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

APPLICATION FOR REHEARING
OF
INTERSTATE GAS SUPPLY, INC.

Interstate Gas Supply, Inc. ("IGS"), pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35(A), Ohio Administrative Code ("OAC"), hereby applies for rehearing from the Commission's July 18, 2012 opinion and order in this docket whereby the Commission approved, without modification, a Section 4928.143, Revised Code, electric security plan ("ESP") proposed by Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, "FirstEnergy" or the "Companies"). As its grounds for rehearing, IGS respectfully submits that the Commission's order is unreasonable and unlawful in the following particulars:

1. The Commission's finding that "there is no record in this proceeding demonstrating that the absence of the purchase of receivables has inhibited competition" is contrary to the manifest weight of the evidence and is inconsistent with the Commission's prior findings that POR programs promote retail electric competition.

2. The Commission's finding that "there is no record in this proceeding that the Companies are under any legal obligation to purchase receivables" misstates the standard for evaluating a term of an ESP and subjected the POR program proposed by IGS to a test that was not applied to any term of the ESP.

3. The Commission's finding that "there is no record that circumstances have changed since the adoption of the stipulation" in *WPS Energy Services, Inc. and Green Mountain Energy Co. v. FirstEnergy Corp., et al.*, Case No. 02-1944-EL-CSS "to justify abrogating the stipulation" is contrary to the manifest weight of the evidence and is belied by, and inconsistent with, the Commission's instruction to its staff to investigate this matter in the context of the newly-opened five-year rule review of Chapter 4901:1-10, OAC.

4. The Commission's failure to provide for this case to remain open to accommodate the results of the ordered staff inquiry is unreasonable and may serve to prevent the implementation of the staff's ultimate recommendations with respect to FirstEnergy's tariffs and/or practices in Case No. 12-2050-EL-ORD.

Pursuant to Rule 4901-1-35(A), OAC, a memorandum in support more fully explaining these grounds for rehearing is attached hereto.

WHEREFORE, IGS respectfully requests that the Commission grant its application for rehearing, reconsider its findings with respect to the purchase of receivables program advocated by IGS in this proceeding, and modify the stipulated ESP by including a term that requires FirstEnergy to purchase the receivables of competitive suppliers at no discount and makes FirstEnergy's generated-related uncollectible expense rider non-bypassable to effectuate this result.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING OF INTERSTATE GAS SUPPLY, INC.

Introduction:

IGS participated in this case for the sole purpose of demonstrating that the Commission should modify the ESP proposed in this proceeding to include a term requiring Companies to offer a purchase of receivables ("POR") program to CRES providers to which they provide consolidated billing service. In view of the fact that the FirstEnergy's application was accompanied by a stipulation endorsed by multiple parties supporting the proposed ESP, IGS recognized that this would be an uphill battle. However, because the POR program advocated by IGS and other marketer intervenors[1] was identical to the longstanding, Commission-approved POR programs of all the state's major gas distribution utilities and the electric POR program recently approved for Duke Energy Ohio ("Duke") as a term of its ESP,[2] IGS held out hope that

[1] Intervenors Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, "Direct") and the Retail Energy Supply Association ("RESA") (collectively RESA/Direct, which like IGS, were not signatories to the stipulation, also proposed that a POR program be made part of the ESP.

[2] *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), 18, 32-33.

its POR proposal would be favorably received. IGS also took comfort in the fact that the Commission, which has long been on record as recognizing that POR programs further Ohio's stated energy policy of promoting competition, went out of its way to extol the customer benefits of POR programs in its order in the 2011 Duke MRO case.[3] Even so, IGS was not completely surprised that the Commission was not willing to jeopardize the stipulated ESP by incorporating the POR program advocated by IGS and RESA/Direct. But, what did come as a surprise was the rationale the Commission relied on in rejecting the POR proposal. Not only are these findings contrary to the evidence, but they are of particular concern to advocates of competitive electric markets because it appears that the Commission has turned its back on the pro-competition Ohio energy policy embodied in Section 4928.02, Revised Code, as well as its own precedents supporting POR programs as means to enhance the development of retail competition.

