

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

**DIRECT TESTIMONY ON REHEARING OF
THOMAS N. LAUSE
ON BEHALF OF THE
OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

June 23, 2016

1 **Q. Please state your name, title, and business address.**

2 A. My name is Thomas N. Lause and I am employed by Cooper Tire & Rubber
3 Company (Cooper Tire). My title is Vice President, Treasurer and my business
4 address is 701 Lima Avenue, Findlay, Ohio, 45840.

5
6 **Q. What is your role with the Company?**

7 A. As Treasurer, I am responsible for treasury operations, tax strategy and
8 compliance, and overall risk management for Cooper Tire's global operations. I
9 also play an integral part in the financial and business decisions of Cooper Tire,
10 including investment, expansion, and capital expenditure decisions. In order to
11 fulfill these responsibilities, Cooper Tire closely monitors our manufacturing cost
12 structure, including energy costs given the important role of electricity in our
13 Company's manufacturing costs. The cost of electricity is a significant input in
14 the cost of our product.

15
16 **Q. Please describe your educational background, professional qualifications and**
17 **employment experience.**

18 A. I earned a BSBA with a major in Accounting from Bowling Green State
19 University, Bowling Green, OH in 1981, and a MBA (Executive Program), also
20 from Bowling Green State University. My final research topic was a case study of
21 Activity Based Costing.

22

1 I also completed the Executive Leadership Program at the University of Notre
2 Dame in 2005. I earned my Certificate of Public Accounting (now inactive),
3 Certificate No. 20,183 from the State of Ohio in November 1986.

4
5 I have been employed at Cooper Tire for 33 years and I have served in various
6 roles in operations and finance. My roles have been in Cooper Tire's plants, our
7 European Operations, and in our Global Headquarters in Findlay Ohio. I served
8 as Global Operations Controller prior to taking on the Treasury responsibilities.

9
10 **Q. Have you previously testified before the Commission?**

11 **A. No.**

12
13 **Q. On whose behalf are you offering testimony?**

14 **A.** I am testifying on behalf of the Ohio Manufacturers' Association Energy Group
15 (OMAEG). As a member of that group, my company has a significant interest in
16 the Modified Rider RRS Proposal¹ filed by the Ohio Edison Company, the
17 Cleveland Electric Illuminating Company, and the Toledo Edison Company (the
18 Companies), the cost of which is similar to the previous Rider RRS proposal that
19 the Commission approved in March of this year. In my testimony, I will explain
20 why the Modified Rider RRS Proposal is unreasonable, unjust, not a financial
21 hedge for electric consumers, and harmful to customers, particularly large

¹ The Modified Rider RRS Proposal refers to the Companies' proposed calculation for its retail rate stability rider (Rider RRS) contained in the Companies' application for rehearing on pages 19-21, filed May 2, 2016 and as referenced by the Attorney Examiners in the Entry setting a procedural schedule issued on June 3, 2016.

1 manufacturers, and why the Public Utilities Commission of Ohio (Commission)
2 should reject the Proposal as bad public policy that does not benefit the public
3 interest.

4
5 **Q. Describe your Company's Ohio operations and the impact on the state of**
6 **Ohio.**

7 A. Cooper Tire is headquartered in Findlay, Ohio and has three tire manufacturing
8 plants in the United States: one in Findlay, Ohio (the only remaining tire
9 manufacturing plant remaining in the state of Ohio), one plant in Texarkana,
10 Arkansas and one plant in Tupelo, Mississippi. We also have tire manufacturing
11 plants in Mexico, the United Kingdom, Serbia and China. In addition to its
12 corporate headquarters, Cooper Tire also has its Global Technical Center located
13 in Findlay, Ohio as well as a mold manufacturing plant. Cooper Tire also has its
14 Mickey Thompson subsidiary located in Northeast Ohio. Cooper Tire has over
15 2,000 employees in the state of Ohio and significantly contributes to state and
16 local taxes. Cooper Tire also purchases significant volumes of goods and services
17 from local Ohio businesses. Cooper Tire not only operates as a major employer of
18 Ohio citizens, but also provides high quality products to citizens in the state of
19 Ohio. Finally, Cooper Tire makes significant efforts to be a good corporate
20 citizen through time and financial contributions to charitable organizations.

21
22 **Q. Describe the Modified Rider RRS Proposal.**

23 A. As explained in the Rehearing Testimony, the Modified Rider RRS Proposal will
24 be a charge (at least initially) to customers based on the netting of projected

1 generation costs against projected sales of the generation output into the PJM
2 Interconnection LLC (PJM) markets. The charge will then be collected from all
3 customers, both shopping and non-shopping. Based on prior testimony in the
4 record and the Rehearing Testimony,² OMAEG continues to expect that the
5 Modified Rider RRS Proposal will cost customers at least \$3.6 billion dollars over
6 the eight-year term of the Stipulated ESP IV.

7
8 **Q. Are you familiar with the Companies' original Rider RRS proposal, which**
9 **included a Power Purchase Agreement (PPA), as described in the**
10 **Companies' Rehearing Testimony?**

11 **A.** Yes. OMAEG has been participating in this Commission proceeding that
12 included the original Rider RRS proposal and many settlements (called Stipulated
13 ESP IV) described throughout the Companies' Rehearing Testimony filed by
14 Companies' witness Mikkelsen on May 2, 2016.³ As a member of OMAEG, my
15 company participated through OMAEG in the proceeding. In addition to our
16 participation through OMAEG, Cooper Tire filed a letter with the Commission,
17 explaining Cooper Tire's concerns with the Companies' original Rider RRS
18 proposal and the impact on the competitive markets and customers.⁴ OMAEG
19 also challenged the original Rider RRS proposal at the Federal Energy Regulatory
20 Commission (FERC) by filing comments in support of the complaint filed by the
21 Electric Power Supply Association (EPSA), the Retail Energy Supply Association

²OCC Ex. 9 at 12 (Second Supplemental Direct Testimony of James F. Wilson (December 30, 2015)); Rehearing Testimony of Eileen Mikkelsen at 5 (May 2, 2016) (Rehearing Testimony).

³ See, generally, Rehearing Testimony.

⁴Letter to Public Utilities Commission of Ohio from Thomas N. Lause, Cooper Tire & Rubber Company, with attachment (January 13, 2016) (Attachment TNL-1).

1 (RESA), Dynegy Inc., Eastern Generation, LLC, NRG Power Marketing LLC,
2 and GenOn Energy Management, LLC, which led to the April 27, 2016 FERC
3 decision referenced in the Rehearing Testimony on page 4 and is explained to be
4 the reason for the modification to the original Rider RRS proposal.⁵ OMAEG's
5 FERC filing also included the letter from Cooper Tire expressing concerns over
6 the Companies' Rider RRS proposal.⁶

7
8 Additionally, on June 17, 2016, OMAEG filed an intervention and comments in
9 support of a protest filed by EPSA, The Environmental Law & Policy Center
10 (ELPC), the Ohio Environmental Council (OEC), the PJM Power Providers
11 Groups, RESA, Dynegy, Inc., Eastern Generation, LLC and the NRG Companies,
12 at FERC regarding the Modified Rider RRS Proposal.⁷

13
14 **Q. Please summarize how the Modified Rider RRS Proposal is different from**
15 **the original Rider RRS proposal approved by the Commission?**

16 **A.** It is my understanding through our participation in OMAEG in this proceeding
17 and as described in the Rehearing Testimony that the original Rider RRS proposal
18 included an underlying PPA between the Companies and its unregulated affiliate,
19 FirstEnergy Solutions (FES). The original Rider RRS charge was calculated
20 based on the netting of costs of the PPA with its affiliate against actual generation

⁵ Complaint Requesting Fast Track Processing, Docket No. EL16-34-000 (January 27, 2016); Motion to Intervene and Comments in Support Submitted on Behalf of the Ohio Manufacturers' Association Energy Group, Docket No. EL16-34-000 (February 23, 2016) (Attachment TNL-2).

⁶ Id.

⁷ Protest and Request for Issuance of Further Order on Complaint, Docket Nos. ER16-1807-000 et al. (June 17, 2016); Motion to Intervene and Comments in Support Submitted on Behalf of the Ohio Manufacturers' Association Energy Group, Docket Nos. ER16-1807-000 et al. (June 17, 2016) (Attachment TNL-3).

1 revenues earned from the resale of the generating units' output into the PJM
2 markets.⁸ In light of the FERC decision, the Companies removed the underlying
3 PPA in the Modified Rider RRS Proposal.⁹ Instead, the Companies explain that
4 they intend to rely on projected generation costs and projected sales into the PJM
5 markets included in the record of this proceeding to calculate the Modified Rider
6 RRS charge.¹⁰

7
8 Removal of the PPA, which was the basis for the costs and revenues associated
9 with Rider RRS, alters the nature of the original Rider RRS and the Stipulated
10 ESP IV approved by the Commission, but the Modified Rider RRS Proposal has
11 the same negative impact on customers.

12
13 **Q. Do you believe that the purpose of the Modified Rider RRS Proposal is to**
14 **continue to support the Companies' affiliate, FES, or another affiliate?**

15
16 **A.** Yes. The Modified Rider RRS Proposal basically substitutes the PPA with its
17 affiliate, FES, with a virtual PPA in order to calculate the Modified Rider RRS.
18 As explained in the Rehearing Testimony, the modified rider is still premised on
19 customers paying non-bypassable generation-related charges incurred by the
20 Companies' affiliates less revenues received from projected capacity of the
21 affiliates' generating units clearing the PJM capacity market at actual base
22 residual auction pricing.¹¹

⁸ Rehearing Testimony at 3-4.

⁹ Id. at 4.

¹⁰ Id. at 4-5.

¹¹ Id.

1 The Companies' claim in their Rehearing Testimony that the "cash associated
2 with Rider RRS charges would not flow to FES,"¹² seems disingenuous as the
3 Companies' assert that the Modified Rider RRS Proposal will help "ensure the
4 continued operation of 3,200 MWs of fuel diverse baseload generation."¹³
5 Additionally, the Companies, FES, and other affiliates that own generation share
6 the same corporate parent. Costs recovered from customers under Modified Rider
7 RRS could be imputed to FES or other affiliates that own generation based on the
8 transfer of funds from the regulated Companies to the parent. Given that all
9 FirstEnergy Corp. entities are in the same tax jurisdiction (i.e., USA Corporate
10 Tax), there is no impediment from a corporate tax perspective to move funds
11 among subsidiaries of a company (as opposed to when companies move funds
12 between foreign entities, which normally triggers cash tax payments). The
13 Companies seem to recognize this possibility, admitting that there is no
14 prohibition in the Modified Rider RRS Proposal regarding the Companies' ability
15 to pay dividends to the parent, FirstEnergy Corp.¹⁴

16
17 The Companies have also failed to explain how they will guarantee that the
18 revenue collected from customers through the Modified Rider RRS will in fact
19 not be used to support or bolster FES or other generator affiliates.¹⁵
20

¹² Id. at 6.

¹³ Id. at 15.

¹⁴ See the Companies' discovery responses, SC-Set 13-INT-236 (Attachment TNL-4).

¹⁵ Id.

1 **Q. As Treasurer of Cooper Tire, are you familiar with financial statements of**
2 **companies and reports from securities analysts?**

3 A. Yes.

4

5 **Q. Have you reviewed the financial statements or information from financial**
6 **analysts regarding FirstEnergy Corp.?**

7 A. Yes, I have reviewed some financial documents. Specifically, I have reviewed
8 FirstEnergy Corp.'s April 27, 2016 1Q 2016 Earnings Call, Quarterly Highlights,
9 its May 2, 2016 letter to the investment community regarding the Modified Rider
10 RRS Proposal, and Moody's Investors Service (Moody's) recent credit report.

11

12 **Q. What are your conclusions?**

13 A. On April 28, 2016, Moody's downgraded FirstEnergy Corp.'s and its
14 subsidiaries' (including FES) outlook to negative from stable.¹⁶ This means there
15 are concerns in the investment community regarding FirstEnergy Corp.'s financial
16 profile and whether FirstEnergy Corp. and its subsidiaries may no longer meet the
17 expectations or requirements for their current credit ratings and, as such,
18 FirstEnergy Corp.'s and subsidiaries' ratings could be downgraded. While I have
19 not studied the FirstEnergy Corp. debt instruments in great detail, it does appear
20 that credit rating downgrades below investment grade would require FirstEnergy
21 Corp. to increase its collateral as a safeguard to the debt holders.

22

¹⁶ Moody's Investor Services, "Moody's revises outlook on FirstEnergy Corp and merchant subsidiaries to negative following FERC order" (2016) at https://www.moodys.com/research/Moodys-revises-outlook-on-FirstEnergy-Corp-and-merchant-subsidiaries-to--PR_348041.

1 **Q. In your experience, what would you expect a company with FirstEnergy**
2 **Corp.’s investment profile to do after a credit agency downgrades its outlook**
3 **to negative?**

4 **A.**First, I would expect a company to have already developed a plan for improving
5 cash flows. For example, some key areas that could be addressed are Selling
6 General and Administrative (SG&A) costs, including advertising, headcounts, and
7 executive compensation. Other significant cash flow opportunities are curtailing
8 or rationalizing capital spending and possibly reviewing the level of dividend
9 payments being made to shareholders. While painful, some companies need to
10 sell off some assets or curtail a portion of their operations in order to improve
11 future cash flows. These are the types of fiscally responsible actions that public
12 companies should be prepared to take and I would expect these cost saving
13 measures to occur prior to a company seeking a corporate bailout in the form of a
14 subsidy. A corporate bailout in the form of a subsidy to one company simply
15 adds costs to all other consumers and Ohio businesses, thus making these
16 businesses less competitive in the global economy.

