

**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)	Case No. 14-1297-EL-SSO
a Standard Service Offer Pursuant to R.C.)	
4928.143 in the Form of and Electric Security)	
Plan.)	

**JOINT REPLY BRIEF OF THE ENVIRONMENTAL LAW AND POLICY CENTER,
ENVIRONMENTAL DEFENSE FUND, AND OHIO ENVIRONMENTAL COUNCIL**

PUBLIC VERSION

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I. INTRODUCTION

The Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively “FirstEnergy Utilities” or “Companies”) seek approval of an Electric Security Plan (“ESP”) featuring a Retail Rate Stability Rider (“Rider RRS”) that they assert will benefit their customers and the public interest. However, as the Commission’s Order rejecting a similar proposal by Ohio Power Company (“AEP”) last year made clear, the Companies face a difficult task demonstrating that Rider RRS is “in the public interest.” *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer*, Case Nos. 13-2385-EL-SSO *et al.*, Opinion and Order (Feb. 25, 2015) (“*AEP ESP 3 Case*”) at 24. In this case, rather than offering a comprehensive analysis showing that the rider meets this standard, the Companies have presented a skewed and one-sided rider projection aimed at supporting a deal with their unregulated affiliate, without any genuine consideration of the myriad other options to achieve similar benefits for customers. Nothing in the FirstEnergy Utilities’ Initial Brief demonstrates that this deal should survive the Commission’s review.

Under Rider RRS, FirstEnergy customers will bear the risks of a contract with the Companies’ unregulated affiliate FirstEnergy Solutions (“FES”). The contract locks customers into financial responsibility for approximately 3,200 MW of coal and nuclear generation (“PPA Plants”) that the electricity markets have proven to be uneconomic, and that the record shows are likely to continue to lose hundreds of millions, if not billions, of dollars over at least the next few years. According to the FirstEnergy Utilities, this arrangement will benefit customers whether the plants make money or lose money. However, the Companies’ arguments fail to meet the balancing test set by the Commission in rejecting a similar rider in the *AEP ESP 3 Case*, a decision making it very clear that a bare assertion of benefits is not enough where those benefits

are not “commensurate” with the costs and risks for customers. *AEP ESP 3 Case*, Opinion and Order at 25.

In this case, the record shows that the costs of Rider RRS are likely to significantly outweigh any probable benefits. The Companies rely on a single projection of rider impacts that shows a net credit to customers by 2024, but that projection rests on the assumption that market prices will rise steeply over the next eight years. That assumption is highly dubious in light of current market conditions, and unsupported by any analysis of plausible alternative scenarios. In fact, more plausible and up-to-date projections suggest that customers are likely to pay between [REDACTED] and \$1 billion for Rider RRS over the next few years, and as much as \$2.7 billion by 2024.

In addition to overstating consumer savings, the Companies’ assertion that such costs are warranted to ensure system reliability fail to adequately consider that customers already paying for that reliability protection through PJM’s “Capacity Performance” rules. Effectively, FirstEnergy customers would be paying twice for two separate schemes to safeguard grid reliability, when the Companies have not offered any evidence that PJM’s approach is ineffective. Similarly, the Companies fail to carry their burden to show that plausible transmission costs that customers might face in the event of the retirement of the PPA Plants are enough to justify the likely high costs of Rider RRS. Therefore, the Commission should reject Rider RRS as unreasonable.