Although the Commission included a one-paragraph summary of IGS's arguments in its opinion,[4] this synopsis contains no mention of any IGS argument that refutes the stated basis for the Commission's rejection of IGS's POR proposal. Rather than acknowledging, as it has on prior occasions, that POR programs promote competition, the Commission's order, like FirstEnergy's briefs, totally ignored these prior pronouncements. Moreover, the Commission faulted IGS and RESA/Direct for failing to demonstrate that the absence of a POR program has inhibited competition in the Companies' service territory, notwithstanding that the evidence of record squarely supports this conclusion.

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[3] *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 60-61.

[4] *See* Opinion and Order, 40.

Also puzzling is the significance the Commission appears to attach to the proposition that FirstEnergy is not currently under any legal obligation to offer a POR program.[5] This is not a relevant standard for purposes of evaluating a term of an ESP. Indeed, none of the inducements FirstEnergy bestowed upon various signatories to the stipulation represented existing legal obligations. Rather, these elements were included as terms of the ESP to add qualitative benefits to enable the proposed ESP to pass the Section 4928.143(C)(1), Revised Code, "more favorable" test. The suggestion that IGS was required to show that FirstEnergy had a legal obligation to offer a POR program as a condition of the Commission including a POR program is contrary to law.

Finally, in determining that nothing has changed since the stipulation in the WPS/Green Mountain complaint case[6] absolved FirstEnergy from compliance with the earlier Commission directive that it offer a POR program, the Commission appears to have discounted completely IGS's extensive discussion of this subject in its initial brief.[7] Indeed, the Commission's conclusion that this nine year-old stipulation should not be disturbed is particularly curious in view of the fact that the Commission went on to specifically instruct its staff to investigate this matter in the context of the newly-opened five-year rule review of Chapter 4901:1-10, OAC,[8] based on its finding that "the issues raised merit further review."[9] IGS appreciates this indication that the Commission is willing to consider rule changes, rule waivers, and modifications to

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[5] *See* Opinion and Order, 41.

[6] *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).

[7] *See* IGS Initial Brief, 4-10.

[8] *See In the Matter of the Commission's Review of Chapter 4901:1-10, Ohio Administrative Code, Regarding Electric Companies*, Case No. 12-2050-EL-ORD.

[9] *See* Opinion and Order, 42.

FirstEnergy's tariffs and practices to promote competition via a POR program.[10] However, IGS respectfully suggests that, in moving this discussion to a rulemaking process, the Commission may well lose the opportunity to put FirstEnergy on the same footing as all the state's major gas distribution utilities and Duke because it may not be able to implement the optimal POR program in the context of a rulemaking proceeding. Thus, although IGS submits that the record in this proceeding provided the Commission with everything it needed to include the POR program advocated by IGS and RESA/Direct as a term of the ESP, at minimum, the Commission should grant IGS's application for rehearing for the purpose of keeping this case open to accommodate the POR program it ultimately finds appropriate as a result of the rulemaking.

First Ground for Rehearing:

> **The Commission's finding that "there is no record in this proceeding demonstrating that the absence of the purchase of receivables has inhibited competition" is contrary to the manifest weight of the evidence and is inconsistent with the Commission's prior findings that POR programs promote retail electric competition.**

It is beyond debate that POR programs promote competition in the residential and small commercial markets. Indeed, FirstEnergy never disputed this proposition, and, in fact, expressly acknowledged that POR programs have been implemented by regulators in other jurisdictions in which it has operating subsidiaries as a means to jump start competition.[11] More importantly, this Commission, in commenting on a proposed POR program identical to that advocated by IGS and RESA/Direct in this case – *i.e.*, a POR program that includes the implementation of a non-bypassable generation-related uncollectible expense rider to permit the purchase of supplier receivables at no discount -- stated as follows in its order in the 2011 Duke MRO case:

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[10] *Id.*

[11] *See* FE Brief, 65.

