

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Duke) | |
| Energy Ohio, Inc., for the Establishment) | Case No. 12-2400-EL-UNC |
| of a Charge Pursuant to Revised Code) | |
| Section 4909.18. | |

| | |
|---|--------------------------------|
| In the Matter of the Application of Duke) | |
| Energy Ohio, Inc., for Approval to) | Case No. 12-2401-EL-AAM |
| Change Accounting Methods.) | |

| | |
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| In the Matter of the Application of Duke) | |
| Energy Ohio, Inc., for the Approval of a) | Case No. 12-2402-EL-ATA |
| Tariff for a New Service.) | |

**DIRECT TESTIMONY OF
SHARON L. NOEWER
ON BEHALF OF FIRSTENERGY SOLUTIONS CORP.**

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1 **I. INTRODUCTION & BACKGROUND**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND POSITION.**

3 A. My name is Sharon L. Noewer. My business address is 341 White Pond Drive,
4 Akron, Ohio 44320. I am employed by FirstEnergy Solutions Corp. (“FES”) as the
5 Director of Competitive Market Policies.

6 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
7 **PROFESSIONAL QUALIFICATIONS.**

8 A. I have a Bachelor of Arts degree in Economics from Hiram College, and a Master of
9 Business Administration degree from Lake Erie College. I have nearly 30 years of
10 experience in the electric industry. I worked for 14 years at Centerior Energy
11 Corporation (and its predecessor), the holding company of utilities The Toledo
12 Edison Company and The Cleveland Electric Illuminating Company, in the Rates and
13 Strategy & Planning departments, and ultimately became Manager of Customer
14 Pricing in the Rates Department. Following the merger of Ohio Edison Company and
15 Centerior Energy and the founding of FES, I joined FES in 1998 as the Director of
16 Market Segments. In 2009, after a number of years and different positions at FES, I
17 was named the Director of Mass Marketing, Government Aggregation and Product
18 Development. I was named the Director of State Competitive Market Policies in
19 2011 and then was named the Director of Competitive Market Policies in 2013.

20 **Q. WHAT ARE YOUR RESPONSIBILITIES AS THE DIRECTOR OF**
21 **COMPETITIVE MARKET POLICIES?**

22 A. As the Director of Competitive Market Policies, I am responsible for overseeing and
23 coordinating initiatives involving state public utility commissions, including the

1 Public Utilities Commission of Ohio (the “Commission”), the Federal Energy
2 Regulatory Commission (“FERC”), regional transmission organizations (“RTOs”), as
3 well as other policy developments that impact competitive energy markets. As part of
4 this role, I am responsible for representing FES’ interests in Ohio Electric Security
5 Plan (“ESP”) and Market Rate Offer (“MRO”) proceedings. Specifically, I was
6 involved in the Duke Energy Ohio (“DEO”) ESP II Case.¹ I was directly involved
7 with the development of FES’ position in the case and participated in the numerous
8 settlement meetings that ultimately resulted in the Stipulation and Recommendation
9 filed October 24, 2011 (the “ESP II Stipulation”).

10 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

11 A. I am testifying on behalf of FES. FES is a licensed competitive retail electric
12 service (“CRES”) provider in Ohio and an energy supplier serving residential,
13 commercial and industrial customers in the Midwest and Mid-Atlantic regions,
14 including DEO’s territory. FES supplies electricity to customers in Illinois,
15 Maryland, Michigan, New Jersey, Ohio and Pennsylvania.

16 **Q. CAN YOU DESCRIBE FURTHER FES’ EXPERIENCE IN THE**
17 **COMPETITIVE ELECTRIC MARKETS IN OHIO?**

18 A. Yes. FES owns and operates competitive generation in Ohio and elsewhere. FES
19 offers a range of energy and energy-related products and services to wholesale and
20 retail customers across Ohio, including the generation and sale of electricity, as well

¹ *In the Matter of the Application of Duke Energy Ohio 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 Nos. 11-3549-EL-SSO, et al.*

1 as energy planning, procurement, and other services. FES serves and provides
2 savings to all customer classes. It also serves customers in all of the Ohio electric
3 distribution utilities' ("EDUs") service territories. FES also has substantial
4 experience as a supplier at the wholesale level, including competitive bid
5 procurements ("CBPs") in Ohio and other states.

