POR programs also expand the customer base for CRES providers to include low-income customers that would not otherwise have an opportunity to shop. As Mr. Parisi explained, in a non-POR environment, CRES providers must employ stricter standards than the host utility in evaluating the creditworthiness of potential customers in order to manage the risk of non-collection.⁴⁷

However, in a market in which the host utility offers a POR program -- and, thus, assumes the risk of shopping customer default -- the CRES provider can make offers to all the utility's distribution customers, thereby bringing low-income customers that would have been excluded in a non-POR market into the pool of potential customers.⁴⁸ It bears emphasis that this ability to serve customers that would not have been in the mix in a non-POR market does not, in any way,

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See IGS Ex. 1 (Parisi Direct), 7.

⁴⁸ Not only is this a benefit to the low-income customer, but broadening the customer base in this fashion also reduces the per-customer cost of enrollment, thereby allowing the CRES provider to offer lower prices to all potential customers than would otherwise be the case. See IGS Ex. 1 (Parisi Direct), 7.

increase the host utility's overall credit risk.⁴⁹ A CRES provider can only serve customers that are distribution customers of the utility. Thus, by definition, all potential CRES provider customers have passed muster under the utility's applicable creditworthiness standards, which means that the utility has already accepted the risk of non-collection posed by the customers in question.⁵⁰ In fact, if anything, the uncollectible expense exposure associated with a shopping customer default is likely to be less than that associated with an SSO customer for reasons discussed later in this brief. Thus, just as the Commission found in its order in the Duke MRO case, a program under which the distribution utility purchases the receivables of CRES providers at no discount promotes shopping by low income customers – and does so without subjecting the distribution utility to any additional credit risk beyond that which it accepted when it enrolled the customers in the first place.

3. POR programs provide a benefit to the host distribution utility.

In the absence of a POR program, once the utility determines that it is unable to collect the charges owed to a competitive supplier on a consolidated bill, the supplier becomes responsible for any further collection activity. However, as Mr. Parisi explained, this does not end the utility's involvement because the utility must have processes and procedures in place to account for subsequent customer supplier charge payments, to track the utility's receivables and the supplier's receivables, and to interface with the supplier so as to communicate changes in the status of accounts.⁵¹ Under a POR program, the utility controls the billing and collection process from beginning to end, thereby freeing the utility from the need for subsequent communications

⁴⁹ See IGS Ex. 1 (Parisi Direct), 7-8.

⁵⁰ *Id.*

⁵¹ See IGS Ex. 1 (Parisi Direct), 8.

with the supplier with respect to the customer's payment status and the complicated accounting associated with a bifurcated collection process.⁵² Thus, the ability to treat all receivables in the same manner should serve to reduce the burden on the utility.

In this connection, it is also important to recognize that the utility systems, personnel, and IT resources involved in managing billings and collections are paid for through the distribution rates charged to all customers, including shopping customers.⁵³ In the absence of a POR program, the competitive supplier has to maintain its own systems to track receivables and pursue collections, which is not only economically inefficient, but results in shopping customers, in essence, paying twice for the same functionality because the competitive supplier must price these costs into its offers.⁵⁴

C. FIRSTENERGY'S CRITICISMS OF THE POR PROGRAM PROPOSED BY IGS AND RESA/DIRECT ARE WITHOUT MERIT.

1. The factors cited by FirstEnergy witness Ridmann to support his claim that there is no correlation between the availability of a POR program and the state of competition within an electric utility's service territory do not represent relevant measures for determining whether a market is truly competitive.

Because FirstEnergy did not present a witness to rebut the recommendations of Mr. Parisi and Ms. Ringenbach, IGS can only guess at what FirstEnergy may have to say with respect to the POR program proposal on brief. However, IGS can address the record comments of FirstEnergy witness Ridmann relating to this subject, as well as the implications of certain questions posed by FirstEnergy's counsel to Mr. Parisi and Ms. Ringenbach on cross-examination. As demonstrated herein, these FirstEnergy criticisms fly in the face of this Commission's conclusion in the Duke

⁵² *Id.*

⁵³ See IGS Ex. 1 (Parisi Direct), 6.

