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. 14-1297-EL-SSO

POST-HEARING BRIEF OF THE OHIO HOSPITAL ASSOCIATION

I. INTRODUCTION AND BACKGROUND

A. The Plan

On August 4, 2014, Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively "FirstEnergy" or "Company") filed an Application to establish a standard service offer ("SSO") in the form of an electric security plan ("ESP" or the "Plan"). This is the fourth ESP proceeding conducted for FirstEnergy since the passage of Senate Bill ("SB") 221 in 2008. FirstEnergy's Plan, as filed, continued the general outline of its current and previous ESPs, with the glaring exception of the inclusion of a PPA Rider proposal (Rider RRS) that has consumed the overwhelming majority of the staggering volume of time and effort that has been expended on this case by the Company and Parties, alike.

The ESP as originally filed would begin on June 1, 2016 and end on May 31, 2019. However, under the Stipulated ESP IV[1] now before the Commission, the plan would instead run for eight years, beginning on June 1, 2016 and ending on May 31, 2024.

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[1] As defined by the Company in the Third Supplemental Stipulation and Recommendation ("Third Supplemental Stipulation"), Company Ex. 154, the "Stipulated ESP IV" consists of the Stipulation filed on December 22, 2014 and its associated errata, the Supplemental Stipulation and Recommendation, filed May 28, 2015, the Second Supplemental Stipulation and Recommendation, filed June 4, 2015, and the Third Supplemental Stipulation and Recommendation, filed December 1, 2015.

The Ohio Hospital Association ("OHA") urges the Commission to reject the Stipulated ESP IV because it does not provide a fair and reasonable balance of the issues presented by FirstEnergy's initial Application.

Although the Stipulated ESP IV suffers from myriad fatal flaws that will be addressed at length by other intervenors in this case, OHA will focus on two particular aspects of the commitments being offered by FirstEnergy: First, the extension of the Interruptible Credit Provision in Rider EDR Section (b), and its cost recovery structure found at subsection (e) of the rider is unfair because of its irrational applicability to only GS and GP rate schedule customers; and second, the vague, aspirational and largely unenforceable nature of the environmental and demand reduction commitments made by FirstEnergy in the Third Amended Stipulation provide essentially no additional benefit to the customers of FirstEnergy, or Ohio generally.

B. <u>The OHA</u>

The OHA is a private, nonprofit trade association with 220 hospitals, 66 of which are served by FirstEnergy. OHA members have more than 700 electricity accounts statewide. Collectively, OHA members annually spend well in excess of $150 million for electric services—approximately $4,500 a year for each staffed hospital bed. Nearly all of OHA member hospitals are non-profit entities, and those "hospital" members also include the full spectrum of medical care services ranging from the stereotypical hospital to physician office buildings, urgent care centers, free-standing emergency rooms, ambulatory surgery centers, skilled nursing facilities (nursing homes), renal dialysis centers, etc. More than 350,000 Ohioans work for or at those hospitals and healthcare systems. OHA's mission is to be a membership-driven organization that provides proactive leadership to create an environment in which Ohio hospitals are successful in serving their communities. The hospitals receiving electricity from FirstEnergy are OHA members and consume significant amounts of electrical energy, rely on their host electric distribution utilities of

FirstEnergy to deliver the electric power necessary to provide patient care. Virtually every hospital in FirstEnergy service area is a member of OHA.

Environmental stewardship is important to OHA's members. The OHA works closely with its members to implement cost-effective energy efficiency measures and reduce the carbon footprint of hospitals across Ohio. By making OHA member hospitals more efficient consumers of electricity, those OHA members not only reduce the cost of the essential services that they provide, but also further contribute to the environmental health of the communities they serve.

II. ARGUMENT

A. Rider EDR (e) Is Unfairly and Irrationally Narrow In Its Operation

FirstEnergy's initial Application in this case filed on August 4, 2014 would have allowed most of Rider EDR, including the Interruptible Credit Provision [Paragraph b)] to expire according to its own terms on May 31, 2016 and with it the charges that it creates. The Residential Non-Standard Credit Provision found at Paragraph a) and the Rate GT provisions of Rider EDR would have continued for the 36 month period of this ESP IV. Company Ex. 7, p. 21.