> In considering the proposed creation of Rider UE-GEN, the Commission is mindful that, as proposed by Dominion and RESA, is an unavoidable rider, Rider UE-GEN furthers state policy by promoting competition.[12]

However, in its order in this case, the Commission sidestepped its prior determination that POR programs further state policy by promoting competition by recasting the issue as being whether IGS and RESA/Direct had shown that FirstEnergy's failure to offer a POR program has inhibited competition in the FirstEnergy market:

> Although the marketers have demonstrated that the purchase of receivables by the utility is their preferred business model, there is no record in this proceeding demonstrating that the absence of purchase of receivables has inhibited competition.[13]

This finding flies in the face of the evidence and is wrong on several counts.

First, the Commission plainly did not think through the implications of its statement that POR programs are marketers' preferred business model. Although this is unquestionably true for all the reasons offered by IGS witness Parisi,[14] this necessarily means that, just as Mr. Parisi testified, CRES providers are much more likely to participate in markets in which the host utility offers a POR program.[15] Thus, by definition, POR programs promote competition and, conversely, the absence of POR programs hinders competition. There is no way around this. Further, not only are POR programs marketers' preferred business model, but they are also this Commission's preferred business model, as evidenced by the fact that this is the model approved for all gas distribution utilities with choice programs and for Duke on the electric side.

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[12] *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.

[13] Opinion and Order, 41.

[14] *See* IGS Exhibit 1 (Parisi Direct), 3-5, 7.

[15] *See* IGS Exhibit 1 (Parisi Direct), 10.

Second, contrary to the Commission's finding, the evidence offered by IGS witness Parisi and RESA/Direct witness Ringenbach conclusively demonstrated that the absence of a POR program has hindered the development of competition in the FirstEnergy market. Did the Commission miss the analysis presented by RESA/Direct witness Ringenbach comparing the number of marketers actually soliciting customers in the Companies' service territories to the number of marketers actively soliciting customers where the host utility offers a POR program? If so, here is the recap: FirstEnergy-5,[16] Duke-11,[17] ComEd-18,[18] PPL-34,[19] PECO-38,[20] Columbia of Ohio-15,[21] and Dominion East Ohio-16.[22] Apparently, the Commission also overlooked the evidence showing that the paltry FirstEnergy number is consistent with the small number of marketers actively soliciting customers behind AEP-Ohio (5) and Dayton Power and Light Company (6), the other two Ohio electric utilities that, like FirstEnergy, do not have POR programs in place.[23] And, what about Mr. Parisi's testimony showing that there are only seven products available from five CRES providers actively marketing in the Companies' service territories as opposed to the 65 products available from the 25 competitive suppliers soliciting customers in the ComEd and Ameren service areas?[24]

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[16] RESA/Direct Ex. 3 (Ringenbach Direct), 5; RESA/Direct Ex. 3 (Ringenbach Direct), Attachment A.

[17] *Id.*

[18] RESA/Direct Ex. 3 (Ringenbach Direct), 5-6; RESA/Direct Ex. 3 (Ringenbach Direct), Attachment A.

[19] *Id.*

[20] *Id.*

[21] PUCO Apples-to-Apples chart.

[22] *Id.*

[23] RESA/Direct Ex. 3 (Ringenbach Direct), 5-6; RESA/Direct Ex. 3 (Ringenbach Direct), Attachment A.

[24] IGS Ex. 1 (Parisi Direct), 14.

As Mr. Parisi acknowledged, there are obviously a variety of factors that may affect the status of competition in a particular utility service territory.[25] However, this evidence plainly shows that there is a direct correlation between the availability of a POR program and the number of marketers actively soliciting customers in a given service territory. It is unfathomable how the Commission could find, in the face of this evidence, that IGS and RESA/Direct failed to demonstrate that the absence of a POR program has hindered the development of competition in the FirstEnergy market.