⁵⁴ *Id.*

MRO case that POR programs further the state's policy of promoting retail competition and provide benefits to customers. Moreover, these criticisms ignore that the POR proposal advanced by IGS and RESA/Direct in this case is identical to the longstanding POR programs of the state's gas distribution utilities.

Mr. Ridmann opined that because some 75 percent of FirstEnergy's distribution customers have switched to CRES provider supply service,⁵⁵ whereas, in other states where FirstEnergy operating subsidiaries purchase competitive suppliers' receivables, the subsidiaries' shopping rates are much lower, FirstEnergy's failure to offer a POR program in Ohio cannot be reasonably construed as creating a barrier to competition in the Companies' service territories.⁵⁶ However, as IGS witness Parisi explained, a high switching percentage, of itself, tells us little about the state of competition in the market in question.⁵⁷ Indeed, if, hypothetically, there were a market in which 100 percent of the electric utility's customers shopped, but all the customers were supplied by a single competitive provider, the fact that all the customers had abandoned the utility's default SSO service would not be evidence of robust competition.⁵⁸ As Mr. Parisi testified, in a truly competitive market, one would expect to see a number of suppliers actively soliciting customers with multiple offers in an attempt to capture market share.⁵⁹ This is the sort of competition – *i.e.*, where multiple suppliers battle one another for customers – that produces the maximum benefit for customers. Moreover, even if one were to conclude that the switching

⁵⁵ In the interest of accuracy, IGS would point out that, although approximately 75 percent of CEI customers have switched to CRES provider service, the Commission's report of Ohio switching statistics appended to Mr. Parisi's direct testimony shows that, as of December 31, 2011, the switch rates for Ohio Edison and Toledo Edison were 64.95 percent and 63.79 percent, respectively. *See* IGS Ex. 1 (Parisi Direct), Ex. 3.

⁵⁶ *See* Ridmann Redirect, Tr. II, 18-19.

⁵⁷ *See* Parisi Redirect, Tr. II, 201-202; *see also* Ringenbach Cross, Tr. III, 62.

⁵⁸ *See* Parisi Redirect, Tr. II, 201-202.

⁵⁹ *Id.*

rate, of itself, represented an appropriate measure of competition in a particular market, one would still have to look behind that number to determine the degree to which it was influenced by opt-out governmental aggregation programs.⁶⁰ Thus, although the switch rate may be high in a particular market, if the switch rate is largely a product of opt-out governmental aggregation, the switch rate alone does not signal that there is vibrant competition in that market or that customers are realizing the full benefits of competition.

Mr. Ridmann also pointed to the fact that there are some 30 to 35 CRES providers “registered” to provide service in FirstEnergy’s service territory as evidence that this market is competitive despite the fact that Companies do not offer POR programs.⁶¹ However, on cross-examination, Mr. Ridmann clarified that his reference to 30 to 35 CRES providers was to the number of CRES providers that had authority to provide service within FirstEnergy’s service territory⁶² and indicated that he did not know how many of those CRES providers had actually entered into the necessary arrangements with FirstEnergy under its supplier tariff to provide service.⁶³ Nor did Mr. Ridmann know how many of those providers were actually serving customers, or how many were actually serving residential and small commercial customers.⁶⁴

As IGS witness Parisi explained, the more relevant measure of the state of competition in a particular market is the number of CRES providers that are actively marketing customers.⁶⁵ To

⁶⁰ See (Parisi Direct), 16-17.

⁶¹ See Ridmann Recross, Tr. I, 242-243.

⁶² As the Commission well knows, applicants for CRES certification often check all the EDU boxes on the application form even if they have no current plans to solicit customers in certain EDU service territories to avoid having to amend the certificate at a later date if they subsequently decide to enter a new market.

⁶³ See Ridmann Cross, Tr. I, 243-244.