The Stipulation and Recommendation filed on December 22, 2014 (Company Ex. 2) restored Rider ELR, and along with it, Rider EDR b) through May 1, 2019, while limiting to participation by current customers taking service under that rider, plus 75,000 kW of additional curtailable load on a "first-come, first-serve" basis from the pool of customers historically eligible for Rider ELR. The cost of Rider ELR is recovered by FirstEnergy through its Rider DSE1 and the OHA has no issue with its operation. The Stipulation and Recommendation also restored the automaker credit provision found at Rider EDR h) and its cost recovery mechanism found at Paragraph i). The Ohio also has no issue with the continuation of the automaker provisions and believes that Paragraph i) is the correct means of recovery all costs of Rider EDR, to the extent that it is continued into the future.

The Supplemental Stipulation and Recommendation filed on May 28, 2015 (Company Ex. 3) expanded the cap on Rider ELR available to include 136,250 kW, an additional 61,250 kW of eligible demand.

Finally, the Third Supplemental Stipulation filed on June 1, 2015 (Company Ex. 154) extended the renewal of both the modified Rider ELR and the Rider EDR(b) credit provisions, along with the surcharge provision in EDR(e) to May 31, 2024, the full eight years of the modified ESP called for in the Third Supplemental Stipulation and Recommendation.

With the extension of the Interruptible Credit Provision of Rider EDR, and its $5/kW of Curtailable Load per month also comes an extension of the cost recovery burden through Rider EDR(e). Together, Rider ELR and EDR(b) provide a very select number of customers with credits of $10 for each eligible kW of demand, paid for by other customers. The problem with the Rider EDR(b) Interruptible Credit Provision is recovered only from Rate GS and GP customers. This is both irrational and unfair and its continuation should not be permitted by the Commission.

B. Background of Rider EDR

The pool of customers eligible for the interruptible credit provisions in both Rider ELR and Rider EDR(b) traces its origins back to the special contract customers of FirstEnergy's three EDUs prior to Ohio's electric industry restructuring in SB 3. At the time that the Commission approved the Electric Transition Plans ("ETPs") required under SB 3, the delta revenue associated with those special contracts was shared equally between ratepayers and the companies, with the ratepayer shares being recovered from customers generally. Opinion and Order, Case No. 95-299-EL-AIR, *et al.*, April 11, 1996, p. 17. The Company's ETPs, approved by the Commission in 2000, dispensed with traditional ratemaking principles and provided for an extension of existing special contracts through the period during which regulatory transition charges ("RTCs") were to be collected, without a specific change to the recovery of the delta revenue associated with those contracts—the status quo was maintained to a substantial degree. Opinion and Order, Case No. 99-1212-EL-ETP, *et al.*, June 19, 2000, p. 6. After SB 3's Market Transition Period had expired, the Rate Stabilization Plan/Rate Certainty Plan ("RSP/RCP") cases, Case Nos. 03-2144-EL-ATA, *et al*., and 05-704-EL-ATA, *et al.*, reduced the number of special contracts down to the current population of "grandfathered" customers, but otherwise did not affect the specific cost recovery of the delta revenues associated with interruptible contracts.

The cost recovery scheme for the interruptible load special contracts changed significantly in Case No. 08-935-EL-SSO, *et al.*, FirstEnergy's ESP-1 case. In that case, FirstEnergy first proposed Rider ELR as a means of promoting gradualism and mitigate overall bill impacts to customers as a consequence of the movement to the first ESP rate structure. Second Opinion & Order, Case No. 08-935-EL-SSO, *et al.*, March 25, 2009, pp. 49-50. Ostensibly, FirstEnergy proposed that the cost recovery provision of Rider EDR, which costs included, among others, the Interruptible Load Credit in paragraph (b) for the legacy special contract customers, be recovered only from GS and GP customers because those customers provided the largest number of kWh over which to spread the costs. FirstEnergy made clear that these were "social costs" that benefit all customers, and as such, all customers should bear the costs. *Id.*, p. 50 (citation omitted). Nevertheless, the Commission *denied* Rider EDR in its December 19, 2008 Opinion & Order as being unnecessary in light of the fact that the Commission was ordering a further continuation of the status quo with respect to special contracts. Case No. 08-935-EL-SSO, *et al.*, Opinion & Order, December 19, 2008, p. 50. However, in March 2009, the Commission approved a "black box" settlement which contained the current Rider EDR scheme whereby only customers on Rates DS and DP would pay the standard charge provision of Rider EDR(e). Case No. 08-935-EL-SSO, *et al.*, Second Opinion and Order, March 25, 2009, p. 10.