17

18 **Q. Why is this relevant to the Companies’ Modified Rider RRS Proposal?**

19 **A.**It is relevant because it does not appear that FirstEnergy Corp. has done these
20 things in order to raise funds to bolster its investor ratings. Instead, it appears that
21 the Companies, on behalf of their parent, have sought a bailout from the
22 Commission in the form of a Modified Rider RRS that all customers will have to
23 pay.

24
25

1 **Q. Does Cooper Tire participate in a competitive market to sell its products?**

2 A. Absolutely. In an industry like the global tire industry, where margins are tight,
3 forcing Ohio manufacturing plants and facilities to bear these higher cost burdens
4 adds risk to our business in Ohio and impedes our ability to sustain or grow our
5 operations here. Every day, Cooper Tire competes for business with other
6 American tire manufacturers and with foreign tire manufacturers from lower cost
7 parts of the world.

8

9 **Q. How does a manufacturer, such as Cooper Tire, handle financial constraints**
10 **in a competitive market?**

11 A. Every day, Cooper Tire strives to sustain and improve its cost competitiveness
12 through innovation, improved productivity, and in some unfortunate cases, staff
13 reductions, all to stay competitive in the global market. And every day, Cooper
14 Tire determines, among its global network of facilities, where to allocate its
15 production and where to invest its resources, with operational costs being a
16 significant consideration.

17

18 **Q. As a financial executive at Cooper Tire, describe the impact of the**
19 **Companies' Modified Rider RRS Proposal on companies like Cooper Tire?**

20 A. The Modified Rider RRS Proposal does not benefit customers and interferes with
21 and disrupts the certainty that companies have derived from shopping for
22 generation service with competitive retail electric service (CRES) providers. The
23 imposition of this additional generation-related charge does not decrease electric
24 volatility or bring any added certainty to electricity pricing. Instead, it increases
25 companies' manufacturing costs and prohibits companies from taking advantage

1 of the market rates that are available. For example, when market costs for energy
2 are low, the Modified Rider RRS Proposal will layer additional costs onto
3 manufacturing facilities, like Cooper Tire's Ohio manufacturing tire plant, thus
4 making those companies less competitive with other USA and global plants and
5 with their competitor's plants, some of which may not be located in the state of
6 Ohio.

7
8 Additionally, the Modified Rider RRS Proposal will have significant impacts on
9 the business decisions of many manufacturing companies in the state of Ohio. An
10 additional charge to electricity prices will create increased costs for
11 manufacturing companies, which will either be borne by customers or cause the
12 companies to go out of business as they cannot recover their costs. This could
13 also deter new business investment in the state of Ohio as new companies looking
14 to invest may choose to go elsewhere in light of increased or high electricity
15 prices that are above market.

16
17 **Q. What conclusions have you reached about the Companies' Modified Rider**
18 **RRS Proposal?**

19 **A.** I recommend that the Commission reject the Companies' Modified Rider RRS
20 Proposal, which equates to a corporate bailout, as unjust and unreasonable, bad
21 public policy, and not in the public interest. Companies like Cooper Tire need
22 reliable electric service at reasonable prices. The certainty provided by supply
23 contracts affords manufacturers stability and the ability to estimate costs and
24 make sound business decisions. The Companies' Modified Proposed Rider RRS,

1 however, does not provide stability to electric prices. Rather, it adds an increased
2 charge to customers' electric service with no real justification or purpose. It
3 thwarts the ability of manufacturing companies, like Cooper Tire, to take
4 advantage of low market prices through shopping for generation service from
5 CRES providers and impedes the competitive market construct that was
6 established by the Ohio General Assembly. The Modified Rider RRS Proposal
7 will have detrimental impacts on manufacturing companies around the state of
8 Ohio, which will ultimately impact consumers and hinder future economic
9 investment in the state.

10
11 **Q. The Companies state that the Modified Rider RRS Proposal will “serve as an**
12 **effective hedge against volatile and increasing market prices, and will**
13 **maintain the risk-sharing provision as set forth in the Third Supplemental**
14 **Stipulation.”¹⁷ Do you agree?**

15 **A. No.** Although the Modified Rider RRS charge is a set charge for both shopping
16 and non-shopping customers, it does not increase the overall stability of the price
17 of electricity as the overall price will still rise and fall with the markets and the
18 Rider RRS charge will be adjusted quarterly. As explained above, Modified
19 Rider RRS only creates an additional charge to the price for electric service
20 already being paid by customers. All retail customers are still being required to
21 pay generation-related costs less revenues from projected capacity clearing in the
22 PJM markets. This is not a “hedge” against market volatility; it is an additional
23 revenue stream for the Companies or its parent.

¹⁷ Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company's Application for Rehearing at 17 (May 2, 2016).

1 **Q. What, if any, measures has your Company adopted to protect itself from**
2 **volatile electric pricing?**

3 A. Cooper Tire has shopped for its generation service with a CRES provider since
4 2012. This has enabled Cooper Tire to better manage its electric pricing by taking
5 advantage of various contracts with CRES providers that are best suited for our
6 business needs. As explained previously, electricity is a significant component in
7 our manufacturing processes. Our CRES contract provides more certainty as to
8 this component of our manufacturing costs.

9

10 Additionally, Cooper Tire has explored constructing customer-sited generation
11 resources to reduce its reliance on the electric grid and exposure to high non-
12 bypassable charges. Finally, Cooper Tire is constantly researching and
13 investigating opportunities for energy efficiency projects that reduce our
14 consumption of electricity. Often these projects require capital investments, but if
15 we determine that the project has a favorable return on investment, we can justify
16 the cash investment to execute the project.

17

18 **Q. Do you believe electric competition is working?**

19 A. Yes. As previously mentioned, Cooper Tire has taken advantage of low market
20 prices by shopping for our generation service. Competition in the electric markets
21 has enabled us to negotiate lower prices for electricity with CRES providers,
22 thereby lowering our manufacturing costs to help minimize our overall product
23 costs.

24

1 **Q.** **Does this conclude your testimony?**

2 **A.** Yes.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served on June 23, 2016 by electronic mail upon the persons listed below.

/s/ Danielle Ghiloni Walter
Danielle Ghiloni Walter

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FILE



COOPER TIRE & RUBBER COMPANY
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THOMAS N. LAUSE
VICE PRESIDENT & TREASURER

(419) 427-4741

January 13, 2016

The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

Subject: Cases 14-1693-EL-RDR (AEP); 14-1297-EL-SSO (First Energy)

To The Public Utilities Commission of Ohio,

Attached is the letter pertaining to Cases 14-1693-EL-RDR (AEP); 14-1297-EL-SSO (First Energy), sent by our CEO, Roy Armes, to key parties and we felt it was appropriate to share this letter with The Public Utilities Commission of Ohio.

Sincerely,

Cooper Tire & Rubber Company

Thomas N. Lause
Vice President & Treasurer

TNL/pmp

Attachment

cc: Anthony Smith
Frank Schrum
Ryan Augsburg

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January 11, 2016

Office of the Governor
Honorable John Kasich
77 S. High Street – 30th Floor
Columbus, OH 43215

Dear Governor Kasich,

I am writing to urge you to act to prevent the Public Utilities Commission of Ohio from approving the recently negotiated settlements of FirstEnergy and AEP. These settlements will enable the utilities to implement costly Power Purchase Agreement riders (PPAs) and other cost-driving provisions that will make it more difficult for Cooper Tire and other Ohio manufacturers to remain competitive in the global markets. Should the PUCO approve the deals, both FirstEnergy and AEP will be able to collect fees over 8 years from all of their customers to subsidize their uneconomical generation assets, thus protecting these utility companies from cost and risk, and also guaranteeing their profits by requiring customers to reward the utilities with significant profit margins on these otherwise uneconomic assets. Ohio's Consumers' Counsel has estimated that the FirstEnergy settlement could cost manufacturers and consumers \$3.9 billion over the eight-year duration of the PPAs, and the AEP settlement could cost manufacturers and consumers \$2 billion. We have estimated the specific impact on Cooper Tire's Ohio operations and it is significant and impactful.

These proposed PPAs serve only to benefit First Energy and AEP while severely compromising the competitiveness of all Ohio manufacturers and other businesses who must use these providers for their electricity needs. The PPAs would allow First Energy & AEP to run unproductive and non-competitive operations and then simply pass these costs onto their customers. Even worse, these PPAs would actually allow First Energy & AEP to become less productive and they would simply be able to pass these costs (plus a guaranteed profit margin) on to their customers. Thus while the entire utility deregulation efforts of 16 years ago were meant to enhance productivity within the utility industry, these proposed agreements would actually move the entire state back to an era of uncompetitiveness.

In an industry like the global tire industry, where margins are extremely tight and business is won or lost based on cost competitiveness, forcing our Findlay, Ohio tire

plant, our Findlay, Ohio mold manufacturing plant, our Findlay, Ohio technical centers and our Findlay, Ohio corporate headquarters to bear these higher cost burdens adds risk to our business in Ohio and impedes our ability to sustain or grow our operations here. Every day, Cooper Tire competes for business with other American manufacturers and with foreign manufacturers from lower cost parts of the world. Every day, Cooper Tire strives to sustain and improve its cost competitiveness through innovation, improved productivity and in some unfortunate cases, staff reductions....all to stay competitive in the global market. And every day, Cooper determines where to allocate its production and resources among its global network of facilities, with cost being a significant factor. To give First Energy & AEP a blank check with these proposed PPAs is fundamentally wrong and a severely incorrect direction for our great state. Approval of these agreements will put Cooper Tire's Ohio facilities at a competitive disadvantage compared to other states, as electricity costs are a significant part of our expenses.

The PUCO is expected to act in early 2016. We respectfully request that you express your opposition of these PPAs to the PUCO. Cooper Tire would be glad to discuss this issue in more detail so as to provide you with greater context and details if you should so desire. Please feel free to contact me (419-424-4363; rvames@coopertire.com) or our General Counsel Steve Zamansky (419-420-6059; szamansky@coopertire.com) if you have any questions or would like to discuss this matter further.

Respectfully yours,



Roy V. Armes
Chairman, Chief Executive Officer & President
Cooper Tire & Rubber Company

RVA/smd

cc: Wayne Struble
Senator Cliff Hite
Representative Robert Sprague

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Electric Power Supply Association,)	
Retail Energy Supply Association,)	
Dynegy, Inc., Eastern Generation, LLC,)	
NRG Power Marketing LLC and GenOn)	
Energy Management, LLC,)	
	)	Docket No. EL16-34-000
Complainants,)	
)	
v.)	
)	
FirstEnergy Solutions Corporation, Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company, and The Toledo)	
Edison Company,)	
Respondents.		

**MOTION TO INTERVENE AND COMMENTS IN SUPPORT
SUBMITTED ON BEHALF OF THE
OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

In accordance with the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure 212 and 214,¹ the Ohio Manufacturers' Association Energy Group (OMAEG) hereby submits this motion for intervention and comments in support of the Complaint filed in the above-captioned proceeding. To protect Ohio's consumers, including manufacturers, it is imperative that the Commission rescind the waiver on affiliate power sales restrictions previously granted to Respondents and review the proposed affiliate power purchase agreement (Affiliate PPA) to ensure that its rates,

¹ 18 C.F.R. 385.212 and 385.214.

terms, and conditions are just and reasonable, and free from affiliate abuse.² Accordingly, OMAEG supports the relief sought by Complainants and requests that such relief be promptly granted.

I. Communications

Correspondence and communications concerning this submission should be directed to:

Kimberly W. Bojko
Ryan P. O'Rourke
Carpenter Lipps & Leland LLP
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280 North High Street
Columbus, Ohio 43215
Telephone: 614.365.4100
Fax: 614.365.9145
Bojko@carpenterlipps.com
O'Rourke@carpenterlipps.com

II. Motion to Intervene

The OMAEG is a non-profit entity created by the Ohio Manufacturers' Association (OMA) for the purpose of educating and providing information to energy consumers, regulatory boards and suppliers of energy; advancing energy policies to promote an adequate, reliable, and efficient supply of energy at reasonable prices; and, advocating on behalf of manufacturers in critical cases at the state and federal levels. The OMAEG's members are all members of the OMA. OMA has over 1,400 member

² 16 U.S.C. 824d; *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 at 62,167-169 (1991) (*Edgar*); *Allegheny Energy Supply Co., LLC*, 108 FERC ¶ 61,082 at 61,417-418 (2004) (*Allegheny*).

companies of all different sizes and energy use profiles, all of which are Ohio retail customers and many of which purchase electric services from FirstEnergy.³

Like the OMA, OMAEG is comprised exclusively of manufacturers who work together to protect and grow Ohio manufacturing. OMAEG strives to improve business conditions in Ohio and drive down the cost of doing business for Ohio manufacturers. OMAEG is regularly and actively involved in proceedings before the Public Utilities Commission of Ohio (PUCO) and its unique knowledge and perspective will contribute to the full development and equitable resolution of the issues in this proceeding. OMAEG has a direct, real, and substantial interest in the issues raised in this proceeding and is so situated that the disposition of the proceeding may, as a practical matter, impair or impede its ability to protect that interest.