6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

7 A. My testimony will address the harm that DEO's proposal to establish a cost-based
8 charge for capacity pricing based on embedded costs (the "Proposed Additional
9 Subsidy") will cause to the competitive market. I discuss the fact that the Proposed
10 Additional Subsidy is in violation of the ESP II Stipulation, and the harm that would
11 be caused by reopening the ESP II proceeding. I also address how continuation of
12 PJM Reliability Pricing Model ("RPM") market-priced capacity is beneficial to
13 competitive markets and DEO's customers. I will also address how DEO's Proposed
14 Additional Subsidy violates state policy by, among other things, providing anti-
15 competitive subsidies.

16 **Q. WHAT IS FES' POSITION ON DEO'S PROPOSED ADDITIONAL**
17 **SUBSIDY?**

18 A. The Proposed Additional Subsidy should be rejected for multiple reasons. First, the
19 Proposed Additional Subsidy violates the delicate, negotiated balance of many
20 signatory parties' interests achieved in the ESP II Stipulation approved by the
21 Commission on November 22, 2011, which established the terms under which DEO

1 is compensated for its capacity as an Fixed Resource Requirement (“FRR”) entity
2 both during and after DEO’s ESP II.²

3 Second, DEO’s Proposed Additional Subsidy is anti-competitive and is in
4 violation of state policies. Approval of the Proposed Additional Subsidy would force
5 DEO’s competitors to compete on an unlevel playing field. FES and other
6 competitors are compensated at market for their capacity, while DEO would receive
7 market pricing plus a subsidy via the Electric Service Stability Charge (“Rider
8 ESSC”) plus the Proposed Additional Subsidy. Such a scheme would not result in
9 reasonably priced retail electric service for DEO’s customers and would promote
10 anticompetitive subsidies.

11 Third, as discussed in the testimony of FES witness Dr. Jonathan Lesser, the
12 Proposed Additional Subsidy plus Rider ESSC equates to an overall average cost of
13 \$1,544 per customer³ and is not justified by DEO’s attempt to put the financial
14 integrity of its legacy generating assets at issue. Although Dr. Lesser strongly
15 opposes this above-market subsidy, he corrects DEO’s capacity revenue requirement
16 calculations to account for Rider ESSC revenues and other mistakes and concludes
17 that DEO’s demand for additional compensation is overstated by more than 80

² DEO ESP II, Stipulation and Recommendation (Oct. 24, 2011), § I.B. (stating that for as long as DEO is an FRR entity it will provide capacity at the Final Zonal Capacity Price in the unconstrained PJM RTO region); § II.B. (obligating DEO to supply capacity to PJM for SSO supply and fixing DEO’s compensation for that capacity as the Final Zonal Capacity Price in the unconstrained PJM RTO region); § IV.A. (obligating DEO to supply capacity to PJM for CRES providers and fixing DEO’s compensation for that capacity at the Final Zonal Capacity Price in the unconstrained PJM RTO region).

³ The Proposed Additional Subsidy component is calculated from August 1, 2012 through May 31, 2015. The ESSC component is calculated for calendar years 2012, 2013, and 2014.

1 percent. Dr. Lesser demonstrates that the Proposed Additional Subsidy would cause
2 DEO's ESP vs. MRO price test for the ESP II to fail by more than \$540 million. Dr.
3 Lesser also explains how DEO's Proposed Additional Subsidy is imprudent given
4 that DEO can satisfy its FRR obligation using much less costly capacity that is readily
5 available in the market.

6 Fourth, as FES witness Dr. Richard Tabors explains, PJM's RPM provides the
7 most appropriate pricing for capacity. Among other things, Dr. Tabors discusses how
8 the Proposed Additional Subsidy would harm the competitive market for capacity
9 across the region and harm customers. Dr. Tabors goes on to show how DEO's
10 calculations of its costs are improper and incorrect under the PJM capacity construct
11 and concludes that DEO is currently collecting the economically correct amount for
12 capacity.