By any reasonable measure, Rider EDR can no longer be considered a means of promoting "gradualism" and it clearly has outlived its purpose; FirstEnergy apparently agrees with this point as its omission of most of Rider EDR in its initial application indicates.

There are two critical features of the stipulation approved by the Commission in the earlier ESP cases that stand in contrast to the current situation, and these differing circumstances weigh heavily against the continuation of the EDR subsidies and charges. First, the ESP-1 stipulation had a very broad base of support and customers representing the DS and DP classes were heavily represented. *See, Id,* p. 7. This is a clear indication that the ESP-1 stipulation, as a package, was well balanced and appeared reasonable to nearly all of the parties to the case—put differently, there was a fair distribution of *quid pro quo*.

Second, as discussed above, Rider EDR was proposed by the Companies as a means of promoting "gradualism" meaning that it was not supposed to be permanent. In the presence of a well-balanced stipulation, and where the burden is *temporary*, the fact that such "social costs" are only borne by DS and DP customers may be considered reasonable.

Rider EDR was extended once again in Case No. 10-388-EL-SSO, the Company's ESP-2 case, and despite the fact that there was somewhat less support for ESP-2, as compared to ESP-1, the representation of DS and DP customers still serves as a rational basis to believe that there was a continued reasonable "quid pro quo" for the unfair burden posed by Rider EDR(e). *See,* Opinion and Order, Case No. 10-388-EL-SSO, August 25, 2010, Finding (4) p. 46. The same can be said for the stipulation approved in Case No. 12-1230-EL-SSO, ESP-3, which once again extended Rider EDR for three more years, although the pattern of fewer and fewer supporting Parties to the stipulations in these earlier ESP cases was becoming clear. *See,* Opinion and Order, Case No. 12-1230-EL-SSO, July 18, 2012, Finding (3) p. 57

The Stipulated ESP IV. is striking in its lack of a reasonable balancing of interests that would justify a continuation of the narrow and unfair recovery of the Interruptible Load credit provision of Rider EDR. Both the OHA and the OMAEG, that supported the earlier stipulations and have large memberships that are negatively impacted by Rider EDR Paragraph (e), are not included in this Stipulated ESP IV. It is also noteworthy that the provisions of the first three iterations of the stipulations comprising the Stipulated ESP IV. closely tie benefits to signatories, with the Company providing virtually no value to customers at Company expense—it's largely all paid for by the other customers of the Company. It's easy to play poker when somebody else is providing you with a limitless stake.

As the history of the interruptible load credit provided by ELR(b) shows, customers receiving that credit have essentially been extending special contracts that can be traced back to at least the 1990s. As Staff witness Scheck testified, the Rider EDR credit provision should be eliminated as the credit provision has become just another subsidized credit provided to Rider ELR customers without any demonstrated new job growth, or retention of existing jobs. Staff Ex. 11, p. 6. At a minimum, the Commission should modify the unfair and irrational charge imposed by Rider EDR(e) and recover these social costs from the broadest possible base of ratepayers, similar to Rider EDR Paragraph i).

C. <u>FirstEnergy's Commitments in the Stipulated ESP IV Provide Little or No Benefit to Ohio Customers</u>

The Third Supplemental Stipulation, which expanded the range of topics included in the overall Stipulated ESP IV, includes a series of commitments, which, while attempting to add balance to an otherwise grossly one-sided deal, in reality contain little substance.

The hollow nature of these commitments is exemplified by Section V.C. of the Third Supplemental Stipulation. Here, the Company pledges to "in good faith" advocate for market enhancements such as a longer-term capacity product, and "any other market improvements."