Under the Commission's Rules of Practice and Procedure, "[a]ny person seeking to intervene to become a party * * * must file a motion to intervene."⁴ The motion to intervene must state the movant's position and provide a basis for that position.⁵ Additionally, the movant must demonstrate that it has a right to participate as granted by "statute or by Commission rule, order, or other action" and show that it has "an interest which may be directly affected by the outcome of the proceeding * * *."⁶ As explained below, OMAEG satisfies these standards, and, therefore, its motion for intervention should be granted and it should be made a party to this case.

³ The term "FirstEnergy" denotes the Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company.

⁴ 18 C.F.R. 385.214(a)(3).

⁵ 18 C.F.R. 385.214(b)(1).

⁶ 18 C.F.R. 385.214(b)(2)(i)-(ii).

Without the Commission's necessary oversight, the Affiliate PPA contemplated between FirstEnergy Solutions Corporation (FES) and FirstEnergy threatens to not only harm the competitive power markets subject to the Commission's exclusive jurisdiction but also steeply raise customers' costs. OMAEG has vigorously advocated before the PUCO that the Affiliate PPA is an anticompetitive subsidy flowing from a regulated distribution utility to its generating affiliate. OMAEG also argued that the PUCO is preempted under the Supremacy Clause of the U.S. Constitution, as illustrated in *PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467 (4th Cir. 2014) and *PPL EnergyPlus, LLC v. Solomon*, 766 F.3d 241 (3rd Cir. 2014). OMAEG reasserts and incorporates those arguments by reference herein.⁷

Ohio's manufacturing sector is one of the top consumers of electricity in the state of Ohio, and any impacts arising from future increases to electricity prices will have a significantly negative effect on their businesses. To this end, several of OMAEG's members have stated their opposition to the Affiliate PPA proposal pending before the PUCO, explaining the estimated direct impact on their facilities and operations in Ohio, including future investment in Ohio.⁸ As explained by the Office of the Ohio Consumers' Counsel (OCC), another intervenor in the PUCO case, the bailout contemplated by the Affiliate PPA could herald an increase of over three-billion dollars in electricity costs.⁹ An increase of this magnitude will negatively affect Ohio

⁷ OMAEG's Initial Brief, PUCO Case No. 14-1297-EL-SSO (February 16, 2016), <https://dis.puc.state.oh.us/TiffToPDF/A1001001A16B16B71429C02435.pdf>

⁸ See attached letters filed in opposition from OMA members in PUCO Case No. 14-1297-EL-SSO, OMAEG Attachment 1.

⁹ Second Supplemental Direct Testimony of James F. Wilson on behalf of OCC at 12-13, PUCO Case No. 14-1297-EL-SSO (December 30, 2015),

manufacturers' competitiveness and have a chilling effect on future investments in Ohio markets.¹⁰ Unquestionably, OMAEG has a real and substantial interest in this complaint proceeding, which asks this Commission to review the Affiliate PPA in order to protect consumers from a non-bypassable charge associated with the Affiliate PPA. As such, OMAEG's interest will be directly affected by the outcome of this proceeding and cannot be represented by any other party.

III. Comments

OMAEG supports the grounds asserted and the relief requested in the January 27, 2016 Complaint filed in this case. The Commission should rescind the waiver on affiliate power sales restrictions it previously granted to Respondents and make it clear that the Affiliate PPA will be reviewed in accordance with the standards articulated in *Edgar*¹¹ and *Allegheny*.¹² Without the waiver rescission, the Affiliate PPA will escape review at both the state and federal levels. FirstEnergy has stated that the PUCO has no jurisdiction to approve the Affiliate PPA.¹³ And, due to the waiver previously granted to Respondents, the Affiliate PPA will also evade Commission review unless the

<https://dis.puc.state.oh.us/TiffToPDF/A1001001A15L30B45750G02894.pdf> See also OCC's Motion to Intervene and Comments in Support at 2, FERC Docket No. EL16-34-000 (January 27, 2016).

¹⁰ Direct Testimony of Dr. Edward W. Hill on Behalf of OMAEG at 5-6, PUCO Case No. 14-1297-EL-SSO (December 22, 2014), <https://dis.puc.state.oh.us/TiffToPDF/A1001001A14L22B72650F23754.pdf>

¹¹ 55 FERC ¶ 61,382 at 62,167-169.

¹² 108 FERC ¶ 61,082 at 61,417-418.

¹³ Vol. III, Tr. at 660-661, PUCO Case No. 14-1297-EL-SSO (September 2, 2015), <https://dis.puc.state.oh.us/TiffToPDF/A1001001A15I17B51328H00492.pdf> Vol. II, Tr. at 444, PUCO Case No. 14-1297-EL-SSO (September 1, 2015), <https://dis.puc.state.oh.us/TiffToPDF/A1001001A15I16B63656C00322.pdf>

Commission affirmatively acts.¹⁴ Given the change in circumstances since the waiver was granted, it is imperative that the Affiliate PPA be reviewed to ensure that its rates, terms, and conditions are just and reasonable, and free from affiliate abuse.¹⁵

The Affiliate PPA threatens to harm competition in the wholesale markets by guaranteeing a revenue stream to a fleet of aging and uneconomic generating units (Affiliate PPA Units) through a non-bypassable rider assessed to Ohio retail customers (Rider RRS). The guaranteed revenue stream from captive retail customers will make the Affiliate PPA Units agnostic to wholesale-market prices, distort wholesale-market price signals, and deter new entry from competitive generation suppliers. As the Independent Market Monitor for PJM Interconnection, LLC (PJM) testified:

The logical offer price for these resources in the PJM Capacity Market, under these conditions, would be zero. A zero offer would be rational because this would maximize the revenue offset to the customers would be required to pay 100 percent of the costs of this capacity and bear all of the performance risks. Offers at or near zero would have an anti-competitive, price suppressive effect on the PJM Capacity Market as would any offers at less than the competitive offer level.¹⁶

An anticompetitive arrangement of this sort is decidedly against the public interest and warrants Commission scrutiny.

¹⁴ *FES*, 125 FERC ¶ 61,356 (2008), on reh'g, 128 FERC ¶ 61,119 (2009).

¹⁵ 16 U.S.C. 824d; *Edgar*, 55 FERC ¶ 61,382 at 62,167-169; *Allegheny*, 108 FERC ¶ 61,082 at 61,417-418.

¹⁶ First Supplemental Direct Testimony of Dr. Joseph E. Bowring on Behalf of the Independent Market Monitor for PJM at 5, PUCO Case No. 14-1297-EL-SSO (December 30, 2015), <https://dis.puc.state.oh.us/TiffToPDF/A1001001A15L30B52627E02902.pdf>

FirstEnergy has touted the Affiliate PPA as a way to promote grid reliability, retail-rate stability, and resource adequacy;¹⁷ however, the simple fact is that the Affiliate PPA is being proposed because the Affiliate PPA Units are unable to withstand the demands of competition. The evidence adduced before the PUCO shows that the competitive markets are working,¹⁸ retail rates are not subject to volatility,¹⁹ and sufficient resource adequacy exists in the region managed by PJM.²⁰ The Affiliate PPA is not needed for consumer protection. Rather, it is being driven by shareholders and the investment community.

While the Commission originally granted the waiver on the grounds that retail choice has taken effect in Ohio, that justification no longer applies due to the rate-design mechanism of Rider RRS, which will flow through the costs of the Affiliate PPA to all of Ohio's retail customers. Regardless of whether Ohio retail customers have the choice to select their provider of generation services, customers will have *no* choice about whether to pay Rider RRS and subsidize FirstEnergy's generating affiliate. Given the non-bypassable nature of Rider RRS, the Commission's reasoning that retail customers in retail choice states are not captive because they can select a generation supplier of their choosing, and thereby bypass charges associated with an affiliate contract, is inapplicable

¹⁷ Application of FirstEnergy, PUCO Case No. 14-1297-EL-SSO (August 4, 2014), <https://dis.puc.state.oh.us/TiffToPDF/A1001001A14H04B60017D82700.pdf>

¹⁸ Direct Testimony of Dr. Edward W. Hill on Behalf of OMAEG at 13-14, PUCO Case No. 14-1297-EL-SSO (December 22, 2014), <https://dis.puc.state.oh.us/TiffToPDF/A1001001A14L22B72650F23754.pdf>

¹⁹ Second Supplemental Direct Testimony of Dr. Joseph P. Kalt on behalf of the PJM Power Providers Group and the Electric Power Supply Association at 5, PUCO Case No. 14-1297-EL-SSO (December 30, 2015), <https://dis.puc.state.oh.us/TiffToPDF/A1001001A15L30B65912G02996.pdf>

²⁰ Supplemental Direct Testimony of James F. Wilson on Behalf of OCC at 8-11, PUCO Case No. 14-1297-EL-SSO (May 11, 2015), <https://dis.puc.state.oh.us/TiffToPDF/A1001001A15E11B43721G33255.pdf>

here.²¹ Insofar as the costs associated with the Affiliate PPA are concerned, *all* Ohio retail customers served by FirstEnergy are captive.

Given that over three-billion dollars are at stake, it is of paramount importance that the Affiliate PPA's terms and conditions be subject to Commission review and evaluated in accordance with the *Edgar/Allegheny* standards. In *Edgar*, the Commission explained that "in cases where affiliates are entering agreements for which approval of market-based rates is sought, it is essential that ratepayers be protected and that transactions be above suspicion in order to ensure that the market is not distorted."²² To protect against abusive affiliate transactions, *Edgar* requires assurances that (1) a competitive solicitation process was designed and implemented without unduly favoring the affiliate; (2) the analysis of the bids did not favor the affiliate, particularly with respect to nonprice factors; and (3) the affiliate was chosen because of some reasonable combination of price and nonprice factors.²³

Building on *Edgar's* guidance, *Allegheny* clarified the standards the Commission would consider when evaluating a competitive solicitation process:

1. Transparency – the competitive solicitation process should be open and fair;
2. Definition – the product or products sought through the competitive solicitation should be precisely defined;
3. Evaluation – evaluation criteria should be standardized and applied equally to all bids and bidders; and

²¹ *Duquesne Light Holdings, Inc.*, 117 FERC ¶ 61,326 at page 38 (2006).

²² 55 FERC ¶ 61,382 at 62,167.

²³ *Id.*

4. Oversight – an independent third party should design the solicitation, administer bidding, and evaluate bids prior to the company’s selection.²⁴

Taken together, the “*Edgar* criteria and *Allegheny* guidelines are designed to ensure that the transactions between affiliates do not unduly favor affiliates, and thereby protect captive customers from affiliate abuse.”²⁵

At its core, the Affiliate PPA is not a competitive solution. Thus it would almost certainly fail the *Edgar/Allegheny* standards for the simple reason that FirstEnergy did not employ a competitive solicitation process. Rather than putting out a request for proposal for the purpose of procuring power at the least cost for the benefit of its Ohio retail customers, FirstEnergy struck a deal with its affiliate, FES, for the purpose of delivering value to the parent company’s shareholders. The economic incentive for the wholesale buyer (FirstEnergy) to favor its affiliate wholesale seller (FES), in this situation is at its apex and plainly necessitates Commission scrutiny. Indeed, as *Edgar* explained:

In an arm’s-length (unaffiliated) transaction, the buyer has no economic incentive to favor anyone but the least-cost supplier (considering price and nonprice factors). * * * By contrast, where a traditional utility is buying from an affiliate not subject to cost-of-service regulation, the buyer has an incentive to favor its affiliate even if the affiliate is not the least-cost supplier, because the higher profits can accrue to the seller’s shareholders.²⁶

A rescission of the waiver and a directive that the Affiliate PPA will be reviewed under the *Edgar/Allegheny* standards will protect against injury to the wholesale markets and to Ohio’s captive retail customers.

²⁴ 108 FERC ¶ 61,082 at 61,417.

²⁵ *Southern Power Company*, 153 FERC ¶ 61,068 at page 5 (2015).

²⁶ 55 FERC ¶ 61,382 at 62,168.

III. Conclusion.

For the foregoing reasons, OMAEG requests that the Commission grant this motion to intervene and permit OMAEG to be made a full party to this proceeding with all of the rights granted thereto.

In support of the complaint, OMAEG urges the Commission to rescind the waiver on affiliate power sales restrictions granted to Respondents, establish the effective date of the rescission as January 27, 2016, state that the Commission will not entertain any request for waiver of the prior notice filing requirements in any proceeding in which FirstEnergy and FES file the Affiliate PPA for Commission review, and determine that the Affiliate PPA will be reviewed in accordance with the *Edgar/Allegheny* standards to protect Ohio's captive retail customers from affiliate abuse.

Respectfully submitted,



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Ryan P. O'Rourke
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Columbus, Ohio 43215
Telephone: 614.365.4100
Fax: 614.365.9145
Bojko@carpenterlipps.com
O'Rourke@carpenterlipps.com

Counsel for OMAEG

Columbus, Ohio

February 23, 2016

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.2010, I hereby certify that I have this day served the foregoing document by electronic means upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Columbus, Ohio this 23rd day of February, 2016.



