BEFORE 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

COMMENTS OF FIRSTENERGY SOLUTIONS CORP.
ON ADDITIONAL QUESTIONS

I. INTRODUCTION

On June 25, 2013, the Public Utilities Commission of Ohio ("Commission") issued additional questions for comment on the subjects of market design and corporate separation. FirstEnergy Solutions, Corp. ("FES"), a licensed competitive retail electric service ("CRES") provider, commends the Commission for continuing to explore ways to improve the health, strength, and vitality of the retail electric service market, and for continuing to examine the critical subject of corporate separation.

As FES explained at length in its earlier Comments and Reply Comments in this proceeding, the lack of statewide corporate separation is the greatest barrier to the development of effective retail electric competition. The General Assembly, through the passage of Senate Bill 3, declared the policy of Ohio to be that electric distribution utilities ("EDUs") must remove themselves from the generation business. R.C. §§ 4928.17, 4928.38. Fourteen years later, however, the Commission still has not succeeded in bringing some Ohio EDUs into compliance with the statutory mandate to complete structural corporate separation. R.C. § 4928.17(A). Certain EDUs have managed to avoid separation by securing the Commission's approval of numerous delays and exceptions, contrary to the law and policy declared by the General Assembly. These EDUs have offered the Commission questionable rationale such as that

structural corporate separation could cause the EDUs financial harm given current market conditions, notwithstanding the fact that the EDUs have delayed compliance with the law through a myriad of market conditions. Only full corporate separation, coupled with the use of competitive procurements of supply for a standard service offer ("SSO"), will allow Ohio customers to receive the full benefits of competition.

While the path to effective competition is straightforward, this latest round of questions introduces a number of complicated potential initiatives, including but not limited to attempting to "regulate" market power, requiring invasive disclosure of information in commodity contracts other than pricing, implementing integrated resource planning ("IRP"), or proposing to alter the treatment of capacity injection rights. These steps are beyond the Commission's legal authority and, in the case of IRP, contrary to fundamental requirements of Ohio's electric restructuring law. FES respectfully urges the Commission to reject these proposed initiatives and focus attention and efforts on statewide enforcement of the existing law, which contains all the measures necessary to deliver the benefits of effective retail electric competition to Ohio customers.

II. COMMENTS

MARKET DESIGN

(a) Comments were filed suggesting that the relationship between an incumbent electric distribution utility (EDU) and a customer should be neither terminated nor encouraged. Does this comment pertain to distribution service or to generation service?

FES did not file the referenced comments, and does not know the writer's intent. FES reserves the right to reply to other parties' comments on this question.

(b) If predatory pricing or other market factors become a barrier to a fully functional competitive retail electric service market, can and should the Commission regulate predatory pricing or other market factors?

FES appreciates the Commission's concern with anticompetitive activities preventing the development of a fully functional competitive retail electric service market. As FES explained in its initial Comments, one such activity creating an insurmountable barrier to a fully functional competitive retail electric market in much of Ohio is the awarding of generation-related subsidies to EDUs or their affiliates. These subsidies, which have taken the form of nonbypassable charges for generation-related costs, as well as for "stability" or "financial integrity," give these EDUs or their affiliates above-market, guaranteed revenue streams that enable price manipulation, skew markets, and discourage CRES providers and wholesale suppliers from competing. FES Comments at 9-10, 13. The Commission can and should fulfill its statutory mandate "to resolve abuses of market power by any electric utility that interfere with effective competition in the provision of retail electric service," R.C. § 4928.06(E)(1), by eliminating these subsidies.

With regard to "predatory pricing," a term the question does not define, FES will assume this refers to offering service at an artificially low price, even at a loss, with the intention of driving competitors out of the market or deterring them from entering. FES is not aware of evidence of predatory pricing among CRES providers. The Commission's statutory authority, however, does not permit it to "regulate" the pricing of competitive retail electric service, or take any direct action with regard to CRES providers' pricing activities. Rather, the law provides that the Commission, "on an ongoing basis, shall monitor and evaluate the provision of retail electric service…for the purpose of discerning any competitive retail electric service that is no longer

subject to effective competition," and provide its findings and any recommendations for legislation to the appropriate legislative standing committees. R.C. § 4928.06(C).