13 For all of the reasons listed above, DEO's Proposed Additional Subsidy should be
14 rejected.

15 **II. THE PROPOSED ADDITIONAL SUBSIDY IS IN DIRECT VIOLATION**
16 **OF DEO'S ESP STIPULATION.**

17
18 **Q. DID THE ESP STIPULATION ESTABLISH DEO'S COMPENSATION FOR**
19 **ITS FRR CAPACITY?**

20 A. Yes. In addition to setting the terms for DEO's provision of a standard service offer
21 ("SSO") to its customers, the ESP Stipulation established DEO's charges for capacity
22 to both SSO and shopping customers through May 31, 2015. DEO agreed to supply
23 all necessary capacity under its FRR election to PJM:

24 For purposes of this paragraph, the Parties also agree that,
25 for so long as Duke Energy Ohio is a Fixed Resource
26 Requirements (FRR) entity under PJM Interconnection,

1 LCC, (PJM), it will provide capacity at the Final Zonal
2 Capacity Price (FZCP) in the unconstrained regional
3 transmission organization (RTO) region. For the period
4 during which Duke Energy Ohio participates in PJM's
5 Reliability Pricing Model (RPM) and Base Residual
6 Auction (BRA), the capacity price is the FCZP [*sic*] for the
7 DEOK load zone region, and capacity shall be provided
8 pursuant to the PJM RPM process.⁴
9

10 DEO further committed that it would receive RPM-based RTO prices as
11 compensation for the capacity supplied to PJM for wholesale bidders in the SSO
12 auctions:

13 Acknowledging Duke Energy Ohio's status as an FRR
14 entity in PJM, the Parties agree that Duke Energy Ohio
15 shall supply capacity to PJM, which, in turn, will charge for
16 capacity to all wholesale supply auction winners for the
17 applicable time periods of Duke Energy Ohio's ESP with
18 the charge for said capacity determined by the PJM RTO,
19 which is the FZCP in the unconstrained RTO region.⁵
20

21 Finally, DEO committed that it would receive RPM-based RTO prices as
22 compensation for the capacity used by CRES providers who did not opt out of DEO's
23 FRR plan:

24 Consistent with Section II.B., above, the Parties agree that
25 Duke Energy Ohio shall supply capacity resources to PJM,
26 which, in turn, will charge for capacity resources to all
27 CRES providers in its service territory for the term of the
28 ESP, with the exception of those CRES providers that have
29 opted out of Duke Energy Ohio's FRR plan, for the period
30 during which they opted out. The Parties further agree that,
31 during the term of the ESP, PJM shall charge CRES
32 providers for capacity as determined by the PJM RTO,
33 which is the FZCP in the unconstrained RTO region, for
34 the applicable time periods of its ESP. When computing the

⁴ ESP Stip., § I.B.

⁵ ESP Stip., § II.B.

1 capacity allocations for PJM, Duke Energy Ohio shall use
2 an allocation formula in common use in PJM.⁶

3 In exchange for these commitments and others in the ESP Stipulation, DEO
4 obtained a separate, non-bypassable revenue stream of \$110 million annually for the
5 calendar years 2012, 2013 and 2014 – on top of the RPM-priced compensation that
6 DEO would receive for its capacity – for providing service as an FRR entity:

7 For the calendar years 2012, 2013, and 2014 of the ESP,
8 Duke Energy Ohio shall recover annually, via a non-
9 bypassable generation charge called the Electric Service
10 Stability Charge (Rider ESSC), an amount intended to
11 provide stability and certainty regarding Duke Energy
12 Ohio's provision of retail electric service as an FRR entity
13 while continuing to operate under an ESP.⁷

14 **Q. DOES DEO PROVIDE ANY LEGITIMATE BASIS FOR REOPENING AND**
15 **UNILATERALLY CHANGING THE TERMS OF THE ESP STIPULATION?**

16 A. No. DEO witness Trent claims that “...while the ESP Stipulation...identifies the
17 price that PJM would charge wholesale and competitive retail suppliers for capacity,
18 the ESP Stipulation did not address what DEO Energy Ohio would receive, in the
19 form of compensation, for its provision of noncompetitive wholesale capacity
20 service.”⁸ This point is not only clearly inaccurate based on the plain language of the
21 ESP II Stipulation, it is also inconsistent with testimony by DEO’s then-President,
22 Julia Janson,⁹ who testified in DEO’s ESP II case as follows:

⁶ ESP Stip., § IV.A, as amended by Joint Exhibit 1.1.