II. ARGUMENT

A. Rider RRS Will Impose Unreasonable Costs on Customers.

1. Company Witness Rose's 2014 Market Price Forecast is Not a Reliable Basis for Projecting the Impacts of Rider RRS.

The FirstEnergy Utilities' brief rests significant weight on the idea that Rider RRS will benefit customers regardless of future energy prices. According to the Companies, the rider will offer both a quantitative credit and a hedging benefit if prices rise, and will not prevent customers from taking advantage of low market prices if they fall. FirstEnergy Initial Br. at 22. In defense of this assertion, the Companies twice quote Ohio Energy Group ("OEG") witness Baron's assertion that "[y]ou are betting against a bad outcome, if you don't have that bad outcome, the premium that you paid for that bet will be worth it." FirstEnergy Initial Br. at 4-5 & n.10, 22 n.84 (citing Hearing Tr. Vol. XXII at 4383:3-4384:3). However, that blanket assurance of customer benefits in any scenario is inconsistent with the Commission's recognition that such a hedge can be reasonable only if credible evidence shows that the likely costs are "commensurate with" the likely benefits. *AEP ESP 3 Case*, Opinion and Order at 25. To use the Companies' own "insurance" analogy, FirstEnergy Initial Br. at 22, people generally purchase insurance after shopping for a policy with a premium that is not too costly in light of the expected benefits of the coverage. The FirstEnergy Utilities have not carried their burden to show that Rider RRS meets any such common-sense test.

The Companies assert Witness Rose's market price forecast is sufficient for the Commission to determine that the "premium" for this insurance is reasonable. FirstEnergy Initial Br. at 13, 50-51. But even the FirstEnergy Utilities understand that the Commission cannot simply assume that Witness Rose is right. As Company witness Ruberto testified, "[w]e recognized a market forecast is a forecast. Inherent in any forecast can be changes. We did

recognize there is going to be variances in those forecasts” Tr. XIII at 2769:25-2770:3 (cited in FirstEnergy Initial Br. at 53). According to Mr. Ruberto, despite this inherent uncertainty, “given the magnitude of the benefits and the confidence we have in Mr. Rose’s forecast, we felt that the benefits would remain.” Tr. XIII at 2770:3-5 (cited in FirstEnergy Initial Br. at 53). The question is, therefore, whether the Companies have demonstrated a reasonable basis for this “confidence” in the reliability of the Rose forecast. They have not.

The record shows that actual energy and capacity prices to date, as well as forward prices for natural gas that are likely to be a reliable indicator of energy prices over the next two to three years, have all been significantly lower than Company witness Rose projected. Initial Br. of the Environmental Law and Policy Center, Environmental Defense Fund, and Ohio Environmental Council (“Environmental Intervenors”) at 16-21; Sierra Club Initial Br. at 23-28. Even Witness Rose’s own organization, ICF International (“ICF”), has recognized that these low prices are not just short-term market swings that will likely be counteracted by large price increases before 2024, as the Companies and OEG suggest. FirstEnergy Initial Br. at 12, 14, 27, 64; OEG Initial Br. at 21. Rather, they are driven by developments in market fundamentals that have caused ICF itself to [REDACTED], relying on the exact same modeling techniques used to prepare the Companies’ forecast here. OCC/NOPEC Ex. 6 at 34-35, Ex. JFW-11; Sierra Club Ex. 78C at 10.

For example, as discussed in our Initial Brief, two of the key variables identified by the Companies as driving Witness Rose’s forecast – “higher forecast natural gas prices” and “electrical demand growth,” FirstEnergy Initial Br. at 13 – have proven to be lower than Mr. Rose had assumed, and look to continue that trajectory for the foreseeable future. Environmental Intervenors Initial Br. at 16-21. There are also clear changes in even ICF’s own understanding of

such key variables. At the time of his rebuttal testimony, Witness Rose asserted that natural gas prices would soon rise because “[p]roducers are responding to lower natural gas/oil/Natural Gas Liquids (NGLs which include propane) prices by reducing exploration and production activity, which will in turn reduce production growth,” specifically citing a decline in the U.S. active drilling rig count. Co. Ex. 151 at 31-32. Yet a more recent ICF report indicates that while “the number of active drilling rigs in the Marcellus and Utica plays declined by 45%” during January through September 2015, “Marcellus/Utica production has *continued to increase due to improvements in well productivity* (i.e., more gas produced per well drilled)” despite this decline in rig count. Sierra Club Ex. 77, Ex. TFC-44 at 6 (emphasis added).