Ryan P. O'Rourke
Carpenter Lipps & Leland LLP

FILE



Government Relations

701 Pennsylvania Avenue, NW • Suite 750 • Washington, DC 20004

LUKE M. HARMS
Senior Manager, Government Relations

January 25, 2016

Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

RE: Cases 14-1693-EL-RDR; 14-1297-EL-SSO

Dear PUCO:

Find attached correspondence by Mr. Jeffrey Noel on behalf of Whirlpool Corporation regarding the referenced cases pending review by the Public Utilities Commission of Ohio. I trust you will contact us if you have questions or need further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Luke Harms", written over a horizontal line.

Luke M. Harms
Senior Manager, Government Relations

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PUCO

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ADMINISTRATIVE CENTER ■ BENTON HARBOR, MICHIGAN 49022

JEFFREY NOEL
CORPORATE VICE PRESIDENT
COMMUNICATIONS AND PUBLIC AFFAIRS

January 25, 2016

Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

Dear Commission:

Whirlpool Corporation strongly urges you to oppose the negotiated settlements of FirstEnergy and AEP that will allow for the implementation of Power Purchase Agreement (PPA) riders and other cost-driving provisions.

Whirlpool is the number one appliance manufacturer in the world, with more than 70,000 employees. In Ohio, Whirlpool operates five manufacturing facilities with more than 10,000 employees. Our facilities are located in Marion, Findlay, Clyde, Ottawa and Greenville.

Approval of the FirstEnergy and AEP settlements will allow both utilities to collect costs, via non-bypassable riders from all customers, to subsidize uneconomical generation plants. These actions would guarantee the profits and cost recovery of FirstEnergy and AEP, and transfer all cost risk to customers for a period of eight years.

According to the Ohio's Consumers' Counsel, these two settlements could cost consumers \$5.9 billion over the eight year duration. These settlements would constrain competition with no commensurate benefits to consumers.

Competitive electricity markets in Ohio are working for the benefit of all Ohio electricity customers; these deals would be a major setback. Whirlpool Corporation strongly urges the commission to protect competition and ensure electricity customers are not forced to subsidize uncompetitive generation plants.

Please contact me if you have any questions or if I may provide additional information.

Sincerely,


Jeffrey Noel
JUN/bll

FILE



February 1, 2016

The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

Subject: Case 14-1297-EL-SSO (FirstEnergy)

To the Public Utilities Commission of Ohio (PUCO):

Attached is a letter on behalf of the BASF Corporation facility located in Elyria regarding the referenced case pending review by the PUCO. Please contact me if you have questions.

Sincerely,

Michele Barney
Site Director

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February 1, 2016

The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

Dear PUCO Commissioners:

The BASF Corporation facility in Elyria, Ohio understands that the commission is considering a draft settlement with FirstEnergy that, according to the Ohio Consumers Counsel, could cost consumers as much as \$3.9 billion. We respectfully ask that the draft settlement not be approved.

BASF Corporation is the largest affiliate of BASF SE and the second largest producer and marketer of chemicals and related products in North America. At BASF, we create chemistry - and have been doing so for 150 years. As the world's leading chemical company, we combine economic success with environmental protection and social responsibility. Through science and innovation we enable our customers in nearly every industry to meet the current and future needs of society. Our Elyria facility contributes to this mission through the production of metal based catalysts and of cathode materials that are used in the lithium-ion batteries that power full electric and plug-in hybrid vehicles. BASF has 10 facilities in Ohio, including the site in Elyria.

The BASF site in Elyria is among the FirstEnergy customers that would be impacted if the draft settlement is adopted. We do not accept the premise for these proposed rate increases via an eight year power purchase agreement, *i.e.* to subsidize aging and under-utilized generating plants. This runs counter to Ohio's status as deregulated energy market that allows customers to choose their energy suppliers and thereby promote competitive rates. Competitive rates in turn have helped to generate business investment in Ohio, especially for the business of chemistry, which is energy-intensive. Chemistry is the second largest manufacturing industry in Ohio.

Thank you for your consideration. We once again ask that the draft settlement not be approved and instead the commission continue to focus efforts on promoting competitive energy rates in Ohio.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Michele Barney', is written over a horizontal line.

Michele Barney
Site Director

BASF Corporation
120 Pine Street
Elyria, Ohio 44035-3228 USA

Telephone: 440-522-5741
Fax: 440-522-2420

FILE

2

BELDEN
THE BELDEN BRICK COMPANY

700 W. Tuscarawas Street
P.O. Box 20910
Canton, Ohio 44701-0910
Phone 330 456-0031
Fax 330 456-2694

The Standard of Comparison Since 1885

January 27, 2016

Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

RE: Opposition Comment to PPA Cases 14-1693-EL-RDR; 14-1297-EL-SSO

Dear PUCO:

I am writing to urge you to act to reject the negotiated settlements of FirstEnergy and AEP (and a small group of others who have negotiated certain benefits) that will enable the utilities to implement costly Power Purchase Agreement (PPA) riders and other cost-driving provisions.

Should the PUCO approve the deals, both utilities will be able to collect costs (via non-bypassable PPA riders) from all of their customers to subsidize their uneconomical generation assets, thus protecting the utilities from cost risk and guaranteeing their profits and cost recovery. And put it all on the backs of their customers for an eight-year term.

Ohio's Consumers' Counsel has estimated that the FirstEnergy settlement could cost consumers \$3.9 billion over the eight-year duration of the PPA, and the AEP settlement could cost consumers \$2 billion.

Our company consumes approximately 21 million kWh/year. We estimate the additional costs of this new rider to be \$940,000 over the eight year term of the case. The construction industry is still feeling the effects of the real estate collapse of several years ago. Our company is still struggling to turn a profit, so this type of regulation will surely be felt by our employees and shareholders. Belden Brick did not have the government to turn to during this recent downturn. We do not agree that FirstEnergy and AEP should have this option either once they decided to deregulate their industry.

If approved by the full PUCO, these deals will put an unnecessary and anti-competitive layer of costs on consumers with no commensurate benefits, constrain competition, and dampen technological innovation in Ohio. In addition, both settlements contain other provisions that will increase costs to consumers.

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RECEIVED-CONNECTIONS

The markets for electricity in Ohio are working to the benefit of consumers. These deals are a massive setback to the consumer-friendly efficiency of those markets.

Please protect Ohio manufacturers and all consumers in FirstEnergy and AEP territories, the lion's share of the state in terms of utilities, from this substantial bailout/giveaway.

Sincerely,

A handwritten signature in black ink, appearing to read 'Belden', followed by a horizontal line.

Bradley H. Belden
Director -- Support Services

cc: Governor John Kasich
State Senator Oelslager
State Representative Landis

FILE

2

Neloms, Tim

From: Hauge, Eric <Eric.Hauge@arcelormittal.com>
Sent: Thursday, February 04, 2016 1:37 PM
To: Puc0 Docketing
Subject: ArcelorMittal comments re: PPA Cases 14-1693-EL-RDR; 14-1297-EL-SSO
Attachments: ArcelorMittal Cleveland - Ohio PPA Letter from Eric Hauge FINAL.pdf

Dear Public Utilities Commission of Ohio:

I am writing to urge you to act to reject the negotiated settlements of FirstEnergy and AEP (and a small group of others who have negotiated certain benefits) to enable the utilities to implement unwarranted and costly Power Purchase Agreement (PPA) riders and other cost-driving provisions.

Should the Public Utilities Commission of Ohio (PUCO) approve the deals, both utilities can use riders to collect costs from all of their customers to subsidize their generation assets they have determined are otherwise uneconomical. In an unprecedented request in an unregulated market, they propose to protect the utility shareholders from cost risk and to guarantee profits and cost recovery for eight years at the expense of their customers and to the detriment of the Ohio economy.

The State of Ohio has chosen to deregulate its electricity markets, a process that has worked well for both the consumer and the utilities. During the ups in the market, the Ohio utilities made exceptional profits. Now that there is a downturn in the markets, these same utilities are looking to take advantage of the system by not having their shareholders bear any of the financial risk associated with their prior business decisions.

Ohio's Consumers' Counsel estimated the FirstEnergy proposal could cost consumers \$3.9 billion over eight years, while the AEP proposal could cost consumers \$2 billion. ArcelorMittal would face cost increases of more than \$20 million in that eight year span, with no concomitant benefits.

The timing could not be worse. As a company, we've been transparent about the challenges facing our USA business and our industry. Global steel overcapacity has resulted in a flood of record-level imports that have eroded the increase in demand we would normally experience from an improving U.S. economy. The influx of imports has drastically reduced domestic steel pricing, with hot-rolled coil spot pricing down by more than 40 percent since Q1 2014. In the United States alone, the steel industry has announced a temporary or permanent loss of more than 12,000 jobs in 2015.

We have been forced to implement a number of cost savings initiatives including a reduction in purchasing, supplier and operating costs and a revised health care plan for our salaried employees. We are also working hard to improve our business performance through strategies that include asset optimization planning, stronger trade enforcement to battle the flood of unfairly traded imports, and labor negotiations with the United Steelworkers.

The loss of tens of millions of dollars over the next several years could have a significant impact on the 3,000 jobs we provide in Ohio, take away from innovation and reduce scarce capital investments, hurting the long-term viability of our Ohio facilities and our USA business.

If PUCO approves these proposals, it will not only increase costs to customers, but open the door to other proposals that undermine the very basis of deregulation. Such a decision may result in the following: discourage good management practices; constrain competition; and dampen technological innovation in Ohio.

The markets for electricity in Ohio are currently working to the benefit of consumers. The proposals on the table will harm the consumer-friendly efficiency of Ohio's markets and important energy-intensive manufacturers like ArcelorMittal.

Sincerely,

Eric Hauge
 Vice President & General Manager
 ArcelorMittal Cleveland

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 PUCO

Mailed copies to the following: Honorable John Kasich, Ohio Governor
Wayne Struble, Chief of Staff to the Governor
Jai Chabria, Senior Advisor to the Governor
Honorable Tom Patton, Ohio Senate
Honorable Michael J. Skindell, Ohio Senate
Honorable Sandra R. Williams, Ohio Senate
Honorable Kenny Yuko, Ohio Senate
Honorable John Barnes, Jr., Ohio House of Representatives
Honorable Janine R. Boyd, Ohio House of Representatives
Honorable Nicholas J. Celebrezze, Ohio House of Representatives
Honorable Mike Doviola, Ohio House of Representatives
Honorable Stephanie D. Howse, Ohio House of Representatives
Honorable Bill Patmon, Ohio House of Representatives
Honorable Martin J. Sweeney, Ohio House of Representatives

Eric D. Hauge | Vice President & General Manager

ArcelorMittal Cleveland/Warren

3060 Eggers Avenue, Cleveland, Ohio 44105-1012

T +1 216 429 6002 | F +1 216 429 6019 | www.arcelormittal.com



Campbell Soup Supply Company
12773 State Route 110
Napoleon, OH 43545

February 18, 2016

Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

RE: Opposition Comment to PPA Cases 14-1693-EL-RDR; 14-1297-EL-SSO

Dear PUCO:

I am writing to urge you to act to reject the negotiated settlements of FirstEnergy and AEP (and a small group of others who have negotiated certain benefits) that will enable the utilities to implement costly Power Purchase Agreement (PPA) riders and other cost-driving provisions.

Should the PUCO approve the deals, both utilities will be able to collect costs (via nonbypassable PPA riders) from all of their customers to subsidize their uneconomical generation assets, thus protecting the utilities from cost risk and guaranteeing their profits and cost recovery, and put it all on the backs of their customers for an eight-year term. Ohio's Consumers' Counsel has estimated that the FirstEnergy settlement could cost consumers \$3.9 billion over the eight-year duration of the PPA, and the AEP settlement could cost consumers \$2 billion.

Our company consumes approximately 100,000,000 kWh/year. We estimate the additional costs of this new rider to be \$5,000,000 over the eight year term of the case. That is real money that could be used on more productive purposes such as capital investment, infrastructure improvements, and training investments that would help secure and grow jobs at our manufacturing plants that today employ more than 2000 Ohioans in Napoleon and Willard.

If approved by the full PUCO, these deals will put an unnecessary and anti-competitive layer of costs on consumers with no commensurate benefits, constrain competition, and dampen technological innovation in Ohio. In addition, both settlements contain other provisions that will increase costs to consumers.

The markets for electricity in Ohio are working to the benefit of consumers. These deals are a massive setback to the consumer-friendly efficiency of those markets.

As a resident of this state, and a manufacturing leader dedicated to insuring our Ohio operations remain competitive, I ask that you please protect Ohio manufacturers and all consumers in FirstEnergy and AEP territories from this substantial bailout/giveaway.

Mark Cacciatore
Vice President, Manufacturing – Campbell Americas Simple Meals & Beverages

cc: Governor John Kasich
State Senator Clifford Hite
State Representative Robert McColley

3M Home Care Division

1301 Lowell Street
Elyria, OH 44035

February 12, 2016

Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215



RE: Opposition Comment to PPA Cases 14-1693-EL-RDR; 14-1297-EL-SSO

Dear PUCO:

I am writing in regards to the Purchase Power Agreement Cases with First Energy and the PUCO. First Energy, AEP and a small group of others have negotiated certain benefits that will enable the utilities to implement costly Power Purchase Agreement (PPA) riders and other cost-driving provisions.

Should the PUCO approve the deals, both utilities will be able to collect costs (via non-passable PPA riders) from all of their customers to subsidize their uneconomical generation assets, thus protecting the utilities from cost risk and guaranteeing their profits and cost recovery. All of this is at the cost of their customers for an eight-year term.