⁶⁴ *Id.*

⁶⁵ See Paris Cross, Tr. II, 184-186; Parisi Redirect, Tr. II, 201-202; *see also* Ringenbach Cross, Tr. III, 62-63.

apply this metric, RESA/Direct witness Ringenbach relied on the Apples-to-Apples chart on the Commission's website as well as similar information found on public websites in other states. As previously discussed, her analysis showed that, with respect to the Ohio electric utilities that do not have POR programs, there are currently only five CRES providers making offers in the FirstEnergy and AEP-Ohio markets, and only six CRES providers making offers in the Dayton Power and Light Company service territory.⁶⁶ However, in Duke, which has a POR program in place, there are currently eleven CRES providers actively soliciting customers.⁶⁷ In Illinois, ComEd, which recently implemented a POR program, now has eighteen marketers making offers in its service area and, in Pennsylvania, the two largest electric utilities with POR programs, PPL and PECO, have thirty-four and thirty-eight marketers making offers, respectively.⁶⁸ In addition, on the gas side, the Commission's Apples-to-Apples chart shows that Ohio's two largest gas distribution utilities, Columbia of Ohio and Dominion East Ohio, both of which have had POR programs in place for years, have, respectively, fifteen and sixteen competitive suppliers actively soliciting new customers.

As Mr. Parisi readily acknowledged, there are obviously a variety of factors that may affect the status of competition in a particular utility service territory.⁶⁹ However, Mr. Ridmann's suggestion that there is no correlation between the offering of POR programs and the degree of competition is belied by the evidence cited above. Plainly, as Mr. Parisi testified, a POR program is an important component of a successful shopping regime.⁷⁰

⁶⁶ See RESA/Direct Ex. 3 (Ringenbach Direct), 5, and Attachment A.

⁶⁷ *Id.*

⁶⁸ See RESA/Direct Ex. 3 (Ringenbach Direct), 5-6 and Attachment A.

⁶⁹ See IGS Ex. 1 (Parisi Direct), 11-12.

⁷⁰ *Id.*

2. FirstEnergy's professed concern that expanding its generation-related uncollectible expense rider to provide for the recovery of shopping customer bad debt will require SSO customers to subsidize CRES providers is unfounded.

Based on questions posed to Mr. Parisi and Ms. Ringenbach by FirstEnergy's counsel, IGS expects to hear from FirstEnergy on brief that making Rider NDU non-bypassable would result in SSO customers subsidizing CRES providers.⁷¹ The short answer here is that the Commission never expressed concern that the recovery of SSO and shopping customer bad debt expense through a single uncollectible expense rider would create an untoward subsidy when approving non-bypassable uncollectible expense riders for all Ohio gas distribution utilities with choice programs and for Duke's electric operations. IGS submits that the reason the Commission never found it necessary to address this argument is that, on its face, the argument is counterintuitive. Indeed, the likelihood is that SSO customers would benefit if Rider NDU is expanded to cover CRES provider uncollectible expense as Mr. Parisi and Ms. Ringenbach recommend.

To determine, with mathematical precision, if a subsidy would be created, one would need a variety of data inputs, none of which are available in this record and all of which would change over time. However, one such input would be the relative per kWh price of SSO and CRES generation supply, as that will affect the level of the uncollectible balances of defaulting customers. For shopping customers served under an offer based on a discount off the utility's SSO rate, the per kWh price would always be less. However, for shopping customers served pursuant to fixed-price contracts, it is possible that the SSO price may, from time-to-time over

⁷¹ See Parisi Cross, Tr. II, 186-188; Ringenbach Cross, Tr. III, 66.

the term of the contract, be more favorable than the contract price.⁷² But even so, it is not unreasonable to assume that the CRES provider offer prices, on balance, will tend to be lower than the SSO price. Thus, as Mr. Parisi pointed out, it is fair to say that the uncollectible amount associated with a shopping customer default will, in all likelihood, tend to be lower than if the same defaulting customer had been served under the utility's SSO rate.⁷³ And, if a POR program with a non-bypassable uncollectible expense rider were in place, the differential would be greater still because the CRES provider would not have priced any risk of non-collection into its offer.⁷⁴

In addition, due to the higher creditworthiness standards CRES providers must employ to manage credit risk in a non-POR environment, it is reasonable to expect that, over time, shopping customers will tend to be better payers than SSO customers generally. As Ms. Ringenbach explained, bringing these "good" payers into the pool of customers responsible for a non-bypassable generation-related uncollectible expense rider should reduce the per-customer cost of bad debt expense for SSO customers from what it otherwise would have been.⁷⁵ Be that as it may, and all else being equal, combining the generation-related uncollectible expense associated with both SSO and shopping customer defaults and recovering the total amount through a non-bypassable rider paid by all customers should, in theory, result in SSO customers paying a lower rider rate than they would pay if the uncollectible expense rider were by-passable by shopping customers. In other words, if there is a subsidy, it would likely flow from shopping customers to SSO customers, not the other way around, as FirstEnergy attempts to suggest.