Notably, the U.S. Energy Information Administration (“EIA”) likewise identified changes in assumptions in exactly these areas between its Annual Energy Outlook (“AEO”) in April 2014 and its AEO in April 2015. With respect to forecasting production levels, AEO2014 specifically noted that “[p]rospects for production from tight oil and shale gas resources are uncertain, both because large portions of the formations have little or no production history, and because future technology could increase well productivity while reducing costs.” Co. Ex. 60 at MT-25. Then in AEO2015, the EIA identified “higher dry natural gas production in the AEO2015 Reference case in the East region (which includes the Marcellus and Utica formations) compared with the AEO2014 Reference case” as a key difference between the two forecasts. Co. Ex. 166 at E-7. The EIA also decreased its estimate of average annual increase in total U.S. electricity consumption from 1.0% to 0.8% between 2013 and 2040. *Id.* at E-11. As AEO2015 explains, “[a]lthough demand for energy often grew with economic recoveries during the second half of the 20th century, technology and policy factors currently are acting in combination to dampen growth in energy consumption.” *Id.* at ES-6. As discussed in our Initial Brief, Company

witness Rose relied on a PJM forecast of future demand that did not adequately account for such key developments such as increases in energy efficiency. Environmental Intervenor Initial Br. at 18-21. Finally, Witness Rose's rebuttal testimony highlights the importance of "very large increases in demand [for natural gas] over the next ten years" as a driver of increasing energy prices, including half of that demand from increasing LNG exports. Co. Ex. 151 at 37. Yet in AEO2014 the EIA indicated that "[p]rospects for future LNG exports are uncertain, depending on many factors that are difficult to anticipate." Co. Ex. 60 at MT-22.

The Companies emphasize the sophistication of Witness Rose's modeling techniques as a sufficient basis for relying on his forecast, FirstEnergy Initial Br. at 13-14, but that argument irrelevant in light of this evidence that the basic assumptions he put into that forecast failed to accurately reflect future developments in demand levels and natural gas prices.¹ In fact, considering market developments over the last eighteen months offers significant certainty that customers will pay far more over the near term than even the hundreds of millions of dollars projected by the Companies as of 2014. Using more current natural gas forward prices that even Witness Rose concedes are reliable in the near-term, OCC witness Wilson projects that Rider RRS could cost customers more than \$1 billion (nominal dollars) before 2018.² Environmental Intervenor Initial Br. at 17. And if those trends continue, by 2024 customers could face net charges of around \$2.7 billion under the rider. *Id.* at 16. The Commission must weigh whether this likely alternative outcome would be a reasonable cost to impose on FirstEnergy customers

¹ As the saying goes, "garbage in, garbage out." Oxford Dictionaries, http://www.oxforddictionaries.com/us/definition/american_english/garbage-in-garbage-out (last visited Feb. 23, 2016) ("Used to express the idea that in computing and other spheres, incorrect or poor quality input will always produce faulty output.").

² Unless otherwise indicated, all dollar figures in this brief are presented in net present value rather than nominal dollars.

and the state economy, not just the Companies' outdated and no-longer credible projection of a net credit.

2. The Companies Have Failed to Support Witness Rose's Forecast With Any Reasonable Analysis of Likely Alternative Scenarios.

In spite of the above evidence undercutting Witness Rose's prediction of sharply increasing electricity prices, the Companies blithely assert that Rider RRS will benefit customers as long as "natural gas prices inevitably increase from their current historic lows and drive retail energy prices higher." FirstEnergy Initial Br. at 27. But as even Witness Rose acknowledged, there can be "significant uncertainty and variability in market prices in terms of multi-year periods," Tr. VI at 1144:22-25, and therefore he could not assign any particularly probability or confidence interval to his projected market prices. Tr. VI at 1297-1298. Given that inherent uncertainty, the Commission cannot reasonably rely on the Companies' bare assertion that market prices will reach the levels necessary to produce a net credit for customers despite falling significantly below those levels in the near term. Even applying FES's own internal 2014 price forecast – which Company witness Rose did not utilize – would result in [REDACTED]

[REDACTED]. Environmental Intervenors Initial Br. at 30. The Commission must consider not only whether electricity prices may rise by some amount in the future, but also whether they are likely rise high enough and sharply enough to bear out the Companies' rider projection of a significant credit for customers. At this point, the record shows that such steep price increases are highly unlikely over the next few years, and likely beyond. Environmental Intervenors Initial Br. at 16-21. This evidence undermines the Companies' unsupported assertion that the Commission can reasonably expect an outcome consistent with their projection. FirstEnergy Initial Br. at 12, 14, 27, 64.

