BEFORE THE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Investigation of Ohio's Retail Electric Service Market	)))	Case No. 12-3151-EL-COI

REPLY COMMENTS OF FIRSTENERGY SOLUTIONS CORP.

I. INTRODUCTION

FirstEnergy Solutions Corp. ("FES") submits these Reply Comments pursuant to the Public Utilities Commission of Ohio's ("Commission") December 12, 2012 Entry regarding the Investigation of Ohio's Retail Electric Service Market. FES's initial Comments explained that the state of retail electric competition varies widely among Ohio's electric distribution utilities ("EDUs"), and that the keys to effective retail competition are for the Commission to consistently enforce existing laws and policy to implement: (1) structural separation for all EDUs; and (2) competitive bid processes ("CBPs") for 100% of default standard service offer ("SSO") load. At this time, only the FirstEnergy Ohio Utilities ("FEOUs") have achieved complete corporate separation. While there are other significant measures the Commission must take to improve retail electric competition — namely the elimination of anti-competitive subsidies for those EDUs which have not structurally separated — consistent structural separation and use of CBPs are necessary for Ohio to begin full retail electric competition on a statewide basis.

The Commission's need to ensure all EDUs' compliance with existing corporate separation and CBP requirements across Ohio is particularly evident in the initial Comments filed by The Dayton Power & Light Company ("DP&L"). DP&L's Comments are replete with anti-shopping rhetoric and urge the Commission to delay DP&L's structural corporate separation. DP&L further urges the Commission to undermine CBPs by approving subsidies of EDU-based generation service and allowing an EDU to bid into its own CBP. DP&L's recommendations run contrary to long-standing Ohio law and policy, and its arguments would have been timely raised not in 2013, but in 1999, before the General Assembly's mandate to implement retail electric competition through the enactment of S.B. 3. FES strongly urges the Commission to reject DP&L's anti-competitive market recommendations and to bring all EDUs into compliance with Ohio laws regarding corporate separation and procurement of default supply through CBPs.

With regard to the parties supporting competitive markets, some of their initial Comments recognize the need for structural separation and CBPs, while others overlook these fundamental measures and propose an array of progressive retail market enhancements, which go beyond operational enhancements supported by FES as elemental to effective competition in many other Commission proceedings, and range from changes to the default service model and the default service provider, to recommendations for "market-responsive" pricing, to a requirement that default supply bids include costs incurred by a competitive retail electric service ("CRES") provider. Although some of the recommendations of this latter group may promote retail electric competition, they will not implement effective retail electric competition statewide, are premature, and will make relatively little difference until the Commission brings the remaining EDUs into compliance with the law. Other Comments recommend that the Commission take steps that would exceed its jurisdiction and encroach on the authority of the Federal Energy Regulatory Commission ("FERC"), particularly with respect to expanding the state's Code of Conduct and the Commission's oversight of CRES providers. These recommendations must be rejected on the grounds of federal preemption.

As explained further below and in FES's initial Comments, FES recommends that the Commission take all necessary actions to ensure all Ohio EDUs complete corporate separation as soon as possible, provide 100% market-based pricing to SSO customers, and eliminate anti-competitive subsidies for EDU-based generation. With these steps, the Commission will fulfill its statutory obligations and ensure a truly competitive retail electric service market for all of Ohio.

II. REPLIES TO OTHER PARTIES' COMMENTS

A. To Create Effective Retail Electric Competition in Ohio, the Commission Must Ensure Consistent Compliance With Existing Laws Among All EDUs.