Ohio's Consumers' Counsel has estimated that the FirstEnergy settlement could cost consumers \$3.9 billion over the eight-year duration of the PPA, and the AEP settlement could cost consumers \$2 billion.

Based on our current energy usage the impact from this change will increase the 3M Elyria Electric bill by 11% per month. This is money that could be used in a more productive fashion at the 3M Elyria site. Over the past couple of years 3M Elyria has been proactive regarding our energy usage. We have made capital investments with the specific goal of reducing our energy consumption. The result from the invested capital has reduced our electrical usage by 750,000 kW per year. Should the PUCO approve the deals, these investment dollars for energy reduction may be side tracked toward paying the higher energy rates.

If approved by the full PUCO, these deals will put an unnecessary and anti-competitive layer of costs on consumers with no commensurate benefits, constrain competition, and dampen technological innovation in Ohio. In addition, both settlements contain other provisions that will increase costs to consumers.

The markets for electricity in Ohio are working to the benefit of consumers. These deals are a massive setback to the consumer-friendly efficiency of those markets. Please protect Ohio manufacturers and all consumers in FirstEnergy and AEP territories, the lion's share of the state in terms of utilities, from this substantial bailout/giveaway.

Regards,
John Akey

3M Elyria Plant Manager

cc: Senator Gayle Manning
Representative Nathan Manning



SHERWIN-WILLIAMS.

Robert J. Wells
Senior Vice President
Corporate Communications
and Public Affairs
Phone: 216-566-2244
Fax: 216-566-2947
E-mail: rjwells@sherwin.com

February 22, 2016

Public Utilities Commission of Ohio
180 East Broad St.
Columbus, OH 43215

**RE: Opposition Comment to PPA Cases 14-1693-EL-RDR;
14-1297-EL-SSO**

Dear PUCO:

I am writing to urge you to act to reject the negotiated settlements of FirstEnergy and AEP (and a small group of others who have negotiated certain benefits) that will enable the utilities to implement costly Power Purchase Agreement (PPA) riders and other cost-driving provisions.

Should the PUCO approve the deals, both utilities will be able to collect costs (via non-bypassable PPA riders) from all of their customers to subsidize their uneconomical generation assets, thus protecting the utilities from cost risk and guaranteeing their profits and cost recovery. And put it all on the backs of their customers for an eight-year term.

Ohio's Consumers' Counsel has estimated that the FirstEnergy settlement could cost consumers \$3.9 billion over the eight-year duration of the PPA, and the AEP settlement could cost consumers \$2 billion.

Our company consumes approximately 16,381,149 kWh/year with AEP and 50,223,474 kWh/year with FirstEnergy. We estimate the additional costs of this new rider to be \$734,301 with AEP and \$2,504,645 with FirstEnergy over the eight year term of the case. That is real money that could be used on more productive purposes. For example, it would fund the opening of 10 new Sherwin-Williams paint stores in Ohio, which translates to about 80 new jobs.

If approved by the full PUCO, these deals will put an unnecessary and anti-competitive layer of costs on consumers with no commensurate benefits, constrain competition, and dampen technological innovation in Ohio. In addition, both settlements contain other provisions that will increase costs to consumers.



SHERWIN-WILLIAMS.

Public Utilities Commission of Ohio
February 22, 2016
Page 2

The markets for electricity in Ohio are working to the benefit of consumers. These deals are a massive setback to the consumer-friendly efficiency of those markets.

Please protect Ohio manufacturers and all consumers in FirstEnergy and AEP territories, the lion's share of the state in terms of utilities, from this substantial bailout/giveaway.

Sincerely,

Robert J. Wells

RJW/kj

cc: Governor John Kasich
Representative Marcia Fudge
Senator Sherrod Brown

FILE

MARK R. GRINDLEY

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CHIEF OPERATING OFFICER
PLASKOLITE, LLC

2016 JAN 19 PM 2:48

PUCO

January 13, 2016

Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

RE: Cases 14-1693-EL-RDR (AEP); 14-1297-EL-SSO (FirstEnergy)

Dear PUCO:

We are writing this letter to you to express our serious and grave concerns about the imminent PUCO settlement on the Power Purchase Agreements (PPA) with First Energy and AEP. This PUCO settlement will require Plaskolite, along with all the other residential, commercial and industrial ratepayers in Ohio, to subsidize the unprofitable power plants of these two utilities, and it is uncompetitive, costly, and unjust by fair business practices.

If approved, this action will hinder competition in the Ohio electric market, including the entry of well-managed, competitive power plants into Ohio, regardless of whether they are fueled by coal, natural gas, nuclear or renewables. As a result, Ohio will, over time, be left with uncompetitive, old, inefficient power plants that will likely not be able to meet the tightening EPA emission standards (e.g., Clean Power Plan). Rather than improving the reliability of the electric grid, once these uncompetitive power plants are "shut down" by the EPA regulations, the reliability and stability of the electric grid would be adversely affected. This PPA settlement, if approved, will also set a legal precedent and open-the door for these utilities, along with the other investor-owned utilities, to pass on all their uncompetitive operations to the Ohio ratepayers through an "affiliated PPA".

Plaskolite has manufacturing plants in Columbus and Zanesville with a combined total of 400 employees. We are poised to aggressively grow our Ohio operations this year and in the coming years. Electricity is our largest utility cost, so the PUCO PPA settlement will negatively affect our competitiveness in the market place. Our Ohio plants are within the AEP service area, and we estimate that this PPA settlement will cost us almost

POST OFFICE BOX 1497
COLUMBUS, OHIO 43216
614 / 294-3381
FAX 614 / 297-7518
Email: Mark.Grindley@plaskolite.com

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\$300,000 per year for our Ohio operations, or an estimated \$2,400,000 over the 8-year ESP. It is hard for us to fathom having to pay this extra, significant cost to continue getting electricity dispatched to our Ohio operations, and to know that this amount will be subsidizing one or more unprofitable AEP power plants, even though our electricity does not come from any of these AEP power plants.

We are very disappointed in PUCO's support of this PPA settlement for it demonstrates that our state government is "utility-friendly" to the exclusion of the residents and businesses of Ohio. We strongly urge you to reconsider and to disapprove this settlement decision to allow the First Energy and AEP PPAs, which will roll the Ohio electric markets, make the regional electric grid less stable, and increase the cost of electricity in Ohio.

Sincerely,

A handwritten signature in black ink, reading "Mark R. Sindler". The signature is written in a cursive, flowing style.

MRG/jmc



February 15, 2016

Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

RE: Opposition Comment to PPA Cases 14-1693-EL-RDR; 14-1297-EL-SSO

Dear PUCO:

I am writing to urge you to reject the negotiated settlements of FirstEnergy and AEP (and a small group of others who have negotiated certain benefits) that will enable the utilities to implement costly Power Purchase Agreement (PPA) riders and other cost-driving provisions.

Should the PUCO approve the deals, both utilities will be able to collect costs (via non-by passable PPA riders) from all of their customers to subsidize their uneconomical generation assets, thus protecting the utilities from cost risk and guaranteeing their profits and cost recovery and put it all on the backs of their customers for an eight-year term. Ohio's Consumers' Counsel has estimated that the FirstEnergy settlement could cost consumers \$3.9 billion over the eight-year duration of the PPA, and the AEP settlement could cost consumers \$2 billion.

For Graphic Packaging International, we estimate the additional costs of this new rider to be \$5 million over the eight year term of the case. That is real money that could be used on more productive purposes and reinvested in the state of Ohio.

Graphic Packaging International ("GPI") is North America's largest manufacturer of folding cartons and a leading manufacturer of packaging for consumer products. GPI has 7 paperboard mills, 44 converting plants, 3 machinery facilities and 12,000 employees worldwide. GPI employs over 600 team members in our three facilities across the state of Ohio.

If approved by the full PUCO, these deals will put an unnecessary and anti-competitive layer of costs on consumers with no commensurate benefits, constrain competition, and dampen technological innovation in Ohio. In addition, both settlements contain other provisions that will increase costs to consumers.

Ohio has seen resurgence in manufacturing in part to positive electricity markets. These deals impose a massive setback to the growing economy and to Graphic Packaging International's success in Ohio.

Please protect Ohio manufacturers and all consumers in FirstEnergy and AEP territories, the lion's share of the state in terms of utilities, from this substantial bailout/giveaway.

A handwritten signature in dark ink, appearing to read "Spencer H. Maurer".

Spencer H. Maurer
VP Supply Chain

cc: Governor John Kasich

Senator Coley
Senator Burke
Senator Patton

Representative Pelanda
Representative Derickson
Representative Anielski

3

FILE



COOPER TIRE & RUBBER COMPANY
701 Lima Avenue • Findlay, OH 45840

THOMAS N. LAUSE
VICE PRESIDENT & TREASURER

(419) 427-4741

January 13, 2016

The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

Subject: Cases 14-1693-EL-RDR (AEP); 14-1297-EL-SSO (First Energy)

To The Public Utilities Commission of Ohio,

Attached is the letter pertaining to Cases 14-1693-EL-RDR (AEP); 14-1297-EL-SSO (First Energy), sent by our CEO, Roy Armes, to key parties and we felt it was appropriate to share this letter with The Public Utilities Commission of Ohio.

Sincerely,

Cooper Tire & Rubber Company

Thomas N. Lause
Vice President & Treasurer

TNL/pmp

Attachment

cc: Anthony Smith
Frank Schrum
Ryan Augsburg

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2016 JAN 15 PM 1:36
PUCO

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Cooper Tire & Rubber Company
701 Lima Avenue • Findlay, OH 45840-2915

ROY V. ARMES
CHAIRMAN
CHIEF EXECUTIVE OFFICER
PH 10507

Telephone: (419) 422-1323
Facsimile: (419) 420-6050
Internet: www.coopertire.com

January 11, 2016

Office of the Governor
Honorable John Kasich
77 S. High Street – 30th Floor
Columbus, OH 43215

Dear Governor Kasich,

I am writing to urge you to act to prevent the Public Utilities Commission of Ohio from approving the recently negotiated settlements of FirstEnergy and AEP. These settlements will enable the utilities to implement costly Power Purchase Agreement riders (PPAs) and other cost-driving provisions that will make it more difficult for Cooper Tire and other Ohio manufacturers to remain competitive in the global markets. Should the PUCO approve the deals, both FirstEnergy and AEP will be able to collect fees over 8 years from all of their customers to subsidize their uneconomical generation assets, thus protecting these utility companies from cost and risk, and also guaranteeing their profits by requiring customers to reward the utilities with significant profit margins on these otherwise uneconomic assets. Ohio's Consumers' Counsel has estimated that the FirstEnergy settlement could cost manufacturers and consumers \$3.9 billion over the eight-year duration of the PPAs, and the AEP settlement could cost manufacturers and consumers \$2 billion. We have estimated the specific impact on Cooper Tire's Ohio operations and it is significant and impactful.

These proposed PPAs serve only to benefit First Energy and AEP while severely compromising the competitiveness of all Ohio manufacturers and other businesses who must use these providers for their electricity needs. The PPAs would allow First Energy & AEP to run unproductive and non-competitive operations and then simply pass these costs onto their customers. Even worse, these PPAs would actually allow First Energy & AEP to become less productive and they would simply be able to pass these costs (plus a guaranteed profit margin) on to their customers. Thus while the entire utility deregulation efforts of 16 years ago were meant to enhance productivity within the utility industry, these proposed agreements would actually move the entire state back to an era of uncompetitiveness.

In an industry like the global tire industry, where margins are extremely tight and business is won or lost based on cost competitiveness, forcing our Findlay, Ohio tire

plant, our Findlay, Ohio mold manufacturing plant, our Findlay, Ohio technical centers and our Findlay, Ohio corporate headquarters to bear these higher cost burdens adds risk to our business in Ohio and impedes our ability to sustain or grow our operations here. Every day, Cooper Tire competes for business with other American manufacturers and with foreign manufacturers from lower cost parts of the world. Every day, Cooper Tire strives to sustain and improve its cost competitiveness through innovation, improved productivity and in some unfortunate cases, staff reductions....all to stay competitive in the global market. And every day, Cooper determines where to allocate its production and resources among its global network of facilities, with cost being a significant factor. To give First Energy & AEP a blank check with these proposed PPAs is fundamentally wrong and a severely incorrect direction for our great state. Approval of these agreements will put Cooper Tire's Ohio facilities at a competitive disadvantage compared to other states, as electricity costs are a significant part of our expenses.

The PUCO is expected to act in early 2016. We respectfully request that you express your opposition of these PPAs to the PUCO. Cooper Tire would be glad to discuss this issue in more detail so as to provide you with greater context and details if you should so desire. Please feel free to contact me (419-424-4363; rvarmes@coopertire.com) or our General Counsel Steve Zamansky (419-420-6059; szamansky@coopertire.com) if you have any questions or would like to discuss this matter further.

Respectfully yours,



Roy V. Armes
Chairman, Chief Executive Officer & President
Cooper Tire & Rubber Company

RVA/smd

cc: Wayne Struble
Senator Cliff Hite
Representative Robert Sprague

FILE



David W. Johnson
President and CEO

January 19, 2016

PUCO

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2016 FEB -5 AM 11:34

Public Utilities Commission of Ohio
180 E Broad Street
Columbus, Ohio 43215

RE: Cases 14-1693-EL-RDR (AEP); 14-1297-EL-SSO (FirstEnergy)

Dear PUCO:

I want to go on record as strongly opposing the recent negotiated settlements that I gather the staff of the PUCO have concluded with First Energy and American Electric Power, at the expense of Ohio's consumers and small to mid-sized companies.