⁷² See Ridmann Cross, Tr. I, 248.

⁷³ See IGS Ex. 1 (Parisi Direct), 8.

⁷⁴ See IGS Ex. 1 (Parisi Direct), 5.

⁷⁵ See RESA/Direct Ex. 3 (Ringenbach Direct), 12-13.

Moreover, there is no question that, in the absence of a POR program, shopping customers subsidize SSO customers through their distribution rates.

As previously noted, the resources FirstEnergy has in place to manage its collection efforts are paid for through the distribution rates charged to SSO customers and shopping customers alike, notwithstanding that, unlike SSO customers, shopping customers do not receive the full benefit of these resources. Without a POR program, the only way to eliminate this subsidy would be to further unbundle FirstEnergy's rates to more precisely allocate the cost of these resources to the benefitted customers. However, under a POR program, shopping customers get the full benefit of these resources. Thus, a POR program automatically eliminates this subsidy because the costs associated with the resources in question are properly aligned with the beneficiaries in accordance with cost-causation and cost-benefit principles.

Having said this, IGS recognizes that a second input necessary to determine who would be subsidizing who if a non-bypassable bad-debt tracker were to be established in this proceeding is the relative default rate of SSO customers versus shopping customers. Although the Commission does not have this data before it,⁷⁶ the record suggests that the default rate for shopping customers, whatever it may be, would likely be considerably lower if FirstEnergy offered a purchase of receivables program. As Mr. Parisi emphasized, CRES providers do not have the ability to disconnect customers for non-payment of their generation charges, and there is no question that the utility is far better positioned than the CRES provider to pursue collection of delinquent accounts.⁷⁷ Thus, with the disconnection incentive in play under a purchase of

⁷⁶ Although neither Mr. Parisi nor Ms. Ringenbach had conducted a study, both estimated that shopping customer defaults were typically in the three to five percent range, but acknowledged that the rate could be higher in certain instances. See Parisi Cross, Tr. II, 189-190; Ringenbach Cross, Tr. III, 70.

⁷⁷ See IGS Ex. 1 (Parisi Direct), 5-6.

receivables program, there is no reason to believe that the default rates of SSO customers and shopping customers would be appreciably different.

3. Although a POR program that utilizes a non-bypassable uncollectible expense rider as the mechanism for making the utility whole for the risk of non-collection assures that CRES providers will be paid in full for the service they provide, customers are the primary beneficiaries of a POR program containing this feature.

Through another line of cross-examination, FirstEnergy's attorney attempted to portray the IGS and RESA/Direct POR program proposals as an attempt by these CRES providers to line their pockets at the expense of FirstEnergy's SSO customers.⁷⁸ Nothing could be farther from the truth. Yes, like participants in any competitive market, CRES providers are subject to a variety of risks, one of which is the risk that they will be unable to collect from customers for the service they provide.⁷⁹ And, yes, under the scenario in which the utility purchases the CRES provider's accounts receivable at no discount, the CRES provider is paid in full up front, thereby eliminating the risk of non-collection.⁸⁰ However, the direct consequence of transferring the risk of non-collection to the utility is that the CRES provider no longer has to price this risk into its offers, which will translate into lower offer prices to consumers than would be the case in the absence of a POR program.⁸¹ Further, transferring the risk of non-collection to the utility in this manner does not mean that the CRES provider is indifferent with respect to whether the customer pays its bill for generation service as FirstEnergy's counsel attempted to suggest.⁸² As

⁷⁸ See Parisi Cross, Tr. II, 194; Ringenbach Cross, Tr. III, 67-69.

⁷⁹ See Parisi Cross, Tr. II, 183.

⁸⁰ See IGS Ex. 1 (Parisi Direct), 4.

⁸¹ It goes without saying that a CRES provider that attempts to pocket this "savings" instead of passing it on to customers in the form of lower offer prices will quickly find itself losing market share to CRES providers that do.