In so stating, IGS recognizes that FirstEnergy argued that its failure to offer a POR program cannot be construed as a barrier to competition because its shopping numbers are the highest in the state. If the Commission bought this argument, it certainly did not say so in its order. More to the point, if this was, in fact, the basis for the Commission's conclusion, the Commission was sold a bill of goods. As IGS explained on brief, 96 percent of the switching in the FirstEnergy territory is attributable to opt-out governmental aggregation, and essentially the entire aggregation load is served by the Companies' marketing affiliate, FirstEnergy Solutions.[26] Plainly, this evidence belies any claim that there is robust competition in the FirstEnergy market and unequivocally supports a conclusion that the absence of a POR program has hindered the development of competition in the Companies' service territories.

Third, regardless how the Commission frames the issue, the Ohio energy policy set forth in Section 4928.02, Revised Code, is to promote retail electric competition. Thus, even if, contrary to fact, IGS and RESA/Direct had failed to demonstrate that the absence of a POR program constitutes a barrier to competition, it would not be enough for the Commission to find that competition has not been hindered by the absence of a POR program. The question is

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[25] *See* IGS Ex. 1 (Parisi Direct), 11-12.

[26] *See* IGS Reply Brief, 4-5, citing NOPEC/NOAC Ex. 1 (Frye Direct), 10-11.

whether the POR program proposed by IGS and RESA/Direct would enhance competition in the FirstEnergy market as contemplated by Section 4928.02, Revised Code. Based on the evidence in this proceeding and the Commission's prior pronouncements on the subject, the answer to that question is yes. Thus, modifying the ESP to include a term providing for a POR program and the expansion of FirstEnergy's generation-related uncollectible expense rider to cover shopping customer bad debt would be consistent with Ohio's stated policy, whereas the approved version of the ESP is not. Indeed, this is precisely why the Commission approved the identical POR program in the Duke ESP proceeding.

Second Ground for Rehearing:

> **The Commission's finding that "there is no record in this proceeding that the Companies are under any legal obligation to purchase receivables" misstates the standard for evaluating a term of an ESP and subjected the POR program proposed by IGS to a test that was not applied to any term of the ESP.**

As suggested above, IGS does not know what to make of the Commission's statement that "there is no record in this proceeding that the Companies are under any legal obligation to purchase receivables."[27] Plainly, if FirstEnergy were under a legal obligation to offer a POR program, there would have been no need for IGS to participate in this proceeding in the first place. As must surely be obvious, the standard for including a term in an ESP is not whether the proposed element is legally mandated. Rather, the standard is whether the proposed term furthers Ohio's stated energy policy, is in the public interest, and provides a benefit to be considered in applying the Section 4928.143(C)(1), Revised Code, "more favorable" test. One need only look to the various elements of the ESP cited by the Commission in its order as providing benefits to customers that would not otherwise be achievable to see that this is the case. None of these identified benefits were the result of previously existing legal obligations.

[27] Opinion and Order, 41.

Thus, whatever the Commission meant by this curious statement, the fact that FirstEnergy is currently under no legal obligation to offer a POR program is not a lawful basis for rejecting the POR program proposed by IGS and RESA/Direct in this proceeding. In suggesting otherwise, the Commission subjected the POR program do a different standard than the approved elements of the ESP and unlawfully imposed a test on IGS and RESA/Direct that they were not required to meet.

Third Ground for Rehearing:

> **The Commission's finding that "there is no record that circumstances have changed since the adoption of the stipulation" in *WPS Energy Services, Inc. and Green Mountain Energy Co. v. FirstEnergy Corp., et al.*, Case No. 02-1944-EL-CSS "to justify abrogating the stipulation" is contrary to the manifest weight of the evidence and is belied by, and inconsistent with, the Commission's instruction to its staff to investigate this matter in the context of the newly-opened five-year rule review of Chapter 4901:1-10, OAC.**

As IGS anticipated in its initial brief, the Commission focused on the stipulation adopted in the WPS/Green Mountain complaint case, which resulted in a waiver of the then-applicable requirement that FirstEnergy purchase the receivables of CRES suppliers to which it provides consolidated billing service. However, in finding that IGS and RESA/Direct "have not demonstrated sufficient grounds to disturb the stipulation,"[28] the Commission does not accurately describe the circumstances underlying the WPS/Green Mountain complaint and totally ignores the significant changes that have occurred since the stipulation was adopted in 2003. We begin with a bit of history.