The status of retail electric competition varies widely among Ohio EDUs, based on their degree of compliance with the requirements first promulgated in S.B. 3 in 1999. One EDU completed corporate separation over ten years ago, and procures 100% of its SSO supply through a market-based CBP. Another EDU has not completed corporate separation at this time but does procure 100% of its SSO supply though a market-based CBP. The other EDUs, however, have delayed and continue to delay corporate separation and prolong their control over SSO generation service. As FES explained at length in its initial Comments, retail electric competition is dramatically higher and prices are lower in the service territories of EDUs with full structural corporate separation and market-based CBPs, than in the territories of EDUs that have avoided compliance with the law and policy of Ohio for 14 years. FES Comments at 3-5, 12-13. Indeed, full retail electric competition arguably has yet to even begin in the territories of the non-compliant EDUs.

Thus, while the initial Comments of several pro-competition parties recommend a variety of retail market enhancements which might improve competition, the answer to the question of how to significantly improve the state of Ohio's retail electric service market is more fundamental, squarely in front of the Commission and within its power: demanding consistent compliance by all Ohio EDUs with long-standing Ohio law and policy regarding structural separation and market-based SSO supply. With these two simple but essential steps, the Commission will find Ohio's retail electric market surpassing those of other states.

1. DP&L Has Had Ample Time To Complete Corporate Separation.

The Commission cannot allow EDUs to continue delaying their corporate separation if retail electric competition is to succeed statewide. In its Comments, DP&L offers the same implausible excuses for avoiding corporate separation that it has proffered in its SSO proceeding, which has been pending for over a year. Among other things, DP&L contends that corporate separation, which it seems to regard as a relatively new concept, would cause it financial harm:

> First, the current state policy is leaning toward requiring utilities to sell, divest, or transfer what has traditionally been, for some utilities, the largest and most profitable function of its business (generation assets) at a time when its product (energy) is facing the lowest market prices in recent history.

DP&L Comments at 1. Current market conditions, however, do not justify further delay. DP&L has had 14 years to implement corporate separation, and has put off its legal obligations time and again, through myriad market conditions. DP&L gives no cause to believe it ever intends to follow the law. To the extent DP&L would characterize itself as a victim, it is a victim of its own delay tactics. It cannot ask the Commission to help it time the market to effect corporate separation at the right moment.

The time for DP&L to wait out the market passed long ago. R.C. § 4928.17(A)(1) has required structural separation since S.B. 3 was enacted in 1999, and R.C. § 4928.17(C) permits mere functional separation for good cause shown, and only for an interim time period. Fourteen years exceeds any reasonable definition of an "interim time period."

FES submits that once DP&L has completed corporate separation, its attitude toward competition will improve. DP&L's Comments demonstrate a decidedly negative attitude toward alternative retail electric supply, lamenting the alleged "pitfalls" of shopping or "unfair and deceptive sales practices." DP&L Comments at 2. DP&L's anti-shopping sentiments run contrary to Ohio law and policy.[1] FES believes that DP&L, once it is properly structured, will be indifferent to retail electric competition, rather than threatened by it.

The Utility Workers Union of America ("UWUA") also opposes structural separation, citing the recent bankruptcy filing of Edison Mission Energy. UWUA Comments at 4. However, it was corporate separation that shifted the risks of Edison Mission's capital investments in generation to its shareholders and away from its ratepayers. Contrary to UWUA's intentions, its Edison Mission Energy illustration highlights an important benefit of structural separation, and FES recommends complete structural separation for all Ohio EDUs as soon as possible.

2. The Commission Should Reject Proposals Which Would Compromise CBPs for Default SSO Supply.

As FES explained at length in its Comments, the second key to effective retail competition is competitive bidding for 100% of default SSO load. Various commenters have

[1] Unfortunately, DP&L is not alone in this respect. In a proceeding intended to identify ways to improve retail electric competition, the Citizens Coalition raises the possibility of re-regulation, explaining that "[w]hether Ohio should do that, of course, depends upon whether that would serve the overriding goal of securing reliable electricity at the lowest possible prices." This recommendation to reverse fourteen years of efforts by the Commission, the General Assembly (through S.B. 3 and S.B. 221) and numerous stakeholders to restructure Ohio's retail electric market and its EDUs is not only impractical but would also deprive Ohio's retail electric customers of the many recognized benefits of retail electric competition. To the extent the Citizens Coalition's suggestion even merits a response, FES urges the Commission to reject it outright.