While this question addresses anticompetitive activities that create barriers to a fully functional competitive retail electric service market, it is important to remember that these are secondary barriers. The primary barrier to effective electric competition in Ohio remains the lack of statewide compliance with the statutory mandate to achieve statewide corporate separation. R.C. § 4928.17(A).

(c) In a fully functional retail market, with no merchant or wholesale based default service, should the Commission and/or an independent market monitor have the ability to regulate market power?

Eliminating "merchant or wholesale based default service" is a dramatic measure that would require substantial amendments to Ohio law, as well as the resolution of numerous technical questions. FES respectfully submits that it is premature to discuss eliminating merchant or wholesale based default service, while EDUs covering much of the State have yet to complete the initial steps toward allowing a fully functional competitive retail electric service market to develop under the longstanding law. These EDUs remain in the competitive generation business and secure subsidies for their non-competitive generation services. Enforcing the existing law by eliminating this barrier is much easier and more practical than redesigning SSO service, and will have immediate, dramatic benefits for retail electric competition. The difficulties and delays in enforcing the current law create serious doubt that establishing a retail market with no merchant or wholesale based default service in Ohio could be accomplished in the near future, if at all. Accordingly, FES urges the Commission to focus on requiring these EDUs to fulfill their statutory obligations to implement a bona fide corporate

separation plan in compliance with R.C. § 4928.17, and to procure SSO supply through competitive bidding in accordance with R.C. § 4928.142, and on discontinuing the approval of improper subsidies of EDU-based generation.

In the unlikely event Ohio were to eliminate merchant or wholesale based default service, FES does not believe the Commission and/or an independent market monitor should have the ability to "regulate" market power, which the law defines as "the ability to impose on customers a sustained price for a product or service above the price that would prevail in a competitive market." R.C. § 4928.01(18). As explained above, existing law adequately addresses market power by requiring the Commission to monitor and evaluate indicators of market power, and make reports and recommendations to the General Assembly. R.C. § 4928.06(C), (D). Unless and until a "fully functional retail market" exists, and there is some actual evidence of market power, there is no reason to seek additional regulatory authority and risk interfering with the natural operation of competitive market forces.

(d) Regarding government aggregation, should the Commission require public disclosure of any information in addition to commodity pricing, such as inducements or incentives related to commodity contracts? In general, should the Commission require public disclosure of any information in addition to commodity pricing, such as inducements, incentives, or broker commission related to commodity contracts?

The Commission should not require "public disclosure" of information regarding retail electric service, in the context of government aggregation or in general. Such requirements exceed the Commission's legal authority, would deprive communities and retail customers of valuable benefits of retail competition above and beyond savings on electricity, and would be harmful to retail electric competition.

With respect to government aggregation, incentives provide communities with valuable benefits of implementing aggregation programs, in addition to the savings on electricity that their citizens enjoy. Ohio law requires only the public disclosure of rates, charges, and other terms and conditions of enrollment in connection with government aggregation. R.C. § 4928.20(D). There is no legal authority to require public disclosure of other information related to commodity contracts, including any incentives.

Moreover, requiring public disclosure of other information would diminish CRES provider participation in governmental aggregation programs. Any incentives a CRES provider may offer a governmental aggregator are competitively sensitive, and requiring CRES providers to disclose them will discourage their participation in aggregation programs. Therefore, requiring public disclosure would violate the statutory mandate that the Commission "adopt rules to encourage and promote large-scale governmental aggregation in this state." R.C. § 4928.20(K). Discouraging CRES provider participation in government aggregation programs would deprive communities of not only savings on electric generation supply for their citizens, but also the valuable benefits that result from competition among CRES providers, in the form of incentives.