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

[28] Opinion and Order, 42.

service, and these POR programs have operated successfully ever since.[29] With the advent of retail electric competition under S.B. 3, the Commission initiated Case No. 00-813-EL-EDI (the "EDI case") to develop electronic data exchange standards and uniform business practices governing the operating relationship between the electric utility and CRES suppliers.[30] In its July 19, 2000 finding and order in 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.[31]

The Commission originally ordered FirstEnergy to have its POR program in place by June of 2001.[32] By an application for rehearing, FirstEnergy's sought, among other things, to extend the implementation date to March 1, 2002 and to condition the requirement that it offer to purchase supplier receivables on a sufficient number of suppliers committing to utilize the program.[33] The Commission granted FirstEnergy's application for rehearing for purposes of extending the implementation date to March 1, 2002, and agreed that the requirement should be conditioned on sufficient supplier interest in the service.[34] However, the Commission denied rehearing on all other grounds raised by FirstEnergy.[35] Thus, so long as there was sufficient

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

[30] *See In the Matter of the Establishment of Electronic Data Exchange Standards and Uniform Business Practices for the Electric Industry*, Case No. 00-813-EL-EDI.

[31] Case No. 00-813-EL-EDI (Finding and Order dated July 19, 2000), at 15.

[32] *See* Case No. 00-813-EL-EDI (Finding and Order dated July 19, 200), at16-17.

[33] *See* Case No. 00-813-EL-EDI (Entry on Rehearing dated August 31, 2000), at 7-8.

[34] *Id.*, at 8.

[35] *See* Case No. 00-813-EL-EDI (Entry on Rehearing dated August 31, 2000), at 10.

supplier interest, FirstEnergy was under a legal obligation to offer to purchase supplier receivables pursuant to a negotiated discount at the time the WPS/Green Mountain complaint was filed.

The Commission states that the WPS/Green Mountain complaint was based on FirstEnergy's failure to offer to purchase supplier receivables.[36] That is not true. As the filings in the complaint case show, FirstEnergy was willing to purchase the complainants' receivables as required by the order in the EDI case.[37] The problem was that the parties were unable to agree on the terms of the purchase, most notably, a mutually acceptable discount rate. The case was ultimately resolved by a stipulation that simply provided for a modification of the partial payment posting priority as the quid pro quo for complainants dropping the complaint. Thus, contrary to the statement in the order in this case, the Commission has not "previously addressed the question of the purchase of receivables in the FirstEnergy service territories,"[38] except, of course, in the EDI case, where it ordered FirstEnergy to offer a POR program because it was consistent with its established policy on the gas side. Rather, all the Commission did in the WPS/Green Mountain case was to facilitate a voluntary dismissal of the complaint by adopting a stipulation that provided for a waiver of the legal requirement the Commission had previously imposed upon FirstEnergy.

The Commission then states that "(t)here is no record that circumstances have changed since the adoption of the stipulation to justify abrogating the stipulation."[39] In view of attorney examiner Price's pointed question to IGS witness Parisi regarding what had changed since the

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[36] Opinion and Order, 41.

[37] *See, e.g.,* Case No. 02-1944-EL-CSS (Answer of First Energy dated August 21, 2002), as 10.

[38] Opinion and Order, 41.