offered proposals which would undermine competitive bidding and therefore must be rejected. For example, DP&L recommends that Ohio generation, even that owned by an EDU, should be permitted to bid into SSO CBPs. DP&L Comments at 2. To the contrary, vertically integrated EDUs and their affiliates should not be allowed to participate in Ohio auctions while receiving a generation subsidy and until completion of corporate separation. EDUs that remain vertically integrated, like DP&L, enjoy an unfair competitive advantage in the form of Commission-approved subsidies, such as DP&L's proposed nonbypassable Service Stability Rider. EDUs using subsidized generation, or affiliates which purchase the energy, capacity and ancillaries of subsidized generation from the utility instead of the market, have distinct advantages over competitors which are compensated at market. Among other things, those generation owners receiving subsidies can use the additional revenue for compressing their margins and making offers that a supplier without these resources is unable to make, or for electing to upgrade their generating facilities or operational systems without having to recapture those dollars in the competitive market. Additionally, the retail affiliate could use the additional revenue for marketing, branding and other matters. Accordingly, allowing an EDU, to the extent it is receiving subsidies and is not structurally separate, or its affiliates to bid into SSO CBPs — including its own CBPs — would distort Ohio's competitive market and thwart its development, and the distortion could be aggravated if, e.g., it caused wholesale or retail competitors to exit the market.

DP&L further recommends that EDUs be permitted to "flex" the prices of competitive service they offer in other EDU's territories, just as CRES providers are permitted to do.[2] DP&L Comments at 2. DP&L's argument illustrates the very problem that arises when EDUs have not

[2] While DP&L cites to R.C. § 4928.146, which allows a utility to offer CRES in the territories of other EDUs, its Comments do not limit its request for "flex" pricing to other EDUs' territories.

undergone corporate separation: the EDU incorrectly views itself as a competitor of CRES providers. Further, EDUs should not be using subsidized generation to compete with CRES providers in <u>any</u> EDU territory. DP&L's recommendation would exacerbate the harm it is inflicting on retail competition in its own service territory, and spread it across all of Ohio. Therefore, the Commission should reject DP&L's flex pricing recommendation.

Duke Energy Retail and Duke Energy Commercial Asset Management ("DERS/DECAM") recommend that all EDUs should be required to procure SSO supply through retail auctions in their respective electric security plans or market-rate offers. While FES supports this recommendation, DERS/DECAM further propose that all EDUs be required to procure SSO supply through auctions conducted by customer class, (i.e., residential, commercial, and industrial customers). FES urges the Commission to reject this latter proposal and continue to implement slice-of-system auctions. Conducting auctions by customer class will result in higher wholesale prices, diminishing the benefits of competition. As FES's explained at length in its initial Comments, shopping levels in markets with CBPs are high and therefore SSO load is small. In fact, the Commission's most recent shopping statistics from December 2012 illustrate that 73.14% of Duke Energy Ohio's load is shopping and 80.11% of the FEOUs' load is shopping. Further division of the remaining SSO load by conducting separate SSO supply auctions for each customer class will likely result in fewer participating suppliers, and increase the default price for Ohio's SSO customers.

In addition, Dominion Retail, Inc. ("Dominion") argues that default service should include all of the same costs CRES providers must include in their offers, including acquisition, bad debt, attrition, and market exposure. Dominion Comments at 3. Similarly, Interstate Gas Supply, Inc. ("IGS") contends that "default service masks the true cost of providing retail service" and "default service rates are heavily subsidized." IGS posits that wholesale default suppliers are subsidized through the lack of necessary built-in collection costs that retail providers must include in their offers. IGS Comments at 2-3. Dominion's and IGS's arguments are based on the mistaken premise that wholesale and retail products include the same risks and costs. To the contrary, wholesale products incorporate different costs than retail products in their pricing. For instance, only wholesale suppliers must post large credit deposits. Also, while wholesale suppliers risk changes to utility rules and PJM charges during the terms of their contracts, resulting in costs for which they have no recourse, CRES providers pass such costs through to retail customers. While wholesale suppliers must use standardized bid documents, CRES providers are not so limited. Wholesale default suppliers also face acute migration risk that retail suppliers do not. As a result, Dominion's and IGS's proposals would distort the Ohio wholesale market pricing and inflate the price paid by default service customers.