It is my understanding that the First Energy settlement will cost consumers in Ohio an estimated \$3.9 Billion over the eight year period of the agreement while the AEP settlement will cost its consumer customers as much as \$2 Billion for that same period of time. Meanwhile, these two utility monopolies will be guaranteed a 10.38% return on equity. What a deal...for the utilities!

These two utility monopolies have already received billions of dollars in so called "stranded cost recovery" from their customers as part of Ohio's transition to a competitive retail electricity market. This new settlement merely shifts more costs and more risk from utility shareholders to utility customers, which is patently inconsistent with the intent of Ohio's electric restructuring law.

As it is, the KWH generation costs that we are absorbing today at Summitville Tiles, Inc. are already some 50% higher than they were just six years ago. The distribution component of our electricity costs have increased by a staggering 100% during the same period of time. Additionally, we have been socked with three new monthly charges since 2008: the retail stability rider, the deferred asset phase-in rider, and the phase-in recovery rider - utility charges which did not even exist six years ago. Added to this will be these new charges, costing Summitville Tiles tens of thousands of dollars, with no compensating benefits...all the while the big utilities are raking in excessive, state-guaranteed profits.

Nobody that I know in business is happy about these "sweet heart" settlements with Ohio's utility monopolies. It is bad for Ohio's business climate, it will make Ohio uncompetitive even with neighboring states, and put a dagger in the heart of everything John Kasich has done to make Ohio strong again. I urge that the PUCO kill the Power Purchase Agreement Riders.

Sincerely yours,


David W. Johnson
CEO - Summitville Tiles, Inc.

CC: Governor Kasich
Speaker Rosenberger
Senate President Faber

Summitville Tiles Inc. • Summitville, Ohio 43082
(330) 223-1611 • Fax: (330) 223-1414 • E-mail: dwjohnson@summitville.com

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FILE



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2016 FEB -1 PM 2:59
PUCO

January 29, 2016 *Quality Solid Unfinished & Prefinished Hardwood Flooring*

Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

RE: Opposition Comment to PPA Cases 14-1693-EL-RDR; 14-1297-EL-SSO

Dear PUCO:

I am writing to urge you to reject the negotiated settlements of FirstEnergy and AEP (and a small group of others who have negotiated certain benefits) that will enable the utilities to implement costly Power Purchase Agreement (PPA) riders and other cost-driving provisions.

Should the PUCO approve the deals, both utilities will be able to collect costs (via non-bypassable PPA riders) from all of their customers to subsidize their uneconomical generation assets, thus protecting the utilities from cost risk and guaranteeing their profits and cost recovery... At the expense of placing it all on the backs of their customers for an eight-year term.

Ohio's Consumers' Counsel has estimated that the FirstEnergy settlement could cost consumers \$3.9 billion over the eight-year duration of the PPA, and the AEP settlement could cost consumers \$2 billion.

Our company consumes approximately 2,122,000 kWh/year. We estimate the additional costs of this new rider to be \$105,834 over the eight year term of the case. That is real money that could be used on more productive purposes updating our equipment, increasing our inventories and building a new finishing plant for our hardwood flooring products --- ALL OF WHICH BRING MORE TAXABLE INCOME TO THE STATE OF OHIO AND INCREASE OUR CONSUMPTION OF ELECTRICITY.

If approved by the full PUCO, these deals will put an unnecessary and anti-competitive layer of costs on consumers with no commensurate benefits, constrain competition, and dampen technological innovation in Ohio. In addition, both settlements contain other provisions that will increase costs to consumers.

These deals are a massive setback to the consumer-friendly efficiency of the market.

Please protect Ohio manufacturers and all consumers in FirstEnergy and AEP territories, the lion's share of the state in terms of utilities, from this substantial bailout.

Respectfully,

Barbara Titus,
Vice President

15320 Burton-Windsor Road, Middlefield, Ohio 44062
Mailing address: P.O. Box 510, Burton, Ohio 44021
(800) 834-1180 / (440) 834-1710 / Fax (440) 834-9310
www.sheogaflooring.com email: info@sheogaflooring.com

FILE

AMERICA'S LARGEST DISTRIBUTOR AND MANUFACTURER OF PRECISION GRINDING WHEEL ADAPTERS,
QUILLS, WHEELSCREWS AND SPINDLE ACCESSORIES

William Sopko & Sons Co., Inc.

26500 LAKELAND BLVD. • EUCLID, OHIO 44132 • TELEPHONE (216) 289-1400 • FAX: 289-1888

January 26, 2016

The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

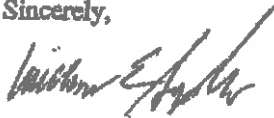
RECEIVED-DOCKETING DIV
2016 FEB -5 AM 11:34
PUCO

Subject: Cases 14-1693-EL-RDR (AEP); 14-1297-EL-SSO (First Energy)

To The Public Utilities Commission of Ohio,

Attached is an email pertaining to Cases 14-1693-EL-RDR (AEP); 14-1297-EL-SSO, sent by me to key parties and I felt it was appropriate to share this email with The Public Utilities Commission of Ohio.

Sincerely,



William E. Sopko,
President

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Bill Sopko Sr.

From: [REDACTED]
Sent: Tuesday, January 26, 2016 3:44 PM
To: Bill Sopko Sr.
Subject: Confirmation of: Utility Bailouts/Giveaways -- Consumer Cost Increases

Please do not reply to this email--this confirmation simply lets you know that your message was sent.

William Sopko, Sr.:

Thank you for *protecting and growing Ohio manufacturing.*

Your message has been sent to the following recipients:

- * Governor John Kasich
- * Senator Tom Patton
- * Senator Kenny Yuko
- * Representative Marlene Arielski
- * Representative Kent Smith

The content of your message is as follows:

[The message(s) you sent had each recipient's salutation here]:

I love the State of Ohio. I love our Cleveland Browns. I hate the fact FirstEnergy paid BIG money to name Cleveland Stadium and call it good will or "advertising" and then they want "special" treatment with a PPA.

I am writing to urge you to act to prevent the Public Utilities Commission of Ohio from approving the negotiated settlements of FirstEnergy and AEP (and a small group of others who have negotiated certain benefits) that will enable the utilities to implement costly Power Purchase Agreement (PPA) riders and other cost-driving provisions.

Should the PUCO approve the deals, both utilities will be able to collect costs (via non-bypassable PPA riders) from all of their customers to subsidize their uneconomical generation assets, thus protecting the utilities from cost risk and guaranteeing their profits and cost recovery. And put it all on the backs of their customers for an eight-year term.

Ohio's Consumers' Counsel has estimated that the FirstEnergy settlement could cost consumers \$3.9 billion over the eight-year duration of the PPA, and the AEP settlement could cost consumers \$2 billion.

The PUCO is expected to act in early 2016.

If approved by the full PUCO, these deals will put an unnecessary and anti-competitive layer of costs on consumers with no commensurate benefits, constrain competition, and dampen technological innovation in Ohio. In addition, both settlements contain other provisions that will increase costs to consumers.

William Sopko Sr.
1-26-16

The markets for electricity in Ohio are working to the benefit of consumers. These deals are a massive setback to the consumer-friendly efficiency of those markets.

Please protect Ohio manufacturers and all consumers in FirstEnergy and AEP territories, the lion's share of the state in terms of utilities, from this substantial bailout/giveaway.

All of you were elected by the PEOPLE, who like you pay our electric bills, Please don't let these few companies get a special break on our backs !!!!!

Sincerely,

William Sopko Sr.
[Your postal address was included here]

1/26/2016

Document Content(s)

FE FERC Complaint - OMAEG MTI and Comments.PDF.....	1-34
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**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

FirstEnergy Solutions Corp.	)	Docket No. ER16-1807-000
)	
The Cleveland Electric Illuminating Company	)	Docket No. ER10-1469-004
)	
Ohio Edison Company	)	Docket No. ER10-1467-004
)	
The Toledo Edison Company	)	Docket No. ER10-1468-004
)	
FirstEnergy Solutions Corp.	)	Docket No. ER10-1459-008
)	
FirstEnergy Generation, LLC	)	Docket No. ER13-785-003
)	
FirstEnergy Nuclear Generation, LLC	)	Docket No. ER13-713-003
)	
FirstEnergy Generation Mansfield Unit 1 Corp.	)	Docket No. ER10-1453-004
)	
)	
Electric Power Supply Association,)	
Retail Energy Supply Association,)	
Dynegy, Inc., Eastern Generation, LLC,)	
NRG Power Marketing LLC and GenOn)	
Energy Management, LLC,)	
)	
)	
v.)	
	)	Docket No. EL16-34-000
FirstEnergy Solutions Corporation, Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company, and The Toledo)	
Edison Company,)	
)	
	)	(Not consolidated)
)	

**MOTION TO INTERVENE AND COMMENTS IN SUPPORT
SUBMITTED ON BEHALF OF THE
OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

I. Introduction.

In accordance with the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure 212 and 214,¹ the Ohio Manufacturers' Association Energy Group (OMAEG) hereby submits this motion for intervention and comments in support of the Protest and Request for Issuance of Further Order on Complaint (Protest) filed by the Electric Power Supply Association, the Environmental Law & Policy Center, the Ohio Environmental Council, the PJM Power Providers Group, the Retail Energy Supply Association, Dynegy Inc., Eastern Generation, LLC, and the NRG Companies.² Specifically, the Protest objects to the filings made by affiliates of FirstEnergy Corporation (FirstEnergy) on May 27, 2016 in response to the Commission's April 27, 2016 Order in Docket No. EL16-34-000,³ and requests that the Commission take further action to enforce its orders and rules,⁴ including the affiliate restrictions established by this Commission.⁵ In accordance with that Protest and as further described herein, the Commission should take affirmative steps to protect competitive wholesale markets and ensure that customers are not saddled with soaring costs arising from a scheme that was

¹ 18 C.F.R. § 385.212 and 385.214.

² Protest, Docket Nos. ER16-1807-000 (June 17, 2016) (Protest).

³ Tariff Filing, Docket No. ER16-1807-000 (May 27, 2016); Notice of Change in Status, Docket Nos. ER10-1469-004, et al. (May 27, 2016); *Electric Power Supply Assn. v. FirstEnergy Solutions Corp.*, Order Granting Complaint, 155 FERC ¶ 61,101 at P 13, 52 (2016) (April 27, 2016 Order).

⁴ Protest at 1-3.

⁵ 18 C.F.R. § 35.39(b). See also *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, clarified, 121 FERC ¶ 61,260 (2007), order on reh'g, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, clarified, 124 FERC ¶ 61,055, order on reh'g, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), order on reh'g, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), order on reh'g, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), aff'd sub nom. *Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), cert. denied, 133 S. Ct. 26 (2012).

purposefully devised by FirstEnergy and/or its affiliates⁶ to evade this Commission's regulatory oversight.

II. Communications.

Correspondence and communications concerning this submission should be directed to:

Kimberly W. Bojko
Ryan P. O'Rourke
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
Telephone: 614.365.4100
Fax: 614.365.9145
Bojko@carpenterlipps.com
O'Rourke@carpenterlipps.com

III. Motion to Intervene.

OMAEG was previously granted intervention and made a party to the proceeding in Docket No. EL16-34-000.⁷ The Protest, however, extends to additional proceedings. Therefore, to the extent necessary, OMAEG files this motion to intervene and requests that it be made a party to the Protest proceeding, Docket No. ER16-1807-000, as well as all relevant proceedings referenced and incorporated in the Protest, Docket No. ER10-1469-004, Docket No. ER10-1467-004, Docket No. ER10-1468-004, Docket No. ER10-1459-008, Docket No. ER13-785-003, Docket No. ER13-713-003, and Docket No. ER10-1453-004.

⁶ FirstEnergy Corporation's affiliated, regulated franchised public utilities in Ohio include Cleveland Electric Illuminating Company, Ohio Edison Company, and Toledo Edison Company (collectively, FirstEnergy Ohio Regulated Utilities). FirstEnergy Solutions Corp. is FirstEnergy Corporation's market-regulated power sales affiliate in Ohio (FES).

⁷ April 27, 2016 Order at P 13, 52.

The OMAEG is a non-profit entity created by the Ohio Manufacturers' Association (OMA) for the purpose of educating and providing information to energy consumers, regulatory boards and suppliers of energy; advancing energy policies to promote an adequate, reliable, and efficient supply of energy at reasonable prices; and, advocating on behalf of manufacturers in critical cases at the state and federal levels. The OMAEG's members are all members of the OMA. OMA has over 1,400 member companies of all different sizes and with various energy use profiles, all of which are Ohio retail customers and many of which purchase electric services from FirstEnergy Ohio Regulated Utilities.

Like the OMA, OMAEG is comprised exclusively of manufacturers who work together to protect and grow Ohio manufacturing. OMAEG strives to improve business conditions in Ohio and drive down the cost of doing business for Ohio manufacturers. OMAEG is regularly and actively involved in proceedings before the Public Utilities Commission of Ohio (PUCO) and its unique knowledge and perspective will contribute to the full development and equitable resolution of the issues in these proceedings. OMAEG has a direct, real, and substantial interest in the issues raised in these proceedings and is so situated that the disposition of these proceedings may, as a practical matter, impair or impede its ability to protect that interest.