⁸² See Parisi Cross, Tr. II, 194; Ringenbach Cross, Tr. III, 69.

Mr. Parisi explained, CRES providers that focus on the residential market incur significant costs in acquiring customers and, thus, have a very real financial interest in retaining those customers.⁸³ In fact, the party that should be indifferent to whether customers pay for generation service under a POR program in which the utility purchases the receivables at no discount is the utility itself, because the utility will be made whole through the uncollectible expense rider in any event.

FirstEnergy witness Ridmann also impugned the motives of IGS and RESA/Direct in proposing a POR program, suggesting, disparagingly, that the reason certain CRES providers want such a program is that they “cannot manage their uncollectibles appropriately.”⁸⁴ This cannot be allowed to pass without comment. Although CRES providers face a rather unique challenge due to the inability to disconnect customers for non-payment,⁸⁵ CRES providers manage that risk by imposing more stringent credit requirements than the host utility and by pricing the risk into their offers, or by simply not entering a particular market at all.⁸⁶ Beyond that, other than turning the nonpaying customer back to the utility as promptly as possible – which may be months down the road⁸⁷ – and sending its own bills and dunning letters to the defaulting customer, the CRES provider’s only recourse is to initiate a civil collection action,

⁸³ See Parisi Redirect, Tr. II, 203; *see also* IGS Ex. 1 (Parisi Direct), 7.

⁸⁴ See Ridmann Cross, Tr. I, 247-248.

⁸⁵ There are relatively few businesses that must deliver their product prior to payment without any mechanism to protect themselves from the risk of nonpayment. Imagine what the price of groceries would be if the customer could take the groceries home and consume them without paying the supermarket in advance. By the same token, what if the car dealer could not repossess the vehicle when the purchaser failed to make the installment payments? This is precisely the situation in which CRES providers find themselves in the absence of a POR program.

⁸⁶ See IGS Ex. 1 (Parisi Direct), 7.

⁸⁷ See RESA/Direct Ex. 3 (Ringebach Direct), 9-10.

which, in many instances, is not cost-effective.⁸⁸ On the other hand, FirstEnergy has no problem managing its “uncollectibles appropriately” because it has the hammer of disconnection backed up by an uncollectible expense rider that guarantees its 100 percent recovery of its bad debt expense regardless. To add to the irony, the resources FirstEnergy has in place to manage its collection efforts are paid for through the distribution rates charged to both SSO customers and shopping customers, which means that a CRES provider has to charge shopping customers a second time for tools to manage collection efforts.⁸⁹ Mr. Ridmann apparently believes that CRES providers should do more in terms of managing their uncollectibles, but to do more – whatever “more” is – would limit the number of customers to whom the CRES provider could provide offers and increase CRES provider costs to the detriment of customers and competition generally.

In this connection, the Commission should also bear in mind that, as previously discussed, CRES providers are more likely to enter markets in which the host utility offers a POR program.⁹⁰ Thus, not only will the POR program advocated by IGS and RESA/Direct tend to reduce CRES provider offer prices from what they otherwise would have been by reducing the risk CRES providers must price into their offers, but the presence of more CRES providers in the market will increase competition, which, in turn, will also lead to lower prices and to the introduction of new and innovative products.⁹¹ Simply stated, customers, not CRES providers, will be the real winners if a POR program is implemented as a part of the FirstEnergy ESP.

⁸⁸ See IGS Ex. 1 (Parisi Direct), 7.

⁸⁹ See IGS Ex. 1 (Parisi Direct), 6.

⁹⁰ The ultimate “risk management” tool available to CRES providers is simply to stay out of markets in which the host utility does not offer a POR program.

⁹¹ See IGS Ex. 1 (Parisi Direct), 10.

4. Contrary to FirstEnergy's claim, a POR program that utilizes a non-by passable uncollectible expense rider as the mechanism for making the utility whole for the risk of non-collection will serve the interests of low-income customers.