Other commenters recommend progressive retail market enhancements, which go beyond operational enhancements supported by FES as elemental to effective competition in many other Commission proceedings, and RESA references a "transitional default service" or "end-state." Until all EDUs fully implement corporate separation and CBPs, these recommendations are premature and will have not have the impact on retail electric competition that corporate separation and CBPs will. These parties' Comments focus on the identity of the default service provider, the length of default service supply contracts, or limits on which customers are eligible for default service (e.g., IGS's recommendation to limit default service to low-income customers), while missing the bigger point that effective retail electric competition has not been allowed to begin in all EDU service territories. The details of the default service model only become relevant if and when CRES providers have an opportunity to effectively compete and no longer have to contend with subsidized EDU-based generation. Indeed, there is little use in debating the pros and cons of various details and phases of default supply when half the state does not even procure power through a CBP.

B. Governmental Aggregation Programs Promote the Development of Ohio's Retail Electric Market and Offer Customers an Opportunity to Save Money.

FES strongly opposes DERS/DECAM's suggestion that governmental aggregation should be eliminated as a means of removing barriers to competition. DERS/DECAM Comments at 3-4. As FES explained in its initial Comments, governmental aggregation programs promote the development of Ohio's retail competitive market by offering consumers choice of supply and competitive pricing, and by resulting in movement of customers off of default service. As the Northeast Ohio Public Energy Council ("NOPEC") observes in its Comments, governmental aggregation has saved residential and small business customers more than $175 million since 2001, and is expected to save an additional $130 million or more by 2019. Indeed, Cincinnati's aggregation program has saved customers 23% off their price to compare while offering 100% renewable energy sources for generation. NOPEC Comments at 1-2. Cincinnati Vice Mayor Roxanne Qualls praised the program for benefiting both the city and its residents: "[n]ot only will we be able to put real money back in people's pockets, but this establishes the city as a leader in supporting green energy choices."[3]

DERS/DECAM incorrectly contend that aggregation prevents consumers from making informed decisions in selecting a supplier. This criticism confuses a legitimate, legal aggregation program with unlawful efforts to deceive customers. As DERS/DECAM surely

[3] "Cincinnati to become first major U.S. city to offer 100% green electric and save money for residential customers," Cincinnati Herald (May 12, 2012), last accessed on March 25, 2013 at http://www.thecincinnatiherald.com/news/2012-05-12/News/Cincinnati_to_become_first_major_US_city_to_offer_.html?

know, rules requiring that consumers make informed decisions are designed to prevent a consumer from being surreptitiously shifted to another supplier without the customer's knowledge and consent. In the case of an opt-out governmental aggregation, however, SSO customers will be notified by letter that they will be served by the aggregator at a good price, unless they take action to "opt out" of the aggregation plan and individually select a CRES provider or remain on default service. The plan is designed to give customers an opportunity to save money, not to deceive them.

Hess urges the Commission not to adopt any alternative default service structure involving an "involuntary auction or assignment of a customer to a CRES the customer did not affirmatively choose." According to Hess, customers, particularly commercial and industrial customers, "should never be placed in a situation where they are involuntarily auctioned or assigned to a CRES who they have not engaged or bargained with." Hess Comments at 8. Hess's argument fails to recognize that Ohio law expressly authorizes non-mercantile customers to participate in governmental aggregation on an opt-out basis, and to opt out without paying a switching fee. R.C. § 4928.20. As explained above, lawful governmental aggregation programs have substantially benefitted customers and competition. Hess's position is overly broad and, to the extent it would compromise these valuable programs, must be rejected.