Under the Commission's Rules of Practice and Procedure, "[a]ny person seeking to intervene to become a party * * * must file a motion to intervene."⁸ The motion to intervene must state the movant's position and provide a basis for that position.⁹ Additionally, the movant must demonstrate that it has a right to participate as granted by

⁸ 18 C.F.R. § 385.214(a)(3).

⁹ 18 C.F.R. § 385.214(b)(1).

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“statute or by Commission rule, order, or other action” and show that it has “an interest which may be directly affected by the outcome of the proceeding * * * .”¹⁰ OMAEG satisfies these standards, and, therefore, its motion for intervention should be granted and it should be made a party to the dockets enumerated above.

Ohio’s manufacturing sector is one of the top consumers of electricity in the state of Ohio, and any impacts arising from future increases to electricity prices will have a significantly negative effect on their businesses. To this end, OMAEG stated its opposition to the Affiliate Power Purchase Agreement (PPA) proposal that was addressed in Docket No. EL16-34-000.¹¹ Although the Affiliate PPA appears to have been abandoned, it has been replaced with an equally harmful construct: a modified non-bypassable generation-related charge (Rider RRS) proposal that substitutes the Affiliate PPA with a virtual purchase power agreement (hereinafter, Virtual PPA) (described in more detail below). Increases in electricity prices associated with FirstEnergy Ohio Regulated Utilities’ implementation of the Virtual PPA will negatively affect Ohio manufacturers’ competitiveness. Unquestionably, OMAEG has a real and substantial interest in these proceedings. As such, OMAEG’s interest will be directly affected by the outcome of these proceedings and cannot be represented by any other party.

IV. Comments in Support.

A. Background.

In its April 27, 2016 Order, the Commission found that Ohio retail customers were captive to a non-bypassable generation-related charge (Rider RRS) approved by the

¹⁰ 18 C.F.R. § 385.214(b)(2)(i)-(ii).

¹¹ OMAEG Motion to Intervene and Comments in Support, Docket No. EL16-34-000 (February 23, 2016).

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PUCO¹² that was designed to recover the costs of an Affiliate PPA between FirstEnergy's Ohio Regulated Utilities and their affiliate, FES.¹³ Additionally, the Commission rescinded the waivers on affiliate sales restrictions previously granted to FirstEnergy's market-regulated power sales affiliates in Ohio, including FES, with respect to the Affiliate PPA and directed that the Affiliate PPA be submitted for review and approval under the *Edgar/Allegheny* standards before any sales could be transacted under it.¹⁴

To implement the terms of its Order, the Commission directed FES to modify its market-based rate tariff to specify "that the affiliate sales restrictions codified at 18 C.F.R. § 35.39(b) will apply to this specific Affiliate PPA."¹⁵ The Commission also directed the FirstEnergy Ohio Regulated Utilities, FES, and their affiliates to file a change in status to address the impact of its finding that FirstEnergy's Ohio Regulated Utilities have captive customers with respect to the Affiliate PPA.¹⁶ The change in status filing was intended to address other existing waivers of 18 C.F.R. § 35.39, "including other provisions of the Commission's regulations such as § 35.39(c) (separation of functions), § 35.39(d) (information sharing), § 35.39(e) (non-power goods or services), and § 35.39(f) (brokering of power) and the corresponding regulations in § 35.44(a) and § 35.44(b)."¹⁷

¹² *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, Opinion and Order at 85 (March 31, 2016), <https://dis.puc.state.oh.us/TiffToPDF/A1001001A16C31B41521H01842.pdf>.

¹³ April 27, 2016 Order at P 61.

¹⁴ Id. at P 53.

¹⁵ Id. at P 62.

¹⁶ Id. at P 66.

¹⁷ Id.

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In its May 27, 2016 market-based tariff filing, FES states that “there have been no transactions under the Affiliate PPA” and that it “will submit the Affiliate PPA for Commission review and approval before performing any transactions under [it].”¹⁸ In the May 27, 2016 change in status filing submitted by the FirstEnergy Ohio Regulated Utilities, FES, and certain other affiliates, the companies state, among other things, that the FirstEnergy Ohio Regulated Utilities and FES “have suspended the Affiliate PPA pending the outcome of certain regulatory and business decisions.”¹⁹

Glaringly absent from either the market-based tariff filing or the change in status filing is any acknowledgement of the Virtual PPA that the FirstEnergy Ohio Regulated Utilities proposed to the PUCO during the rehearing phase of their fourth electric security plan proceeding.²⁰ The PUCO originally authorized the FirstEnergy Ohio Regulated Utilities to calculate the Rider RRS charge based on the netting of the costs of the Affiliate PPA against actual generation revenues earned from the resale of the PPA units’ output into the PJM markets.²¹ In light of the Commission’s Order, however, the FirstEnergy Ohio Regulated Utilities abandoned the underlying framework for calculating the charges associated with Rider RRS.²² Now, instead of relying on actual generation costs and actual generation output to calculate the Rider RRS charges, the FirstEnergy Ohio Regulated Utilities propose to rely on projected generation costs and

¹⁸ Tariff Filing at 2, Docket No. ER16-1807-000 (May 27, 2016).

¹⁹ Notice of Change in Status at 3, Docket Nos. ER10-1469-004, et al. (May 27, 2016).

²⁰ FirstEnergy Ohio Regulated Utilities Application for Rehearing, Case No. 14-1297-EL-SSO (May 2, 2016), <https://dis.puc.state.oh.us/TiffToPDF/A1001001A16E02B64659C00268.pdf>. Rehearing Testimony of Eileen M. Mikkelsen on Behalf of FirstEnergy Ohio Regulated Utilities, Case No. 14-1297-EL-SSO (May 2, 2016), <https://dis.puc.state.oh.us/TiffToPDF/A1001001A16E02B65019F00270.pdf> (Mikkelsen Rehearing Testimony).

²¹ Mikkelsen Rehearing Testimony at 3-4.

²² Id. at 4.

projected volumes of sales into the PJM Interconnection, L.L.C. (PJM) wholesale markets to calculate the Rider RRS charge.²³ The modified Rider RRS proposal is intended to fall “solely within the [PUCO’s] jurisdiction” and purports to “rely on retail ratemaking mechanisms that do not utilize or refer to a PPA or any other contractual arrangement or other involvement of FES.”²⁴

By substituting the Virtual PPA for the Affiliate PPA to calculate the modified Rider RRS, FirstEnergy Ohio Regulated Utilities and their affiliates are trying to do indirectly what they cannot do directly. But in spite of FirstEnergy’s efforts to FERC-proof their new proposal, the fact remains that the so-called “hedge” promised by FirstEnergy Ohio Regulated Utilities is still premised on captive retail ratepayers paying non-bypassable generation-related charges incurred by market-regulated power sales affiliates less revenues received from projected capacity clearing the PJM capacity market at actual base residual auction pricing.²⁵ The Virtual PPA proposal also claims to preserve the benefits of the Affiliate PPA regarding support for generating facilities owned by its market-regulated affiliate. FirstEnergy Ohio Regulated Utilities state:

Effectively, Rider RRS helps to ensure the continued operation of 3,200 MWs of fuel diverse baseload generation. Accordingly, the significant economic development and job retention benefits and transmission reliability benefits contemplated under the original proposal for the region would continue to exist, albeit for potentially different plants. However, because the commitment involves previously rate-based units, the Commission is assured that the plants were built to serve Ohio customers and, therefore, will provide similar transmission advantages.

Continued operating of plants built to serve Ohio customers not only provides reliability benefits to customers, but also advantages customers

²³ Id. at 4-5.

²⁴ FirstEnergy Ohio Regulated Utilities Application for Rehearing at 14.

²⁵ Mikkelsen Rehearing Testimony at 5.

through the avoidance of transmission investment that would be needed if plants closed.

As the record demonstrates, and the [PUCO] has recognized, continued operation of fuel diverse baseload generating units provides significant positive economic and tax impact for employees, suppliers, and governmental entities in the region.²⁶

The FirstEnergy Ohio Regulated Utilities also state that if less than 3,200 MWs of formerly rate-based generation (most of which is now owned by their affiliates) remains in operation, the Commission may reduce Rider RRS.²⁷ The Commission should not permit FirstEnergy to evade its April 27, 2016 Order by concocting a scheme embodied in the newly-devised Virtual PPA with non-bypassable generation charges that, in substance, supports or bolsters market-regulated power sales affiliates and imposes the same types of harms on the PJM wholesale markets and customers that were embodied in the original Affiliate PPA, including “the ‘potential for the inappropriate transfer of benefits from [captive] customers to the shareholders of the franchised public utility’” that “could undermine the goal of the Commission’s affiliate restrictions.”²⁸

B. The Virtual PPA Should Be Reviewed by the Commission as it Creates an Effective Sale of Capacity from FirstEnergy market-regulated affiliates to FirstEnergy Ohio Regulated Utilities.

Irrespective of whether a contract exists for FES to sell the output of the PPA units to FirstEnergy Ohio Regulated Utilities for re-sale into the PJM markets, the fact remains that the FirstEnergy Ohio Regulated Utilities are guaranteeing the continued existence or availability of capacity in Ohio owned by their market-regulated affiliates in

²⁶ Id. at 15-16 (citations omitted).

²⁷ Id.

²⁸ April 27, 2016 Order at P 55 (citations omitted).

contravention of the April 27, 2016 Order.²⁹ The implementation of the Virtual PPA will bestow upon FirstEnergy Ohio Regulated Utilities and likely their parent company and/or FirstEnergy's Ohio market-regulated affiliates at least \$3.6 billion in revenue from Ohio customers.³⁰ As FirstEnergy Ohio Regulated Utilities admit, the features of the newly-devised Virtual PPA closely follow the contours of the originally-contemplated Affiliate PPA. FirstEnergy Ohio Regulated Utilities state that the Virtual PPA "uses the generation output (MWhs) and cleared capacity (MWs) that were included in the record and relied upon by the [PUCO] in reaching its decision" that was predicated on the Affiliate PPA.³¹ As devised, FirstEnergy Ohio Regulated Utilities explain that under the Virtual PPA proposal they have made a "few modest modifications to the calculation of the costs and revenues that will be reflected in [the modified] Rider RRS" proposal:

- "actual costs will be replaced with the costs which are already evidence of record and relied upon by the [PUCO]";
- "actual generation output will be replaced with the generation output which is already evidence of record and relied upon by the [PUCO]"; and
- "actual capacity (MWs) cleared in the PJM capacity market will be replaced with the capacity (MWs) projected to clear which is already evidence of record and relied upon by the [PUCO]."³²

Notwithstanding FirstEnergy Ohio Regulated Utilities' claim that the Virtual PPA is not backed by an executed contract between FirstEnergy Ohio Regulated Utilities and FES, the Virtual PPA provides a guarantee for the availability of capacity owned by

²⁹ Mikkelsen Rehearing Testimony at 15 ("Effectively, Rider RRS helps ensure the continued operation of 3,200 MWs of fuel diverse baseload generation.").

³⁰ Second Supplemental Direct Testimony of James F. Wilson on Behalf of The Office of the Ohio Consumers' Counsel at 12, Case No. 14-1297-EL-SSO (December 30, 2015), <https://dis.puc.state.oh.us/TiffToPdf/A1001001A15L30B45750G02894.pdf>.

³¹ Mikkelsen Rehearing Testimony at 6.

³² Id. at 5.

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market-regulated affiliates.³³ In this way, the Virtual PPA provides an effective sale of capacity from FES (or other market-regulated affiliates) to FirstEnergy Ohio Regulated Utilities. Indeed, but for the output associated with generating units owned by market-regulated affiliates, FirstEnergy Ohio Regulated Utilities would not be in a position to offer customers a so-called “hedge,” at least not one based upon costs and revenues associated with generation assets and the sale of the output of those assets into the PJM wholesale markets.³⁴ The reality is that the only thing hedged here is FirstEnergy’s revenue stream, not customers’ price risk.

The Commission has previously observed that it is inappropriate to bypass Commission policy by seeking to accomplish by indirect means what cannot be accomplished directly.³⁵ That principle should be applied here. The workaround contemplated by the Virtual PPA should not escape the Commission’s review. The substance of the Virtual PPA provides support to market-regulated affiliates and in essence guarantees the availability of capacity to FirstEnergy Ohio Regulated Utilities from market-regulated affiliates. Moreover, the cost data underlying the Virtual PPA is based on plants owned by FES or other market-regulated affiliates, which are subject to the Commission’s jurisdiction. It is immaterial that the Virtual PPA is not memorialized in an agreement between FES and FirstEnergy Ohio Regulated Utilities. A long line of Commission decisions have stressed that substance matters—not artful labeling designed

³³ Id. at 15 (“Effectively, Rider RRS helps ensure the continued operation of 3,200 MWs of fuel diverse baseload generation.”).

³⁴ Id. at 14.