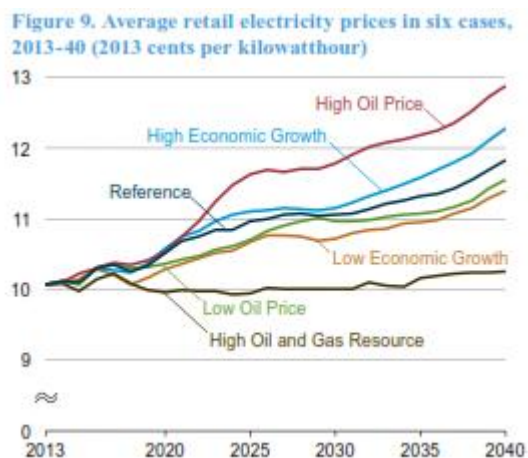
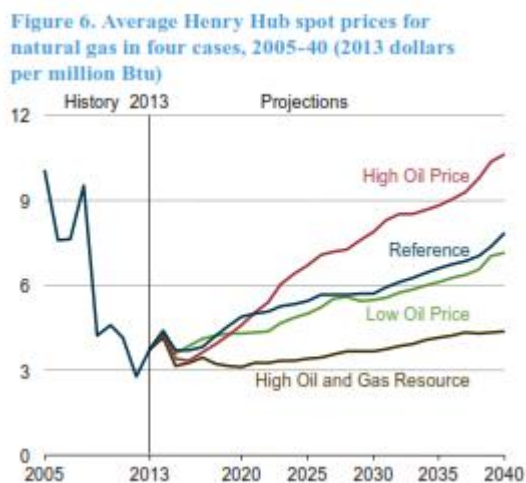
As Sierra Club points out, the most important thing that the Companies should have done to provide support for their “confidence” in this outcome is to conduct a sensitivity analysis in order to gauge what the impacts of Rider RRS might be under other plausible market scenarios, which the Commission could then consider in light of the most up-to-date market information. Sierra Club Initial Br. at 41-43. The FirstEnergy Utilities not only failed to conduct such analysis, they also never explain why they did not need to do so as part of their basic due diligence. *Id.* As discussed below, a sensitivity analysis is a standard, common-sense practice for demonstrating the reasonableness of this type of forecast in other contexts.

The EIA has itself recognized the importance of considering alternative scenarios in order to obtain a reasonable picture of the range of plausible future energy market outcomes. The EIA conducts the type of basic economic modeling in which the Companies rest so much confidence, using the National Energy Modeling System to prepare its AEO. Yet, as the EIA warns in AEO2015:

Energy market projections are subject to much uncertainty. Many of the events that shape energy markets are random and cannot be anticipated. In addition, future developments in technologies, demographics, and resources cannot be foreseen with certainty.

Co. Ex. 166 at iii. The EIA, therefore, prepares a range of alternative cases in order to address exactly these “key uncertainties.” *Id.* Moreover, AEO2015 is clear that “[b]ecause of the uncertainties in any energy market projection” – regardless of its basis in sophisticated modeling techniques – “the Reference Case results *should not be viewed in isolation.*” *Id.* at 1 (emphasis added). Rather, “[r]eaders are encouraged to review the alternative cases to gain perspective on how variations in key assumptions can lead to different outlooks for energy markets.” *Id.* As shown by the range of natural gas and retail electricity prices projected for alternative scenarios

in AEO2015, those alternative analyses show that there are multiple plausible scenarios where prices do not increase nearly as steeply as the Companies project:



Id. at 6, 8. The Commission should weigh these alternative scenarios particularly heavily since, as discussed above, market information from the last eighteen months and reliable forward prices for the next few years show that natural gas, energy, and capacity prices are all falling below Company witness Rose’s forecast of sharp price increases. Environmental Intervenor Initial Br. at 16-18.