C. Recommendations to Expand Corporate Separation and Other Code of Conduct Requirements Lack Factual Support and Exceed the Commission's Jurisdiction.

IGS, the Sierra Club & Ohio Environmental Council ("OEC") attack shared services, which when properly designed meet existing FERC and Commission Standards of Conduct, and/or recommend that generation and competitive suppliers divest from transmission and distribution affiliates. These proposals lack any supporting facts, fail to address important federal jurisdictional issues, and ignore resulting savings for EDU ratepayers. In addition, the Sierra Club, OEC and UWUA recommendations that the Commission require EDUs to disclose analyses involving plant retirements, capacity auctions and transmission projects, including records of affiliates, encroach on areas covered by FERC rulings. *E.g., Allegheny Energy Supply Co., LLC*, 108 FERC ¶61,082, P 22 (2004) ("*Allegheny Energy Supply*"). Similarly, the recommendations of the Sierra Club and OEC that CRES providers affiliated with EDUs be completely divested from those EDUs or their common corporate parents are subjects within FERC's exclusive jurisdiction.

1. There Is No Factual Basis for Changing the Legal Requirement That Compensation for Shared Services Be Based on Embedded Costs.

The Sierra Club and OEC recommend that compensation for shared services should be based on market costs. According to the Sierra Club and OEC, shared services "may create a low overhead for affiliates," providing a competitive advantage for EDUs and their affiliates. Sierra Club Comments at 12-13. Also, IGS contends that shared services can be "damaging to competitive markets, if the costs attributable to the services are only incremental, and if the services shared also provide access to information (either by the affiliated company or the EDU) that would not otherwise be available to other competitive suppliers." IGS Comments at 8-9.

These concerns are based on mere speculation, and the commenters fail to proffer any evidence of an unlawful preference or advantage, particularly in situations where full structural corporate separation has occurred. While utilities with only functionally separate competitive activities may be difficult to police, utilities with properly instituted structural separation present no such concerns. In the absence of any evidence of an unlawful preference or advantage with respect to structurally separated entities, there is no reason to depart from the current practice of compensating for shared services based on embedded costs, as allowed by statute. R.C. § 4928.17(A). Further, these commenters' arguments, particularly those of IGS, overlook applicable FERC requirements, including the requirement set forth in *Allegheny Energy Supply* that all suppliers have equal access to data relating to supplier participation. In addition, as FES explained in its initial Comments, FERC's Standards of Conduct expressly prohibit such non-public information sharing, regardless of whether it is done directly or through a conduit. FES Comments at 23-24. IGS's recommendations are duplicative of FERC rules, and would have the Commission encroach on FERC jurisdiction.

2. Recommendations That the Commission Require EDUs That Have Completed Corporate Separation To Disclose Affiliates' Generation-Related Information Exceed the Commission's Authority and Are Based on Incorrect Facts.

The Sierra Club and OEC recommend that the Commission examine the books and records of any utility affiliate to obtain generation-related information. Sierra Club Comments at 3-7. However, the legal authority these commenters cite authorizes the Commission to supervise matters related to the cost of service and to inspect pertinent records of public utility affiliates. Sierra Club Comments at 4-7. As FES explained in its initial Comments, an EDU that has completed corporate separation no longer owns generation. FES Comments at 20. The Sierra Club's and OEC's recommendation does not apply to such an EDU and its affiliates. After corporate separation has been completed, issues relating to generation-related information lie within the exclusive jurisdiction of the FERC. FES Comments at 20-21.