[39] *Id.*

waiver was granted in 2003, IGS took great pains to address this question on brief. However, the order merely states that Mr. Parisi "was unable to specify any changes in the competitive marketplace since the adoption of the stipulation."[40] In seizing upon this answer as a basis for rejecting the POR program proposed by IGS and RESA/Direct, the Commission fails to mention that the presiding attorney examiner denied counsel for IGS the opportunity to ask a follow-up question to attorney examiner Price's inquiry,[41] which would have elicited testimony explaining a very significant change that occurred since the stipulation in the WPS/Green Mountain complaint was adopted. Moreover, although IGS addressed this change, as well as others, at great length in its initial brief, the Commission simply ignored that entire discussion.

As IGS pointed out on brief, a properly-conceived POR program must include 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.[42] 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.[43] As noted above, the Commission has, for years, 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. Thus, on the gas side, utilities are fully compensated for assuming the risk of non-collection associated with the purchase of supplier

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[40] Opinion and Order 41-42, citing Tr. II, 213-214.

[41] *See* Tr. II, 214-215.

[42] *See* IGS Initial Brief, 5, citing IGS Ex. 1 (Parisi Direct), 18.

[43] *See* IGS Ex. 1 (Parisi Direct), 5.

receivables through this rider and, accordingly, purchase the receivables of competitive suppliers at no discount.

On the other hand, 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. Indeed, FirstEnergy itself made this very point in its application for rehearing in the EDI case, arguing that, in extending the gas POR policy to electric utilities, the Commission had overlooked the fact that, unlike the gas utilities, the Companies did not have an uncollectible expense rider to cover the risk of shopping customer default.[44] However, in 2009, FirstEnergy, as a result of its initial ESP proceeding, became the first Ohio electric utility to receive Commission approval to implement a bad-debt tracking mechanism.[45] 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.

Shortly thereafter, Duke was authorized to implement a distribution-related uncollectible expense rider as a result of a stipulation adopted by the Commission in Duke's most recent

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[44] *See* Case No. 00-813-EL-EDI (Entry on Rehearing dated August 31, 2000), at 8.

[45] *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.

distribution rate case.[46] In its subsequent application for approval of an MRO-based SSO, Duke requested authority to implement a bypassable generation-related uncollectible expense rider of the type previously approved for FirstEnergy in its initial ESP case.[47] Several intervening CRES providers contended that the proposed generation bad-debt tracker should be expanded to cover the 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.[48] 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 to facilitate Duke's POR program, citing the fact that such a measure would further the state policy of promoting competition.[49]

After its application for approval of an MRO-based SSO was rejected, Duke, which had supported the CRES providers' POR proposal in the MRO case, followed up with an application for approval of an ESP-based SSO.[50] 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

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[46] *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.

[47] *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.

[48] *Id.*

[49] *Id.*, 60-61.

[50] *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).

CRES providers participating in the Duke POR program and that Duke would purchase the receivables of such providers at no discount.[51]

On paper, the directive in the EDI case requiring the parties to negotiate the POR discount rate was a reasonable approach, but, in practice, as evidenced by the WPS/Green Mountain complaint, the inability of the FirstEnergy and CRES providers to reach agreement as to the appropriate discount rate essentially rendered the requirement in the EDI case that the FirstEnergy offer to purchase the receivables illusory. However, the point is that, at the time, electric utilities did not have uncollectible expense riders, so discounting the purchase price of supplier receivables was the only available mechanism to protect the Companies from the risk of shopping customer default.

FirstEnergy now has a bypassable generation-related uncollectible expense rider in place to provide protection from SSO customer default. Thus, contrary to the Commission's finding, there has been a significant change in circumstances since the requirement that FirstEnergy offer to purchase supplier receivables was waived as a result of the stipulation in the WPS/Green Mountain complaint case. Expanding Rider NDU to cover shopping customer bad debt and making it non-bypassable would mirror the gas POR policy and the Duke result and would eliminate the controversy over the appropriate discount rate that prompted the WPS/Green Mountain complaint. IGS submits that the availability of this option does, in fact, constitute sufficient grounds for abrogating the stipulation in the WPS/Green Mountain complaint case and modifying the FE ESP to include the POR program advocated by IGS and RESA/Direct.