Regulators have also recognized the necessity of adequate sensitivity analysis to validate the reasonableness of a forecast such as this. For example, the Federal Energy Regulatory Commission (“FERC”) has required PJM to conduct sensitivity analyses in order to justify the benefits of proposed investments in regional transmission projects, “recogniz[ing] that there are risks associated with extended price forecasts that may dictate a need for a project that later may appear unjustifiable.” *PJM Interconnection, L.L.C.*, 123 F.E.R.C. ¶ 61,051, 61,114 (2008). As FERC explained in that context, given the inherent uncertainty of such forecasts, “[i]t would appear critical for PJM to test fuel prices, inflation rate and other assumptions used in the model” through such alternative forecasts. *Id.* ¶ 61,420.

The Commission has also previously rejected a utility's proposal for complying with air pollution control requirements when the utility had not provided any detailed analysis of if the proposal would be the least-cost option using alternative fuel price assumptions. *In the Matter of the 1990 Long-Term Forecast Report of Ohio Power Company*, Case Nos. 90-660-EL-FOR *et al.*, 1991 Ohio PUC LEXIS 1143 at 34-35 (Sept. 24, 1991). As the Commission explained in that case:

[T]he lack of a detailed sensitivity analysis prevents an adequate assessment of the reasonableness of AEP's fuel assumption and thus makes it impossible for us to concur with AEP's conclusion, based on its forecast, that fuel switching at the Gavin plant necessarily represents the least cost solution to the Clean Air Act compliance. Therefore, we find that with reference to its case 1 fuel switch option, AEP's plan does not meet the test set forth in Section 4935.04(7), Revised Code, which requires us to find, based on the record that all assumptions made in the forecast are reasonable and adequately documented. This part of AEP's forecast also does not meet the requirements of Rule 4901:5-5-03(D)(3), O.A.C., which requires the utility to demonstrate adequate consideration of the risks, reliability and uncertainty associated with AEP's selected plan. The Commission believes it would be prudent for AEP to evaluate more specifically the volumes of compliance coal for which AEP will be able to contract at favorable prices in comparison to system requirements and to perform more in-depth price sensitivity analyses.

Id. Likewise, the absence of *any* sensitivity analysis by First Energy precludes the Commission from reasonably relying on Company witness Rose's market price forecast, since regardless of Mr. Rose's qualifications or the sophistication of his methodology, some of his assumptions or some aspects of his modeling are likely to be wrong.

The Companies chose not to do any sensitivity analysis in this case, despite the availability of that option. Sierra Club Initial Br. at 41-43. In the context of this affiliate deal, it seems likely that is because such an analysis would show exactly what the intervenors predict: that customers are likely to pay significant amounts under Rider RRS in order to lock in profits for the Companies' affiliate FES. Environmental Intervenors Initial Br. at 6-7, 16-21. In any

case, having made that choice, the FirstEnergy Utilities have no basis to rebut the evidence that this projection is likely significantly over-optimistic for both the near- and long-term. Further, they have not justified requiring customers to pay hundreds of millions, if not billions, of dollars over the next eight years as in the public interest.

B. Rider RRS Requires Customers to Pay a Second Time for Safeguards that PJM Is Already Putting in Place Through Its Capacity Performance Rules.

The Companies describe Rider RRS as necessary to address the dangers of system outages and price spikes that they assert will inevitably result from the ongoing shift in PJM and Ohio toward more natural gas generation. FirstEnergy Initial Br. at 5-6, 26, 57-59. Even putting aside the lack of any analysis of generation sources in the region to substantiate these allegations, Sierra Club Initial Br. at 107-109, the Companies have failed to address the fact that this would effectively require customers to pay a second time for protections that PJM is already pursuing through the Capacity Performance rules approved in 2015.

PJM's Capacity Performance proposal was designed to remedy the apparent problem – exemplified by generator outages during the January 2014 “Polar Vortex” – that “resources [we]re not being properly incented to make the investments required to perform reliably, including during extreme weather conditions.” *PJM Interconnection, L.L.C.*, 151 F.E.R.C. ¶ 61,208, 62,304 (2015). To address this problem, FERC approved rule changes increasing and broadening penalties for non-performance and loosening restrictions on recovery of investments to improve reliability such as natural gas firm transportation arrangements. *Id.* ¶¶ 62,304-62,305. FERC also recognized that, by reducing outages, these changes would likely reduce price spikes such as those observed during the Polar Vortex. *Id.* ¶¶ 62,298-62,299 & n.9.