UWUA also urges the Commission to compel utilities' production of information regarding generation. UWUA contends that the need for disclosure is demonstrated by FES's recent retirement of four plants following the Environmental Protection Agency's adoption of

Mercury Air Toxin Standards ("MATS"). According to UWUA, FES closed the plants to adversely impact the market, and FES's invocation of MATS as justification for the plant closures was "dubious at best" given that MATS emission limits would not take effect for "at least three and possibly four more years." UWUA Comments at 2-3. As an initial matter, the plants are the property of FES and not any EDU, and therefore UWUA's request that utilities produce generation-related information is inapplicable to FES. Moreover, UWUA's arguments in support of its recommendation fail to acknowledge the operation of the PJM Interconnection, LLC's ("PJM") Reliability Pricing Model ("RPM"). While UWUA is correct that the MATS limits would not take effect for three or four years, FES needed to decide whether to close the plants by early 2012. Had FES not announced the closure of the plants when it did, FES would have been obligated to offer the plants into the RPM auction, and face penalties if it did not deliver. If FES waited to close the plants until MATS went into effect, FES would not have been able to close the plants for several years. UWUA's recommendation is founded on incorrect facts and a misunderstanding of how PJM's capacity markets operate, and therefore should be rejected.

3. Recommendations That Generation and Competitive Suppliers Be Required to Divest from Transmission and Distribution Entities, Maintain Their Own Shareholders, and Operate Completely Separate From an Affiliate Structure Lack Any Factual Justification and Ask the Commission to Exceed Its Jurisdiction.

IGS recommends that the Commission require generation and competitive suppliers to divest from transmission and distribution entities, maintain their own shareholders, and operate completely separate from an affiliate structure. IGS Comments at 9. IGS fails to provide any factual support for its recommendation. The Sierra Club and OEC make similar recommendations, based on unsubstantiated and baseless allegations regarding the FEOUs. As FES explained in its initial Comments, the Commission's authority is limited to EDUs, and the recommendations of IGS, the Sierra Club and OEC implicate matters of federal jurisdiction. FES Comments at 24-25. None of these commenters offers any factual or legal justification for encroaching on FERC jurisdiction.

D. EDUs' Default Service Should Consist of a Single, Basic, Fixed-Price Product.

Responding to the Commission's question of whether a utility has an obligation to control the size and shape of its native load, Nucor Steel Marion, Inc. ("Nucor") asserts that a utility may shape its native load through properly designed time of use pricing. Nucor Comments at 17. FES disagrees, and submits that EDUs' default service should consist of a single basic, fixed-price product. Any dynamic pricing options should be provided by the competitive market. For effective retail electric competition to develop, default service providers should not be in the business of offering innovative services. In addition, some Ohio EDUs meet their SSO obligations through CBPs. While a CBP works well to procure fixed wholesale supplies to enable EDUs to meet their provider of last resort obligations, adding dynamically priced products to the default supply mix introduces the need for reconciliation between the fixed wholesale product and any dynamically priced portion of the retail SSO load. For these reasons, Nucor's recommendation should be rejected.

E. CRES Providers Are the Best Resource for Consumer Education.

The Citizens Coalition recommends that the Commission create a group of advisors who would "provide objective comprehensive information on rates, time periods, contract terms, bargaining opportunities (an undefined term), possible penalties for switching contracts, calculating the lowest utility rates, and other details concerning marketer offers," Citizens Coalition Comments at 12, in addition to providing information about energy efficiency and energy choice. It is unclear how the Commission would monitor these advisors for competitive neutrality.

FES urges the Commission to reject this proposal. No group of advisors could possibly keep apprised of the details of all of the various offers in the marketplace. There is a high likelihood of misinformation and customer confusion which would do more harm than good. Instead, CRES providers should be solely responsible for educating customers about the details of their own offers. The Commission should also work to continue educating customers about the benefits of electric choice. To this end, the Commission could enhance its website, and FES respectfully suggests that the Commission examine PlugInIllinois.org or PAPowerSwitch.com for ideas on how customers could view and compare offers more easily on the Commission's website.