Although failing to recognize this material change in circumstances, the Commission acknowledged that the record indicates that there are issues relating to the manner in which

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[51] *Id.*, 18, and 32-33.

FirstEnergy has implemented the stipulation in the WPS/Green Mountain complaint case that "merit further review."[52] At first blush, it may appear that the issues to which the Commission refers are limited to the impact of the partial payment priority posting in connection with customers on deferred payment plans. However, in directing the staff to hold a workshop in the context of the newly-opened five-year rule review of Chapter 4901:1-10, OAC, for the purpose of reviewing FirstEnergy's partial payment priority posting practices, the Commission clarified that broader issues would also be considered.[53] Moreover, that this directive also contemplated a review of the POR issue was made clear by the Commission's subsequent order in the AEP Ohio ESP case, wherein the Commission specifically stated:

> In our recent order on FirstEnergy's electric security plan (*See* Case No. 12-1230-EL-SSO), we noted that this workshop would be an appropriate place of stakeholders in the FirstEnergy proceedings to review issues related to POR programs. Similarly, we believe this workshop would also provide stakeholders in this proceeding an opportunity to further discuss the merits of establishing POR programs for other Ohio EDUs that are not currently using them.[54]

Although IGS, of course, appreciates that the Commission is willing to give further consideration to establishing a POR program for FirstEnergy and the two other Ohio electric utilities that do not currently offer them, several points bear mention.

First, the record in this case clearly demonstrates that POR programs promote competition and benefit customers. Indeed, the Commission has so found on numerous prior occasions in requiring all the state's major gas distribution utilities, Duke, and FirstEnergy itself

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[52] Opinion and Order, 42.

[53] *Id.*

[54] *In the Matter of the In the Matter of the Application of Columbus Southern Power Company and Ohio Power 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. 11-346-EL-SSO (Opinion and Order dated August 8, 2012) at 41-42.

to offer such programs. Yes, the Commission relieved FirstEnergy from complying with this requirement in the WPS/Green Mountain complaint case in the context of approving a settlement entered into by the parties to the proceeding. However, the issue was never litigated in that case, whereas, here, the issue was teed up for a decision on the merits and should have been decided in the manner dictated by the evidence and consistent with the Commission's earlier pronouncements on this subject.

Second, although IGS generally supports workshops as a productive means to work out generic competitive issues, it is not clear precisely what the Commission expects to learn from another collaborative effort that it does not already know. As IGS witness Parisi explained, one of the tasks undertaken by the Operational Support and Planning for Ohio Taskforce ("OSPO") that grew out of the Commission's November 30, 1999 order in Case No. 99-1141-EL-COI[55] was to develop guidelines for the purchase of CRES supplier receivables.[56] On July 13, 2001, OSPO filed an unopposed stipulation in the EDI Case that was accompanied by what was, in effect, a model POR agreement. The Commission approved the stipulation by entry of September 13, 2001, finding that the model agreement should be approved as a guideline for negotiating and resolving issues relating to POR agreements, and instructed the parties to negotiate in good faith to reach such agreements.[57] As previously discussed, the fly in the ointment proved to be the controversy surrounding the appropriate discount rate for the purchase, a matter that was not addressed in the model agreement. That is no longer an issue in the case of an electric utility that now has an uncollectible expense rider, because making the rider non-

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[55] *See In the Matter of the Commission's Promulgation of Rules for Electric Transition Plans and of a Consumer Education Plan, pursuant to Chapter 4928, Revised Code,* Case No. 99-1141-EL-ORD (Finding and Order dated November 30, 1999), at 27.

[56] *See* IGS Ex. 1 (Parisi Direct), 12-13.

[57] *Id.*

bypassable fully protects the utility from the risk of shopping customer default and eliminates the need for a discount to the price paid for supplier receivables. There may be other ways to skin the cat for electric utilities that do not have bad-debt trackers, but there is no question that the expansion of existing Rider NDU to cover shopping customer default is the cleanest, most efficient way to handle this in the case of FirstEnergy.[58] The Commission has already recognized the virtue of this approach in approving the Duke electric POR program, and the questions the Commission has asked its staff to address via the workshop process have already been answered in this case as the relate to FirstEnergy.