Company Ex. 154, p. 9. There are obvious problems with this commitment. It is not clear at all that a longer-term capacity product would "improve" the market to the benefit of retail customers and "market improvements" is something that it entirely in the eye of the beholder. Given the fact that the Commission can be sure that in this case, such "market improvements" would be viewed from the perspective of the shareholders of the Company, this commitment can hardly be considered to be something that brings balance to this deal. That this commitment will be viewed from the Company's perspective is made perfectly clear in subparagraph V.C.2. where the Company pledges to provide quarterly updates on the state of the wholesale electricity markets "from the Companies' perspective." *Id.*

In Section V.D. of the Third Supplemental Stipulation, the Company makes a series of promises concerning certain grid modernization initiatives, such as Advanced Metering Infrastructure, Distribution Automation Circuit Reconfiguration ("DACR"), and Volt/VAR technology deployment through a "grid modernization business plan." *Id.* The OHA has consistently been a supporter of DACR and Volt/VAR technologies, but it is a very bad idea to agree to an up-front set return on equity for this facility deployment before virtually *any* of the details of the plan are known. This does not appear to be good faith dealing on the part of the Company.

The emptiness of the Company' commitments continue into Section V.E. of the Third Supplemental Stipulation. Here, the Company makes a series of commitments regarding resource diversification, and again, the words on the page really do not hold any substance.

At Subparagraph V.E.1., the Company pledge to "establish a goal to reduce CO_2 emissions by at least 90% below 2005 levels by 2045, regardless of whether the EPA's recently finalized Clean Power Plan is overturned by court order." *Id.*, p. 11. This commitment is completely meaningless. This is not a commitment, it's a new year's resolution. Failure on the part of the

Company, due to either genuine impossibility or simple forgetfulness would not carry any consequences.

At Subsection V.E.2., the Company pledges to "evaluate investing in battery resources contingent on Commission approval that all investments four such resources shall be rate-based and included in the recovery mechanism stipulated in Section D.3." *Id.* Once again, if the Commission agrees to an up-front return on investment to be paid by ratepayers, the Company will "evaluate" battery resources. It's very likely that the Company would be willing to evaluate just about any conceivable investment if the Commission were to agree up front to a guaranteed return on that investment. What is missing in this commitment is any mention of a benefit to the Company's customers.

Subsection V.E.3. of the Third Supplemental Stipulation should be viewed with *extreme* suspicion by the Commission. Not only are these provisions involving the "suspended" programs in the Company's EE/PDR portfolio another example of the Company making a pledge to spend an even greater amount of ratepayer money—the annual shared savings cap is being raised 150%, from $10 million to $25 million—but the commitment of the Company to reactivate the programs it suspended in the wake of S.B. 310 is one more example of the Company changing its mind as it suits its interests—the more glaring example being its abandonment of the market paradigm for generation though the PPA rider mechanisms. The Company was the only Ohio EDU to eviscerate its EE/PDR program as permitted by SB 310, and this speaks volumes to the Company's commitment to both renewable and demand-side resources. *See*, Case No. 12-2190-EL-POR, Finding & Order, November 20, 2014, p. 3. The Commission should view each of the provisions in the various stipulations with the Company's fickle nature in mind. Unless the Commission attaches hard consequences to the Company's failure to follow-through on any of these commitments, they are completely worthless.

Section V.E.4., the Company pledges to procure at least 100 MW of new Ohio wind and/or solar resources, to the extent that Staff deems it helpful to comply with a future federal or state law or rule, and, to the extent such federal or state law or rule has not fostered such resources. *Id.*, First, it is completely unclear what "federal or state law or rule" is in question, and whether those laws or rules are intended to foster the development of new Ohio wind or solar resources in the first place. Second, by what measure is the Commission Staff to determine whether compliance with these un-named laws or rules require further "help." Third, this is just another commitment by the Company that commits ratepayer dollars who are not being given a say in this proceeding.

The inescapable bottom line here is that much, if not all, of the Third Supplemental Stipulation, along with the Stipulated ESP IV generally, is illusory as a benefit to customers—these commitments either add unspecified costs or are vague and unenforceable. It would be unreasonable for the Commission to saddle the Company's Ohio ratepayers with the PPA Rider burden at issue in this case, while at the same time adding insult to injury by adopting these provisions of the Third Supplemental Stipulation.

III. CONCLUSION

For the foregoing reasons, OHAs request that this Commission adopt the position of OHA on the issue set forth above.

Respectfully submitted on behalf of
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Post-Hearing Brief was served *via electronic mail* upon the parties of record this 16th day of February, 2016.

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