FirstEnergy's counsel also attempted to suggest through his cross-examination of Mr. Parisi and Ms. Ringenbach that low-income customers would be adversely affected if the POR program proposed by IGS and RESA/Direct were to be adopted.⁹² Although IGS confesses that it is not sure exactly where FirstEnergy's counsel was going with this line of questioning, it appears that the notion may be that a customer that could not be disconnected for nonpayment of CRES provider charges under the current regime would be disadvantaged because he/she would be subject to disconnection if FirstEnergy were required to purchase the CRES provider's receivables. If this is, indeed, the theory, it should be rejected out of hand.

In the first place, unless the customer is deliberately trying to game the system by paying the distribution charges but not the supplier charges, the likelihood is that a customer that is delinquent with respect to the supplier charges would also be delinquent on the distribution charges.⁹³ Thus, the customer would be subject to disconnection in any event. Further, low-income customer or not, rejecting the IGS and RESA/Direct POR proposal for the purpose of allowing customers to continue to game the system would clearly be poor public policy. The ability of the utility to disconnect such customers solves the problem of the lengthy delay the CRES provider experiences in returning a non-payer to SSO service – *i.e.*, once disconnected, the customer will not be running up additional supplier charges as is currently the case.

More to the point, the Commission expressly recognized in its order in the Duke MRO case that “. . . greater access to consolidated billing for CRES providers, without a purchase of

⁹² See Parisi Cross, Tr. II, 194-195; Ringenbach Cross, Tr. III, 71.

⁹³ See IGS Ex. 1 (Parisi Direct), 6-7.

accounts receivable discount, creates a level playing field and allows greater freedom for customer shopping without undergoing a second credit evaluation by a CRES provider, thus promoting shopping among low-income consumers.”⁹⁴ Thus, contrary to FirstEnergy’s hypothesis, the POR program proposed by IGS and RESA/Direct, in fact, benefits low-income customers for those reasons previously explained.

D. FIRSTENERGY IS NO STRANGER TO POR PROGRAMS.

1. FirstEnergy operating subsidiaries offer POR programs in other states.

Despite its opposition to including a POR program as a term of the ESP to be established in this case, the evidence shows that FirstEnergy subsidiaries in other states do, in fact, offer to purchase the receivables of competitive suppliers operating on their systems. FirstEnergy witness Ridmann testified that, in Pennsylvania, FirstEnergy subsidiaries MetEd, Penelec, and Penn Power now offer POR programs,⁹⁵ and that, in Maryland and New Jersey, FirstEnergy subsidiaries Potomac Edison and Jersey Central Power & Light, respectively, also have state-mandated POR programs in place.⁹⁶ Although Mr. Ridmann appeared to attach significance to the fact that FirstEnergy subsidiaries in Pennsylvania agreed to offer POR programs in the context of a stipulation,⁹⁷ the fact remains that FirstEnergy has agreed in Pennsylvania to offer POR programs, while, in this case, FirstEnergy claims that POR programs are inappropriate. Further, the fact that the Maryland and New Jersey POR programs are state-mandated shows that

⁹⁴ *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 (Opinion and Order dated February 23, 2011), at 60-61.

⁹⁵ See Ridmann Cross, Tr. I, 250.

⁹⁶ See Ridmann Redirect, Tr. II, at 18.

⁹⁷ See Ridmann Cross, Tr. I, 250.

those states, like this Commission, have recognized that POR programs enhance competition and benefit consumers.

2. FirstEnergy has agreed to a form of a POR arrangement in connection with governmental aggregation service as a part of the Stipulation in this case.

Not only do FirstEnergy operating subsidiaries offer POR programs in other states, but FirstEnergy has agreed to a form of a POR program in Ohio. Attachment D to the Stipulation provides for the continuation of certain terms and conditions relating to governmental aggregation service that were approved in Case No. 10-388-EL-SSO as a part of FirstEnergy's current ESP.⁹⁸ In his prefiled direct testimony, IGS witness Parisi characterized the provisions of Attachment D as a form of a POR program, and noted that this program, which is limited to governmental aggregation suppliers ("GAGS"), provides for a POR arrangement for GAGS' receivables and the recovery of the deferred cost amounts, including carrying costs, associated with the program from all FirstEnergy customers through a non-bypassable rider.⁹⁹ As Mr. Parisi observed, on its face, these features are discriminatory and anticompetitive because no similar arrangement is available to CRES providers generally.¹⁰⁰

On cross-examination, Mr. Parisi acknowledged that Attachment D purports to apply only in the scenario in which the Commission orders a phase-in of the generation price resulting from the auction that establishes the SSO rate pursuant to Section 4928.144, Revised Code, and agreed that the Commission has not previously ordered such a phase-in for FirstEnergy and that

⁹⁸ See IGS Ex. 1A (Corrections to Parisi Direct), Ex. 6.