For similar reasons, in the context of retail competition in general, the Commission should not seek to require public disclosure of any information, including commodity pricing. While a CRES provider must disclose pricing and terms and conditions of service to a consumer before the consumer enters into a contract for service, R.C. § 4928.10(A), there is no legal authority for the Commission to control a CRES providers' marketing and advertising activities by requiring "public disclosure" of such information. In addition, incentives, broker commissions and, in some instances, commodity pricing are competitively sensitive, and any

mandatory "public disclosure" of this information would harm retail electric competition. Further, brokers may view their commissions as competitively sensitive and proprietary, and a public disclosure requirement might require a CRES provider to breach a confidentiality agreement with a broker. Customers who want to know a broker's commission may require the broker to disclose it as a condition of working with the broker.

The freedom of CRES providers, brokers and customers to negotiate contracts that include additional consideration in the form of "incentives" is a significant benefit of retail electric competition. The parties can weigh each term of an offer, consider the overall economics of the potential agreement, and bargain for additional rewards. While parties may elect to disclose the terms of their deal, any regulatory requirement to publicly disclose additional consideration would needlessly restrain their freedom to negotiate an agreement that suits the parties' needs.

(e) Would a time-differentiated standard service offer (SSO) rate cause more shopping based upon customer preference for avoiding uncertainty?

This question suggests that price certainty is the primary factor influencing shopping decisions. While price certainty is important to customers shopping for a competitive supplier, customer apathy may be the primary cause of customers not taking advantage of opportunities to switch away from the standard service offer.

As FES stated earlier, before the Commission considers dramatic changes to the design of SSO rates, it should ensure that all Ohio EDUs complete corporate separation, and that the SSO offered in every EDU service territory in Ohio is market-based, without nonbypassable generation subsidies that distort the market. The recovery of generation-related costs through nonbypassable riders, separate from the EDU's SSO rate, prevents an apples-to-apples

comparison of competitive offers with the SSO rate and confuses customers. Eliminating these subsidies, and observing the existing law that "the utility shall be fully on its own in the competitive market," R.C. § 4928.38, will significantly increase shopping levels. Unless and until all Ohio EDUs follow the law, many customers will not see much of the benefits of retail electric competition.

In addition, EDUs are not the proper entities to offer time-differentiated products and services. As FES explained in its earlier Reply Comments in this proceeding, the SSO rate should be a basic, plain vanilla fixed rate, and any innovation should come from CRES providers. Default service providers should not be in the business of offering innovative services. If there is a recognized incentive and demand for time-differentiated products, CRES providers will offer them. FES Reply Comments at 14. If customers do not want time-differentiated service, the competitive market will not benefit from making the EDU's SSO rate an undesirable product. To the contrary, customers may dislike the feeling of being driven from the EDU's standard service offer, and associate their negative feelings with CRES providers and retail electric competition in general.

To the extent there is a demand for time-differentiated products, the Commission can facilitate CRES providers' development of such products and other innovative offers by ensuring that CRES providers have adequate access to customer usage data.

(f) Are competitive retail electric service providers better positioned to manage uncertainty in a retail market than EDUs that offer a flat SSO rate?

CRES providers are more experienced and successful at managing risk than EDUs. EDUs which have failed to separate their competitive generation service from their non-competitive distribution service have proven to be poor at managing risk, resulting in several

requests for the Commission to approve improper subsidies for EDU-based generation service in the form of nonbypassable charges. These EDUs have no incentive to manage risk effectively because they can shift the risk to captive distribution customers. In contrast, CRES providers must manage risk effectively because their shareholders bear the risk.