⁷ ESP Stip., § VII.A (emphasis added).

⁸ Direct Testimony of B. Keith Trent on Behalf of Duke Energy Ohio, Inc., p. 5 (Mar. 1, 2013).

⁹ Ms. Janson since has been promoted to executive vice president, chief legal officer and corporate secretary for DEO.

1 In the Stipulation and Recommendation, the parties
2 recognized Duke Energy Ohio's obligations as an FRR
3 entity and, for the term of the ESP, Duke Energy Ohio will
4 supply capacity resources to PJM, which, in turn, will
5 charge wholesale suppliers for capacity. But the charge
6 applicable to these wholesale suppliers will not reflect
7 Duke Energy Ohio's costs of service defined above.
8 Rather, the charge will be predicated upon PJM's capacity
9 market pricing structure. To clarify, Duke Energy Ohio
10 bears the obligation to provide the capacity resources
11 necessary to serve all customers in our footprint for the
12 term of the ESP and the Company will be compensated for
13 capacity resources based on competitive PJM prices.¹⁰
14

15 Ms. Janson further testified that the ESSC was intended to protect the Company's
16 financial integrity and ensure that the overall revenues under the ESP are adequate to
17 compensate DEO for providing its SSO.¹¹

18 **Q. IS THERE ANY OTHER BASIS FOR YOUR OPINION THAT THE ESP II**
19 **STIPULATION ESTABLISHED THAT DEO WOULD BE COMPENSATED**
20 **AT MARKET-BASED, RPM PRICING?**

21 A. Yes. As I mentioned above, I was a participant in DEO's ESP II settlement
22 discussions. I am well aware of FES' expectations based on DEO's representations.
23 It was clear that DEO was committing to receiving compensation based on RPM
24 pricing not cost-based pricing. There was no suggestion that the terms of the ESP II
25 Stipulation were not to be carried out through the entirety of the ESP II term or that
26 DEO would have the option to receive a cost-based rate or modify the terms and
27 capacity pricing in the Stipulation. DEO did not reserve the right to modify the
28 pricing based on the outcome of Ohio Power Company's proceeding. The ESP II

¹⁰ DEODEO ESP II, Supplemental Testimony of Julia S. Janson on Behalf of Duke Energy Ohio, Inc., p. 4-5 (October 28, 2011) (emphasis added).

¹¹ *Id.* at p. 14.

1 Stipulation was, or at least we believed at the time, a fair balance of a number of
2 negotiated provisions, including capacity compensation at RPM-based pricing.

3 **Q. WHAT WOULD BE THE EFFECT OF GRANTING DEO ADDITIONAL**
4 **COMPENSATION FOR ITS CAPACITY?**

5 A. The ESP II Stipulation was the result of many parties making many compromises on
6 many issues. The compensation provided to DEO for its capacity was part of a global
7 agreement on a number of issues, including DEO's ability to collect charges through
8 Rider ESSC. If the amount of the capacity compensation were to be increased during
9 the ESP, then the entire ESP and Stipulation should be reopened.

10 **Q. WHAT WOULD BE THE EFFECT OF REOPENING DEO'S ESP II**
11 **PROCEEDING?**

12 A. If the Commission were to reopen DEO's ESP II proceeding to increase the capacity
13 rate to \$224.15/MW-day, the Commission would then have to determine whether
14 DEO's ESP II, with this \$729 million rate increase, was more favorable in the
15 aggregate than the expected results of an MRO.¹² DEO has not submitted any such
16 evidence, nor could it. As is discussed more fully in Dr. Lesser's testimony, if DEO's
17 Proposed Additional Subsidy were to be implemented, DEO would fail the ESP vs.
18 MRO price test by more than \$540 million. On this basis alone, the Commission
19 should find that it lacks reasonable grounds for hearing, let alone approving, the
20 Application in this case.