⁹⁹ See IGS Ex. 1 (Parisi Direct), 15-16.

¹⁰⁰ *Id.*

there is no proposal that it do so in this case.¹⁰¹ However, as Mr. Parisi pointed out, the provision in Attachment D relating to the purchase of GAGS' receivables is subject to interpretation.¹⁰²

Section 6 of Attachment D provides as follows:

6. The Company(ies) must use commercially reasonable efforts to promptly enter into an agreement with the GAGS which will provide the GAGS with assurance of full recovery of all costs related to the GAGS' recovery of its GAGS Receivables.

"GAGS Receivables" is a defined term and, pursuant to Section 2 of Attachment D, appears to relate only to the difference between the reduced amount aggregation customers pay for generation as a result of the credit used to effectuate the phase-in and the actual price, plus carrying charges, of the energy supplied by the GAGS. But, as Mr. Parisi suggested, it seems rather odd that the requirement that the Companies enter into receivables agreements with GAGS would apply only to this increment of their receivables, and, because the provision has never been invoked, Mr. Parisi was not sure how all this would work in practice.¹⁰³ However, that is not the point of Mr. Parisi's testimony on this subject.

Regardless of how this is supposed to work mechanically, FirstEnergy's agreement to the Attachment D process tells the Commission two things. First, the Companies either have in place – or are willing to develop – the capability to purchase GAGS receivables under the scenario addressed in Attachment D. Thus, as Mr. Parisi pointed out, FirstEnergy's opposition to the proposal to include a POR program available to all CRES suppliers as a part of the ESP

¹⁰¹ See Parisi Cross, Tr. II, 198-199.

¹⁰² See Parisi Cross, Tr. II, 199-200.

¹⁰³ *Id.*

cannot be based on logistical constraints.¹⁰⁴ Second, despite FirstEnergy's professed – but unfounded – concern regarding SSO customers subsidizing CRES provide customers if its generation-related uncollectible expense rider were to be made non-bypassable, FirstEnergy has no problem asking SSO and non-aggregation shopping customers to pay for the costs associated with the Attachment D GAGS receivables program through a non-bypassable rider as provided in Section 4 of that document.¹⁰⁵

In this connection, IGS would also note that in the initial FirstEnergy ESP proceeding, Case No. 08-935-EL-SSO, the Commission determined that all the costs associated with a phase-in, including “any uncollectible GAGS receivables” (emphasis added), were to be run through the generation-related uncollectible rider, which would become non-bypassable in the event of a phase-in.¹⁰⁶ Although Section 4 of Attachment D now apparently contemplates the implementation of a separate, Commission-approved rider to recover all the costs associated with a phase-in, the point is that, in Case No. 08-934-EL-SSO, the Commission signed off on the concept of FirstEnergy utilizing a non-bypassable bad-debt tracker as a means to recover supplier uncollectible expense long before it expressly extolled the virtues of this methodology in its order in the Duke MRO case. Further, because FirstEnergy is made whole under the Attachment D mechanism, IGS assumes that the GAGS agreement referred to in Section 6 would not include a POR discount. Thus, notwithstanding that Attachment D requirement may apply

¹⁰⁴ See IGS Ex. 1 (Parisi Direct), 17.

¹⁰⁵ See Parisi Redirect, Tr. II, 205-206.

¹⁰⁶ See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 08-935-EL-SSO (Second Opinion and Order dated March 25, 2009), at 11, 16.

only in connection with a phase-in of an auction price, these elements of Attachment D are on all fours with the POR program that IGS and RESA/Direct are recommending in this proceeding.