However, once an EDU has completed corporate separation and procures its SSO supply through the competitive wholesale market, as required by Ohio law, the EDU will not need to manage uncertainty. Instead, the risks of offering a flat SSO rate will be borne by experienced wholesale suppliers. These sophisticated suppliers use information provided by the PJM Interconnection, LLC ("PJM"), the highly transparent and liquid organized market, to manage risk and uncertainty as they compete with one another to offer SSO customers the best price. This is yet another reason why it is important for the EDUs to procure their SSO supply through a competitive bid process format, through a market rate offer ("MRO") or a hybrid model that includes an electric security plan ("ESP"). Procuring power through competitive bid processes shifts the risk from the EDU's SSO customers to the winning wholesale suppliers and their shareholders. Again, it is incumbent on the Commission to require all Ohio EDUs to complete structural corporate separation and to procure SSO supply through properly structured competitive bid processes.

As FES explained in response to the previous question, a flat SSO rate is the only type of rate an EDU should offer. Any dynamic pricing should be provided by the competitive market.

(g) Is integrated resource planning compatible with a retail market construct? If yes, how can such planning be done, given the current construct of functionally separated business units? If no, how can investment in transmission, generation, and demand-management be co-optimized?

FES understands integrated resource planning ("IRP") to refer to a plan developed by a public utility, sometimes as required by a public utility commission, in which the utility forecasts energy demand and develops a prescriptive list of actions that it believes to be the best way to meet projected energy demands, through a combination of short- and long-term capacity additions and demand side management programs. IRP signifies a return to vertically integrated utilities and rate-based generation. For effective retail electric competition to develop in accordance with Ohio law, EDUs must be structurally separated and EDU SSO rates must be based on competitive bidding in the wholesale market.

In contrast, in an IRP model investment decisions are divorced from market forces, and incorrectly assume that the decision maker can outperform the market. IRP decisions do not respond to changes in market conditions, and may result in significant stranded costs and shift the risk of bad investment decisions to consumers. IRP also distorts the market, devalues merchant developers' investments in existing resources, and creates a cycle in which future resources cannot be developed without their own additional subsidies.

For retail customers to realize the benefits of competition, investment decisions on when, where, and how to add transmission, generation and demand-side management must be driven by competitive market forces. This is accomplished in Ohio through competitive markets administered by PJM. PJM's Reliability Pricing Model ("RPM") ensures there are resources available to meet customers' future demand for electricity, including an adequate reserve margin to account for unplanned increases in demand. PJM's competitive markets ensure that

investment in transmission, generation and demand-side management is coordinated on a regional basis.

(h) Could integrated resource plans be done on a statewide basis? If so, how would such planning be accomplished? Could the Commission be helpful in facilitating this type of planning?

As FES explained in its previous answer, IRP, even within a single EDU service territory, signifies a return to vertically integrated electric utilities and rate-based generation. In territories of EDUs that have completed structural separation, IRP would be inefficient and impractical. Further, IRP on a statewide basis would amount to an abandonment of the General Assembly's longstanding policy of implementing retail electric competition in Ohio, before the Commission has even tried to implement it in some EDUs' service territories. In addition, any IRP on a statewide basis would be duplicative of PJM's role to ensure resource adequacy in its service territory.

CORPORATE SEPARATION

(a) How can the Commission ensure that decisions made on behalf of the jurisdictional EDU are not providing preferential outcomes for non-regulated entities?

EDUs are required to abide by federal and state codes of conduct that prohibit preferential treatment of any non-regulated entity. However, this question identifies a significant concern with EDUs that have only functionally separated, or receive improper subsidies for their generation. EDUs with competitive activities that are only functionally separated from jurisdictional activities are difficult for regulators to police. EDUs with properly instituted structural separation, however, present no similar concerns. Therefore, the Commission can

properly ensure a jurisdictional EDU's decisions do not provide preferential outcomes for non-regulated entities by requiring complete structural separation of utility generation assets. The Commission must also eliminate nonbypassable generation subsidies.

(b) Is there a corporate structure that will ensure decisions made by non-EDU affiliates minimize costs to ratepayers of the EDU?