21 **Q. WHAT WOULD BE THE EFFECT OF DEO'S VIOLATION OF ITS**
22 **PREVIOUS COMMITMENTS REGARDING CAPACITY PRICING?**

¹² R.C. § 4928.143(C)(1).

1 A. If the Commission approved the Proposed Additional Subsidy despite DEO's ESP
2 commitments to the contrary, it would severely harm the regulatory environment in
3 Ohio. DEO witnesses Cannell and De May discuss the debt and equity investors'
4 perspective on the importance of stable, predictable regulatory outcomes, but fail to
5 address the fact that violating the ESP II Stipulation would be an extremely
6 unpredictable regulatory outcome. FES, for one, considered capacity pricing to be a
7 critical part of the agreement. If the Commission were to decide that DEO should
8 receive anything other than RPM-based pricing plus the ESSC through the term of
9 DEO's ESP II, parties would be reluctant to enter into negotiated settlements in the
10 future with DEO or any other party. Preserving the integrity of stipulations means
11 that parties should be able to rely upon the terms of a stipulation and on the
12 Commission to enforce the provisions. The Commission should affirm the integrity
13 of the settlement process by holding DEO responsible for its obligations under the
14 Stipulation.

15 **III. THE PROPOSED ADDITIONAL SUBSIDY WOULD LIMIT**
16 **CUSTOMERS FROM RECEIVING THE FULL BENEFITS OF A**
17 **COMPETITIVE MARKET FOR ELECTRIC SERVICE.**
18

19 **Q. HOW WOULD THE PROPOSED ADDITIONAL SUBSIDY IMPACT**
20 **COMPETITION IN DEO'S SERVICE TERRITORY AND BEYOND?**

21 A. The Proposed Additional Subsidy is anti-competitive because, if approved, it would
22 result in an above-market revenue stream over and above what DEO is already
23 receiving from RPM-based pricing and Rider ESSC. DEO has requested that once
24 the legacy generating assets have been transferred to an affiliate, "that portion of
25 recovery attributable to the time period during which the assets were owned by the

1 affiliate should then be passed through to such affiliate.”¹³ No other competitor in
2 DEO’s market or the markets in which DEO competes (except Ohio Power Company
3 and, after assets are divested, Ohio Power’s competitive generation affiliate) would
4 be receiving this additional revenue, and would therefore be competing on an unlevel
5 playing field. Most market participants, like FES, have one capacity-related revenue
6 stream (RPM market-based capacity), while others have two, or, if the Proposed
7 Additional Subsidy is approved, three revenue streams for capacity.¹⁴ In this
8 lopsided view of competition, certain competitors have been given a significant head-
9 start instead of letting the market decide. Certainly suppliers with inappropriate
10 subsidies and millions of extra dollars annually can: (1) compress their margins and
11 make offers that a supplier without these resources are unable to make; (2) elect to
12 upgrade their generating facilities or operational systems without having to recapture
13 those dollars in the competitive markets; or (3) use the additional revenue on
14 marketing, branding, and other matters. Simply put, suppliers with access to
15 additional above-market revenue streams obtained from captive ratepayers have
16 significantly more options than those without. When one market participant has
17 access to hundreds of millions of dollars in revenues that other participants do not, it
18 can only act to disrupt the competitive market, not enhance it.

¹³ Application p. 10, ¶ 18.

¹⁴ DEO and Ohio Power Company (or their affiliates, upon corporate separation) currently have two revenue streams for capacity. If the Proposed Additional Subsidy is approved, DEO would be the only market participant with three revenue streams for capacity.

1 The only appropriate way to address these concerns would be to charge RPM
2 rates, putting DEO (and, after corporate separation, its affiliate) in the same position
3 as other electric generation suppliers.