Fourth Ground for Rehearing:

> **The Commission's failure to provide for this case to remain open to accommodate the results of the ordered staff inquiry is unreasonable and may serve to prevent the implementation of the staff's ultimate recommendations with respect to FirstEnergy's tariffs and/or practices in Case No. 12-2050-EL-ORD.**

Despite the earlier OSPO efforts to craft a model POR program, history has shown that leaving the POR discount rate to negotiations among the parties has led to controversy. In addition, the possibility that the host utility could negotiate different terms with different suppliers has anticompetitive overtones, particularly where the electric utility's own marketing affiliate is in the mix. Thus, IGS applauds the Commission's decision in the AEP-Ohio ESP to delve into the merits of establishing POR programs for those electric utilities that do not currently offer such programs via a workshop in the Case No. 12-2050-EL-ORD. However, as discussed above, these sorts of issues are not present where the utility has an uncollectible expense rider that can be utilized as the mechanism to compensate the company for the risk of shopping customer default. Moreover, as discussed in detail in the testimony of witnesses Parisi and Ringenbach, the use of the utility's uncollectible expense rider as the risk-compensation

[58] *See* IGS Ex. 1 (Parisi Direct), 18.

mechanism directly benefits customers because CRES suppliers do not have to build that risk into their offer prices and because the likelihood is that that the inclusion of shopping customers uncollectibles in a non-bypassable bad-debt tracker will reduce the rider rate from what it otherwise would have been.[59] However, by closing this case and handing off the subject of establishing a POR program for FirstEnergy to the staff for review in the rulemaking workshop, the Commission may be foreclosed from utilizing an expanded uncollectible expense rider as the POR risk-compensation mechanism, notwithstanding that it has already approved this model for all the state's major gas distribution utilities and Duke on the electric side.

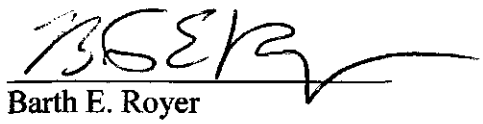
Although it is not unusual for the Commission to require affected utilities to modify their tariffs to conform to the results of a rulemaking proceeding, IGS is not aware of any precedent for the Commission ordering changes in rates or changes in the applicability of riders in a rulemaking context. Thus, although, for those reasons set forth above, IGS believes that the Commission clearly erred in failing to include the POR program advocated by IGS and RESA/Direct as a term of the ESP approved in its order in this case, the Commission should, at minimum, have allowed this case to remain open pending the outcome of the rulemaking workshop so as to accommodate a finding in Case No. 12-2050-EL-ORD that Rider NDU should be expanded to permit the purchase of supplier receivables at no discount. Accordingly, if the Commission denies IGS's application for rehearing on the grounds set forth above, the Commission should at least grant IGS's application for rehearing for the limited purpose of allowing this case to remain open so that the Commision will not be foreclosed in the rulemaking proceeding from a POR program for FirstEnergy that mirrors those of the state's major gas distribution utilities and the electric POR program previously approved for Duke.

[59] *See* IGS Initial Brief, 22-23; IGS Reply Brief, 10-11.

Conclusion:

For those reasons set forth above, IGS respectfully submits that its application for rehearing should be granted and that the Commission should modify its July 18, 2012 opinion and order to provide for a term in the ESP requiring FirstEnergy to offer the POR program advocated by IGS and RESA/Direct. At minimum, the Commission should grant IGS's application for rehearing for the limited purpose of allowing this case to remain open to accommodate a decision in Case No. 12-2050-EL-ORD that FirstEnergy should offer to purchase the receivables of CRES suppliers to which it supplies consolidated billing service at no discount.

Respectfully submitted,



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