Accordingly, FERC approved this PJM proposal to ensure system reliability and mitigate price spikes resulting from the ongoing shift toward more natural gas generation in the region, a

change that is likely to increase costs to customers. PJM's own cost-benefit analysis of its proposal showed that the Capacity Performance reforms would increase wholesale prices in PJM between \$1.4 and \$4 billion over just the next three delivery years. *PJM Interconnection, L.L.C.*, 151 F.E.R.C. ¶ 61,208, 62,303. Indeed, the Companies have themselves pointed out that energy and capacity prices have risen since the start of implementation of the Capacity Performance requirements, as competitive retail electric service and standard service offers incorporate somewhat higher capacity prices and the increased risk of non-performance charges. FirstEnergy Initial Br. at 15, 44-45, 102. Thus, the Capacity Performance rules are already requiring customers across PJM to invest in safeguards against asserted threats to system reliability from increasing natural gas generation.

Yet the Companies argue that the Commission should require their customers to invest in the PPA Plants to address these same asserted problems caused by the shift to natural gas. FirstEnergy Initial Br. at 5-6, 26, 57-59. In doing so, the Companies fail to address the fact that the costs of this investment are likely to overlap with, if not entirely duplicate, the costs from PJM's Capacity Performance reforms. In fact, the Companies invoke price spikes and outages resulting from the Polar Vortex as among the primary justifications for Rider RRS. As discussed above, the costs of this rider are likely to run in the hundreds of millions, if not billions, of dollars. Without any evidence of why Rider RRS offers any necessary protection for system reliability beyond that approved by FERC in its Capacity Performance decision, the Commission cannot determine whether these likely costs are reasonable.

C. The Companies' High Transmission Cost Estimates Are Unlikely to Come to Pass.

One of the Companies' most prominent asserted benefits of Rider RRS is that it will avert significant transmission costs that FirstEnergy customers would otherwise pay if the PPA Plants

were to retire. FirstEnergy Initial Br. at 6, 27-28, 67-71. As discussed in our Initial Brief and the briefs of many other intervenors, the Companies' estimate of up to \$1.1 billion in avoided transmission upgrade costs is likely to be an overestimate. Regardless of whether it was valid at the time, the Companies' analysis does not take into account subsequent reductions in expected load in PJM or additional generation that appears likely to come online in Ohio in the next few years, and addresses only the extreme scenario of simultaneous retirement of all of the PPA Plant units. Environmental Intervenors Initial Br. at 42-43; Sierra Club Initial Br. at 90-95.

Nevertheless, the Companies attempt to substantiate their analysis by referring to transmission costs close to \$1 billion associated with the retirement of 2,400 MW of generation in the Cleveland area in the last several years. FirstEnergy Initial Br. at 68. However, that analogy is no substitute for a realistic analysis of the potential retirements in question here. The area affected by those prior retirements "has historically been constrained due to voltage limitations" and "the ability to import power into the Cleveland area has historically been limited by voltage problems," an important fact that the Companies acknowledge only in a footnote. Sierra Club Ex. 60 at 6-7 (cited in FirstEnergy Initial Br. at 68 n.312). There is no evidence that the same existing transmission constraints would apply to the areas near the PPA Plants, and thus there is no reason to believe that the same level of upgrades would be necessary to address such constraints if the PPA Plants were to retire. This is just one more example of the lack of record support for this purported benefit of Rider RRS.

III. CONCLUSION

The Companies have not carried their burden to show that Rider RRS is reasonable or an improvement over the status quo of a market-rate offer complemented by existing hedging and system reliability protections. This failure is the result of the FirstEnergy Utilities' flawed and

incomplete analyses of both the costs and benefits of the rider. In fact, the intervenors' more realistic and robust assessments suggest that Rider RRS is likely to cost far more than it is worth to customers. The Commission should therefore reject this element of the Companies' Electric Security Plan proposal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this *Joint Reply Brief of the Environmental Law and Policy Center, Environmental Defense Fund, and Ohio Environmental Council* on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on February 26, 2016 upon all persons/entities listed below.

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