4 **IV. THE PROPOSED ADDITIONAL SUBSIDY VIOLATES OTHER STATE**
5 **POLICIES.**

6
7 **Q. PURSUANT TO REVISED CODE SECTION 4928.02(A), STATE POLICY**
8 **SEEKS TO “ENSURE THE AVAILABILITY TO CONSUMERS OF**
9 **ADEQUATE, RELIABLE, SAFE, EFFICIENT, NONDISCRIMINATORY,**
10 **AND REASONABLY PRICED RETAIL ELECTRIC SERVICE.” IS THE**
11 **PROPOSED ADDITIONAL SUBSIDY CONSISTENT WITH THIS STATE**
12 **POLICY?**

13 A. No. As discussed further in Dr. Tabors’ testimony, RPM is the appropriate capacity
14 pricing for customers in DEO’s territory. In the ESP II Stipulation, DEO provided
15 assurance to the parties that the market-based capacity rates plus additional ESSC
16 revenues would be adequate compensation for DEO’s capacity obligations and that
17 there would be no need to seek cost-based pricing. Any pricing over and above what
18 was approved in the ESP II Stipulation could not be described as “reasonably priced
19 electric service.”

20 **Q. PURSUANT TO REVISED CODE SECTION 4928.02(H), STATE POLICY**
21 **SEEKS TO “ENSURE EFFECTIVE COMPETITION IN THE PROVISION**
22 **OF RETAIL ELECTRIC SERVICE BY AVOIDING ANTICOMPETITIVE**
23 **SUBSIDIES FLOWING FROM A NONCOMPETITIVE RETAIL ELECTRIC**
24 **SERVICE TO A COMPETITIVE RETAIL ELECTRIC SERVICE....” IS THE**

1 **PROPOSED ADDITIONAL SUBSIDY CONSISTENT WITH THIS STATE**
2 **POLICY?**

3 A. No. The Proposed Additional Subsidy would inappropriately allow DEO to recover
4 capacity prices that are significantly above market and represents an anticompetitive
5 subsidy for a competitive retail electric service. As discussed above, this above-
6 market revenue would allow DEO to manipulate the competitive market in its own
7 service territory and any other service territory in which it participates. Further, DEO
8 intends to pass the above-market revenues collected through Rider Deferred Recovery
9 – Capacity Obligation (“Rider DR-CO”) on to its affiliate upon completion of
10 corporate separation. As Dr. Lesser discusses, this in itself would be an
11 anticompetitive subsidy flowing from DEO to its competitive affiliate.

12 **Q. DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?**

13 A. Yes.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Testimony* was served this 26th day of March 2013, via e-mail, upon the parties below.

/s/ James F. Lang

One of the Attorneys for FirstEnergy Solutions Corp.

John.jones@puc.state.oh.us
Steven.beeler@puc.state.oh.us
Amy.Spiller@duke-energy.com
Elizabeth.watts@duke-energy.com
Jeanne.Kingery@duke-energy.com
cmooney2@columbus.rr.com
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com
mpritchard@mwncmh.com
tobrien@bricker.com
grady@occ.state.oh.us
kern@occ.state.oh.us
jkylar@BKLawfirm.com
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
dhart@douglasshart.com
Bojko@CarpenterLipps.com
Mohler@CarpenterLipps.com
mwarnock@bricker.com
tsiwo@bricker.com
lthompson@energy-strategies.com
kcampbell@energy-strategies.com
jejadwin@aep.com
yalami@aep.com
stnourse@aep.com
mjsatterwhite@aep.com
dstahl@eimerstahl.com
tcraven@wausaupaper.com

mhpetricoff@vorys.com
lkalepsclark@vorys.com
smhoward@vorys.com
Stephen.bennett@exeloncorp.com
David.fein@constellation.com
Cynthia.brady@constellation.com
Judi.sobecki@DPLINC.com
Randall.griffin@DPLINC.com
Joseph.strines@DPLINC.com
kosterkamp@ralaw.com
BarthRoyer@aol.com
Rdc law@swbell.net
Gary.A.Jeffries@dom.com

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Summary: Testimony of Sharon L. Noewer on Behalf of FirstEnergy Solutions Corp.
electronically filed by Ms. Lindsey E Sacher on behalf of FirstEnergy Solutions Corp.