- E. THE COMMISSION SHOULD MODIFY THE STIPULATED ESP TO INCLUDE A TERM REQUIRING FIRSTENERGY TO OFFER TO PURCHASE THE RECEIVABLES OF CRES PROVIDERS AND TO EXPAND THE GENERATION-RELATED UNCOLLECTIBLE EXPENSE RIDER TO PERMIT THE PURCHASE OF SUCH RECEIVABLES AT NO DISCOUNT.

In view of the care FirstEnergy's counsel took to make the point that the modification to Duke POR program approved as a part of the Duke ESP was the product of a stipulation,¹⁰⁷ the Commission may hear from FirstEnergy on brief that the Duke result has no precedential value and that, therefore, the Duke POR program cannot serve as model for a FirstEnergy POR program as recommended by the IGS and RESA/Direct witnesses. Any such argument would be wrong on several levels.

First, Duke has had a tariffed electric POR program in place for more than decade. The only thing that changed as a result of its recent ESP case was the mechanism for compensating Duke for the risk of non-collection associated with purchase of receivables, which went from a POR discount rate set by a tariffed formula to a non-bypassable generation-related uncollectible expense rider, thereby permitting Duke to purchase the receivables of CRES providers at no discount.

Second, although this new risk compensation mechanism was implemented pursuant to the stipulation adopted by the Commission in the Duke ESP case, the Commission's endorsement of this mechanism as furthering the state policy of promoting competition came in its order in the Duke MRO case, a contested proceeding that predated the Duke ESP case – and one in which this specific issue was actually litigated. So, unless FirstEnergy has the temerity to

¹⁰⁷ See Parisi Cross, Tr. II, 195-197.

argue that the Commission did not mean what it said in the order in the Duke MRO case, any suggestion that utilizing a non-bypassable generation-related uncollectible expense rider as the means to compensate the utility for assuming the risk of shopping customer default was simply the product of a bargained compromise in the Duke ESP case should be rejected out of hand.

Third, even if, for some unforeseen reason, the Commission were to find that its approval of the non-bypassable generation-related expense rider in the Duke ESP has no precedential value in this proceeding, the mere fact that the Commission approved a stipulation containing this compensation mechanism at least tells us that a POR program involving the purchase of supplier receivables at no discount does not violate any important regulatory principle and is in the public interest. Otherwise, the Commission could not have determined that the stipulation in the Duke ESP case satisfied the three-prong test for evaluating stipulations.

Finally, even if FirstEnergy were to somehow convince the Commission to ignore the Duke result in its entirety, this would not change the fact that the Commission, years ago, imposed the requirement on gas distribution utilities with choice programs to purchase the receivables of competitive suppliers. Thus, IGS awaits, with no small amount of curiosity, a FirstEnergy explanation as to why the Commission's longstanding policy with respect to gas POR programs should not apply on the electric side. In so stating, IGS is, of course, mindful that Duke secured a waiver of the requirement imposed by the Commission in the 2000 EDI case that like gas distribution utilities, electric distribution utilities, should offer POR programs. However, as explained at the outset of this brief, much has changed in the years since that waiver was granted.

The Commission unquestionably has the authority to modify a proposed ESP to incorporate a term that furthers the state policy of promoting retail electric competition, adds a


qualitative benefit to customers, and is in the public interest. The Commission should exercise this authority in this instance by including a term in the ESP that requires FirstEnergy to offer a POR program of the type proposed by IGS and RESA/Direct in this case. If, despite the Commission's prior pronouncements with respect to this subject and despite the fact that its operating subsidiaries in certain other states purchase the receivables of competitive suppliers, FirstEnergy declines to offer a POR program in Ohio, it has the option of withdrawing its ESP.

III. CONCLUSION

For those reasons set forth above, the Commission should modify the ESP as proposed in the Stipulation to incorporate a term that provides that FirstEnergy will offer to purchase the receivables of CRES providers for which it performs consolidated billing service and makes the generation-related uncollectible expense rider non-bypassable so that the receivables can be purchased at no discount.

Respectfully submitted,

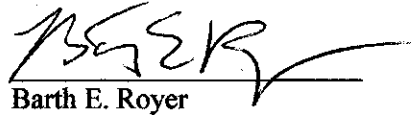
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I hereby certify that a true copy of the foregoing has been served upon the following parties by electronic mail this 22nd day of June 2012.


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