F. DP&L's Proposal That the Alternative Energy Rider ("AER") Be Nonbypassable Would Penalize Shopping Customers.

The Commission should reject DP&L's proposal to advocate amending S.B. 221 to provide for recovery of AER charges on a nonbypassable basis. According to DP&L, a bypassable AER discourages both distribution utilities and CRES providers from investing in renewable energy projects or entering into long-term renewable energy credit contracts, "due to the fact that customer switching causes fluctuation in the EDU or CRES providers renewable requirements." DP&L Comments at 5. Presumably, DP&L would amend R.C. § 4928.64(E) to eliminate the mandate that an EDU shall recover costs it incurs in complying with alternative energy requirements on a bypassable basis, as well as R.C. § 4928.02(H)'s declaration of the policy of the state of Ohio to ensure effective retail electric competition by, among other things, prohibiting the recovery of any generation-related costs through distribution or transmission rates.

Such amendments would be bad policy. Both EDUs and CRES providers must incur these costs of compliance with Ohio's renewable portfolio standard, and both have an equal opportunity to recover the costs of compliance through their retail rates. The General Assembly's mandate that EDUs recover renewable energy resource costs through a bypassable charge ensures that these costs are not recovered twice from shopping customers. Accordingly, DP&L's proposed legislative amendments would penalize customers for shopping with a CRES.

Further, DP&L's suggestion that bypassable cost recovery is a disincentive to EDUs and CRES providers is factually incorrect and contradicted by experience. In fact, DP&L has been recovering the costs of Yankee 1 through a bypassable charge. In addition, FES and other CRES providers are investing in renewable generation in Ohio, without the ability to impose a nonbypassable charge, further evidence that the market in Ohio is working, making DP&L's recommended amendments unnecessary.

G. On-Bill Repayment Should Not Disrupt the Commission's Partial Payment Hierarchy Rules.

Advanced Energy Economy Ohio ("AEEO") proposes that the Commission allow on-bill repayment of certain energy savings measures in which customers receive financing and installation support from a third party, and then repay these costs via the utility bill. AEEO Comments at 9. While FES takes no position on whether the Commission should allow on-bill repayment of these types of charges, FES asks that any new bill items follow the partial payment hierarchy rules set forth in O.A.C. 4901:1-10-33(H)(1). Specifically, when a customer only pays a portion of the bill, a partial payment should be credited to charges in the following order:

> (a) Billed and past due CRES provider charges, or, if applicable, CRES provider payment arrangement or past due CRES provider budget billing.
>
> (b) Billed and past due electric utility distribution, standard offer generation, and transmission charges or, if applicable, electric utility payment arrangement or past due electric utility budget billing.
>
> (c) Billed and due current electric utility distribution and transmission charges or current electric utility budget billing.
>
> (d) Billed and due current RES provider charges or current CRES provider budget billing.
>
> (e) <u>Other past due and current non-regulated charges, excluding CRES charges</u>.

O.A.C. 4901:1-10-33(H)(1) (emphasis added). If AEEO's proposal is adopted, FES recommends that the Commission clarify that the third party charges described by AEEO would fall under O.A.C. 4901:1-10-33(H)(1)(e).

III. CONCLUSION

While Ohio customers have begun to enjoy the benefits associated with competition in retail electric service, there is significant room for improvement and an obvious course of action in the near term. While a fully functional market between truly competitive, unsubsidized and separate generating entities operating on a level playing field will benefit Ohio customers and the state's economy, such benefits will not be fully realized until existing corporate separation requirements are enforced, and CBP processes are used to procure 100% of SSO supply. Only after these fundamental steps have been completed will it be fruitful to explore such retail market enhancements as the role of default service and the default service provider, uniformity of policies and procedures across EDUs, and consumer education. FES looks forward to working with the Commission and all stakeholders to ensure the success of retail electric competition in Ohio.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Reply Comments of FirstEnergy Solutions Corp.* was served this 5th day of April 2013 via e-mail upon the parties below.

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