³⁵ *Tennessee Gas Pipeline Co., L.L.C.*, 143 FERC ¶ 61,128 at P 61 (2013).

to escape regulatory scrutiny.³⁶ Further, any argument that FirstEnergy Ohio Regulated Utilities are not directly paying FES or any other affiliate for the continued retention of capacity rests on a mirage. FirstEnergy Ohio Regulated Utilities, FES, and other generator-owned affiliates share the same corporate parent. Thus, costs recovered from customers under modified Rider RRS could be imputed to FES or other market-regulated affiliates based on the transfer of funds from FirstEnergy Ohio Regulated Utilities to the parent.³⁷

In keeping with these precepts, and to ensure that its April 27, 2016 Order is not contravened, OMAEG recommends that the Commission take the following actions. First, the Commission should direct that the Virtual PPA be reviewed in accordance with Section 205 of the Federal Power Act for evaluation under the *Edgar/Allegheny* standards.³⁸ Second, all FirstEnergy market-regulated affiliates, including FES, should be directed to revise their market-based tariff to bar it from providing capacity or other electric products to FirstEnergy Ohio Regulated Utilities where the costs will be recovered through the modified Rider RRS. Finally, the Commission should enforce the no-conduit provision prescribed by 18 C.F.R. § 35.39(g)³⁹ to prevent FirstEnergy Ohio Regulated Utilities from flowing Riders RRS revenues to the parent for distribution to

³⁶ See, e.g., *WSPP Inc.*, 139 FERC ¶ 61,061 at P 26 (2012); *Entergy Servs., Inc.*, 85 FERC ¶ 61,268 at 62,078 (1998); *Western Mass. Elec. Co.*, 61 FERC ¶ 61,182 at 61,664 (1992).

³⁷ *Criteria for Reassertion of Jurisdiction Over the Gathering Services of Natural Gas Company Affiliates*, 118 FERC ¶ 61,114 at P 36 (2007) (“The Commission has no doubt as to its authority to disregard corporate structures” to prevent frustration of statutory purposes), citing *Capital Tel. Co. v. FCC*, 498 F.2d 734, 738, n. 10 (D.C. Cir. 1974) (“[w]here the statutory purpose could be easily frustrated through the use of separate corporate entities a regulatory commission is entitled to look through the corporate entities and treat the separate entities as one for purposes of regulation.”).

³⁸ See 16 U.S.C. § 824d; 55 FERC ¶ 61,382 (1991) (*Edgar*); 108 FERC ¶ 61,082 (2004) (*Allegheny*).

³⁹ 18 C.F.R. § 35.39(g) provides: “A franchised public utility with captive customers and a market-regulated power sales affiliate are prohibited from using anyone * * * as a conduit to circumvent the affiliate restrictions in §§ 35.39(a) through (g).”

FirstEnergy market-regulated affiliates, including FES. These actions by the Commission will carry out the “primary aim” of the Federal Power Act which “is the protection of consumers from excessive rates and charges,”⁴⁰ and the Commission’s “independent role to ensure that wholesale sales of electric energy and capacity are just and reasonable and to protect against affiliate abuse.”⁴¹

C. The Virtual PPA Triggers the Commission’s Regulatory Authority Over the Transfer of Non-Power Goods and Services.

A finding that the Virtual PPA does not constitute the effective sale of capacity from FirstEnergy market-regulated affiliates to FirstEnergy Ohio Regulated Utilities does not negate the grant of additional measures of relief against FirstEnergy’s harmful stratagem. To this end, the Commission’s regulations pertaining to non-power goods and services should be enforced for the benefit of customers and the competitive wholesale markets. Under 18 C.F.R. § 35.39(e)(2), “Unless otherwise permitted by Commission rule or order, sales of any non-power goods or services by a market-regulated power sales affiliate to an affiliated franchised public utility with captive customers may not be at a price above market.” Likewise, 18 C.F.R. § 35.44(b)(2) provides that a franchised public utility with captive customers “may not purchase or receive non-power goods and services from a market-regulated power sales affiliate or a non-utility affiliate at a price above market.” These restrictions on the transfer of non-power goods and services plainly apply here.

The creation of this so called “hedge” through the retention or availability of capacity provided by generating units owned by FirstEnergy market-regulated affiliates

⁴⁰ *Municipal Light Bds. of Reading & Wakefield v. Federal Power Comm.*, 450 F.2d 1341, 1348 (D.C. Cir 1971), cert. denied, 405 U.S. 989 (1972).

⁴¹ April 27, 2016 Order at P 65.

amounts to the transfer of a non-power good and service between FirstEnergy market-regulated affiliates and FirstEnergy Ohio Regulated Utilities in contravention of 18 C.F.R. § 35.39(e)(2) and 35.44(b)(2). Neither the FirstEnergy market-regulated affiliates nor the FirstEnergy Ohio Regulated Utilities enjoy waivers from these restrictions. Moreover, it would be implausible to suggest that the transfer of \$3.6 billion in funds (at the very least) from customers to FirstEnergy Ohio Regulated Utilities over the next eight years does not constitute an above market price. Any argument that the transfer of non-power goods and services does not occur between FirstEnergy market-regulated affiliates and FirstEnergy Ohio Regulated Utilities elevates form over substance. Just as revenues could be imputed to FirstEnergy market-regulated affiliates based on the transfer of funds from FirstEnergy Ohio Regulated Utilities to the parent, so can the transfer of non-power goods and services.⁴²

D. The Failure to Disclose the Virtual PPA Warrants Further Commission Scrutiny.

FES' market-based tariff filing that was purportedly submitted in accordance with the Commission's April 27, 2016 Order did not disclose the Virtual PPA.⁴³ Likewise, FirstEnergy Ohio Regulated Utilities, FES, and the other designated FirstEnergy affiliates listed on the notice of change in status filing did not disclose the Virtual PPA.⁴⁴ As explained in the Protest,⁴⁵ the failure to disclose the Virtual PPA in these two filings

⁴² *Criteria for Reassertion of Jurisdiction Over the Gathering Services of Natural Gas Company Affiliates*, 118 FERC ¶ 61,114 at P 36 (2007) ("The Commission has no doubt as to its authority to disregard corporate structures" to prevent frustration of statutory purposes), citing *Capital Tel. Co. v. FCC*, 498 F.2d 734, 738, n. 10 (D.C. Cir. 1974) ("[w]here the statutory purpose could be easily frustrated through the use of separate corporate entities a regulatory commission is entitled to look through the corporate entities and treat the separate entities as one for purposes of regulation.").

⁴³ Tariff Filing, Docket No. ER16-1807-000 (May 27, 2016).

⁴⁴ Notice of Change in Status, Docket Nos. ER10-1469-004, et al. (May 27, 2016)

⁴⁵ Protest at 22-23.

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bespeaks a lack of candor towards the Commission and should prompt the Commission to examine whether it would be appropriate to revoke or suspend the market-based rate authority enjoyed by the entities listed on these two filings for the existence of the Virtual PPA in FirstEnergy's service territory.

It is imperative that entities act with transparency in their Commission-directed filings. To remedy actual or alleged violations of statutes and regulations it is entrusted with administering, the Commission has previously suspended or revoked entities' market-based authority.⁴⁶ Examining whether similar treatment is warranted here will protect the public interest and ensure compliance with the Commission's directives.

V. Conclusion.

The "hedge" embodied in the Virtual PPA is supported by the claimed continued retention of capacity provided by the FirstEnergy market-regulated affiliate-owned generating units. This amounts not only to the effective sale of capacity from FirstEnergy market-regulated affiliates to FirstEnergy Ohio Regulated Utilities but also to the transfer of non-power goods and services between FirstEnergy market-regulated affiliates and FirstEnergy Ohio Regulated Utilities. Given this, the notion that FES, or any other FirstEnergy market-regulated affiliate, has no involvement with the Virtual PPA is incorrect. In accordance with the comments set forth herein, the Virtual PPA should be scrutinized to ensure that the Commission's April 27, 2016 Order is not rendered meaningless simply through FirstEnergy's artifice.

⁴⁶ *J.P. Morgan Ventures Energy Corp.*, 141 FERC ¶ 61,131 at P 1 (2012) (suspending market-based rate authority upon finding of false or misleading statements); *Cleco Corp.*, 104 FERC ¶ 61,125 at P 4 (2003) (revoking market-based rate authority)

Respectfully submitted,

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June 17, 2016

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CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.2010, I hereby certify that I have this day served the foregoing document by electronic means upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Columbus, Ohio this 17th day of June, 2016.

/s/ Ryan P. O'Rourke
Ryan P. O'Rourke
Carpenter Lipps & Leland LLP

Document Content(s)

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Sierra Club Set 13
 Witness: Eileen M. Mikkelsen
 As to Objections: Carrie M. Dunn

Case No. 14-1297-EL-SSO
 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

RESPONSES TO REQUEST

SC Set 13
 INT-236

- Refer to page 6 line 23 of Ms. Mikkelsen's Rehearing Testimony. With regards to the contention that "the cash associated with Rider RRS charges would not flow to FES":
- a. Identify and explain the basis for your contention that "the cash associated with Rider RRS charges would not flow to FES."
 - b. Identify each and every safeguard that the Companies have established to ensure that none of the cash associated with Rider RRS charges would flow to FES.
 - c. State whether "the cash associated with Rider RRS charges" could flow to FirstEnergy Corp.
 - i. If not, explain why not.
 - d. Confirm that net revenues generated by the Companies can be distributed to FirstEnergy Corp. through dividends or other means.
 - e. State whether any cash associated with Rider RRS charges could be included in any sums distributed to FirstEnergy Corp. through dividends or other means.
 - f. If any cash associated with Rider RRS charges could be included in any sums distributed to FirstEnergy Corp., state whether such cash could then flow to FES.
 - i. If not, explain why not.
 - g. If any cash associated with Rider RRS charges could be included in any sums distributed to FirstEnergy Corp., state whether such cash could increase FirstEnergy Corp's ability to provide equity to FES.
 - i. If not, explain why not.
 - h. If any cash associated with Rider RRS charges could be included in any sums distributed to FirstEnergy Corp., state whether such cash could increase FirstEnergy Corp's ability to provide a loan or another debt instrument to FES.
 - i. If not, explain why not.
 - i. If any cash associated with Rider RRS charges could be included in any sums distributed to FirstEnergy Corp., state whether such cash could affect FirstEnergy Corp's credit rating.
 - i. If not, explain why not.

Response:

- a. Objection. The request seeks an improper narrative response. See Penn Cent. Transp. Co. v. Armco Steel Corp., 271 N.E.2d 877 (Montgomery Co., 1971) (improper use of discovery device or interrogatory to require detailed narrative response). Subject to and without waiving the foregoing objection, see Company Witness Mikkelsen's Rehearing Testimony at page 11, lines 17-23.

- b. Objection. This request seeks information which is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. This request also seeks information which is outside the scope of discovery permitted by the Attorney Examiner's June 3, 2016 Entry. In addition, this request is vague and ambiguous in its use of "safeguard." Subject to and without waiving the foregoing objections, see the Companies' response to subpart (a). The Companies have not established additional unique procedures with respect to cash management of revenues recovered from Rider RRS. The Companies will manage cash associated with Rider RRS consistent with existing corporate policies.
- c. Objection. This interrogatory mischaracterizes the Companies' testimony. Subject to and without waiving the objection, see Company Witness Mikkelsen's Rehearing Testimony at page 12, lines 1-7.
- d. Objection. This request is vague and ambiguous in its use of "net revenues generated by the Companies" and "other means" and is incapable of a response. This request also seeks information which is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. In addition, this request seeks information which is outside the scope of discovery permitted by the Attorney Examiner's June 3, 2016 Entry.
- e. Objection. This request is vague and ambiguous in its use of "included," "sums distributed to FirstEnergy Corp." and "other means." Subject to and without waiving the foregoing objections, see the Companies' answer to subpart (c) above. Further, there is no prohibition in the Proposal on the Companies' ability to pay dividends to FirstEnergy Corp.
- f. Objection. This request is vague and ambiguous in its use of "included" and "sums distributed to FirstEnergy Corp." Subject to and without waiving the foregoing objections, see the Companies' answer to subparts (a), (c), and (e).
- g. Objection. This request is vague and ambiguous in its use of "included," "sums distributed to FirstEnergy Corp.," "increase" and "ability." This request also seeks information which is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. In addition, this request seeks information which is outside the scope of discovery permitted by the Attorney Examiner's June 3, 2016 Entry. Subject to and without waiving the foregoing objections, see the Companies' answer to subparts (a), (c), and (e).
- h. Objection. This request is vague and ambiguous in its use of "included," "sums distributed to FirstEnergy Corp.," "increase," "ability" and "another debt instrument." This request also seeks information which is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. In addition, this request seeks information which is outside the scope of discovery permitted by the Attorney Examiner's June 3, 2016 Entry. Subject to and without waiving the foregoing objections, see the Companies' answer to subparts (a), (c), and (e).
- i. Objection. This request is vague and ambiguous in its use of "included," "sums distributed to FirstEnergy Corp.," and "affect." This request also calls for speculation. In addition, this request seeks information which is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. Further, this request seeks information which is outside the scope of discovery permitted by the Attorney Examiner's June 3, 2016 Entry. Subject to and without waiving the foregoing objections: No. FirstEnergy Corp.'s credit ratings are not affected by whether FirstEnergy Corp. receives dividends from the utility.

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in

Case No(s). 14-1297-EL-SSO

Summary: Testimony Direct Testimony On Rehearing Of Thomas N. Lause On Behalf Of The Ohio Manufacturers' Association Energy Group electronically filed by Mrs. Kimberly W. Bojko on behalf of OMA Energy Group