While the decisions made by a structurally separate non-EDU affiliate lie beyond the Commission's jurisdiction, the corporate structure of such an unregulated affiliate ensures that its decisions will have no impact whatsoever on EDU rates. In a properly restructured retail electric market, competitive market forces will ensure decisions made by structurally separate, unsubsidized non-EDU affiliates minimize costs to customers. If a non-EDU affiliate's decisions do not minimize costs to customers, the affiliate cannot compete. As a result of competition, customers in EDU territories where corporate separation is completed or in an advanced stage are enjoying lower market-based prices. When a structurally separate non-EDU affiliate receives no improper generation-based subsidies, its shareholders bear the risk, instead of EDU ratepayers.

(c) Since generation has been declared competitive in Ohio, should return on investment for EDUs be reduced in order to reflect lower risk?

Aside from this question's recognition that generation has been declared competitive in Ohio, FES cannot see how this question is relevant to this Retail Markets Investigation or its objective of eliminating barriers to retail electric competition. FES takes no position on the Ohio EDUs' return on investment.

(d) Should the capital structure of EDUs be more heavily weighted toward debt in light of the reduced risk associated with a wires-only company?

FES cannot see how this question is relevant to this Retail Markets Investigation or its objective of eliminating barriers to retail electric competition. FES takes no position on the Ohio EDUs' return on investment.

(e) FERC Order 1000 requires and/or enables regional transmission organizations to consider non-transmission options and merchant transmission options in their planning processes. Would a statewide integrated resource plan or shadow plan provide the market with guidance on where and/or how to make investments in conjunction with the PJM planning process?

FES reserves the right to reply to other parties' comments on this question.

(f) How could a competitive process be developed to provide all transmission developers, including incumbent transmission owners, with a fair chance to bid a transmission solution to a reliability problem identified by PJM?

FES reserves the right to reply to other parties' comments on this question.

(g) Should competitive bidding for transmission construction be considered in order to ensure the lowest possible cost?

FES reserves the right to reply to other parties' comments on this question.

(h) Does the current treatment of capacity injection rights adequately address units that retire and are later reactivated?

In its initial comments responding to the Commission's questions regarding capacity injection rights ("CIRs"), FES explained that a generation developer awarded CIRs for a given generating unit retains those CIRs during the life of the generating unit and for a limited period

after retirement of the unit. When a generating unit is retired, the owner must either declare its intent to continue to use its CIRs by developing a new generating facility at the same site within one (1) year or lose them entirely. FES Comments at 21-22. Reactivation of a generating unit during the lifetime of the CIRs would be another instance of use of the CIRs. If, however, the CIRs terminate before the unit is reactivated, the generation developer would have to pursue the reactivation process by means of the PJM queue and processes.

FES further explained that the terms and conditions for the award of CIRs are a FERC-approved filed rate, and therefore beyond the Commission's jurisdiction to regulate. While the Commission lacks legal authority to regulate the terms and conditions under which CIRs are awarded, the Commission may raise any concerns it has with the treatment of CIRs and any unit that may choose to retire through the PJM stakeholder process. However, FES is unaware of any evidence that the current PJM tariffs' treatment of CIRs is prohibiting new resources from being added to the system. See FES Comments at 21-22.

III. CONCLUSION

FES thanks the Commission for continuing to explore ways to deliver the benefits of retail electric competition to Ohio customers. As explained above, a number of concepts introduced in this latest round of questions lie outside the Commission's jurisdiction, are redundant of federal processes and requirements, and in the case of IRP, would require EDUs to reverse their structural corporate separation, contrary to Ohio law. Again, the path to fully functional retail electric competition has been clear for fourteen years: complete corporate structural separation, procurement of SSO supply through competitive bid processes, and the discontinuance of nonbypassable charges and other generation-based subsidies for EDUs or their affiliates. 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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Summary: Comments electronically filed by Mr. Scott J Casto on behalf of FirstEnergy Solutions Corp.