

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

I. SCHUMANN & COMPANY, LLC,)	
)	Case No. 17-0473-EL-CSS
Complainant,)	
v.)	
)	
THE CLEVELAND ELECTRIC)	
ILLUMINATING COMPANY,)	
)	
Respondent.)	
)	

**THE CLEVELAND ELECTRIC ILLUMINATING COMPANY'S
POST-HEARING REPLY BRIEF**

Robert M. Endris (0089886)
Counsel of Record
Carrie M. Dunn-Lucco (0076952)
Joshua R. Eckert (0095715)
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308
Telephone: 330-384-5728
Facsimile: 330-384-3875
rendris@firstenergycorp.com
cdunn@firstenergycorp.com
jeckert@firstenergycorp.com

Christine E. Watchorn (0075919)
Ulmer & Berne LLP
65 East State Street, Suite 1100
Columbus, Ohio 43215
Telephone: 614-229-0034
Facsimile: 614-229-0035
cwatchorn@ulmer.com

ATTORNEYS FOR THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY

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I. INTRODUCTION

With a sensational flourish of the pen, Complaint I. Schumann & Co. (“Schumann” or “Complainant”) cobbles together misleading excerpts from testimony, emails, and other “evidence” attempting to persuade the Public Utilities Commission of Ohio (“Commission”) not only that The Cleveland Electric Illuminating Company (“CEI” or the “Company”) unduly and unreasonably discriminated against Schumann, but also that its employees are somehow lying to this Commission. Schumann’s dramatization of the record in its Brief¹ is not appropriate for an administrative hearing where the Commission is tasked with determining whether CEI’s actions were unreasonable, unlawful or unduly discriminatory. This task often involves the Commission’s balancing of the interests of a single customer with the need for safe and reliable electric service of all the utility’s customers – service that CEI is bound to protect. Looking beyond the smoke and mirrors, it is apparent that Schumann has failed to carry its burden in this proceeding.²

As CEI has shown, Complainant does not qualify for Rate GSU because it does not require sub-transmission service. For nearly 50 years, Schumann has been adequately served by its current distribution service.³ Moreover, Schumann has not presented any actual evidence of discrimination here. While Schumann may misleadingly point to snippets of various emails sent by various CEI representatives⁴, and imply that Company Witness Bellas is lying about her

¹ I. Schumann & Company, LLC’s Initial Post-Hearing Brief, filed 9/15/2017 (“Complainant’s Brief”).

² *Grossman v. Pub. Util. Comm.*, 5 Ohio St. 2d, 189, 214, 214 N.E. 2d 666 (1966).

³ *See generally*, Schumann Ex. 2 and Ex. 2C, Direct Testimony of Scott M. Schumann for Complainant I. Schumann & Company, LLC (public and confidential versions) (“S. Schumann Direct Testimony”), 3:19-21. *See also*, Company Ex. 25, Direct Testimony of Denise P. Bellas on Behalf of The Cleveland Electric Illuminating Company (“D. Bellas Direct Testimony”), 3:8-10.

⁴ Most of these representatives including Messrs. Fanelli, Weis and Hrdy [REDACTED]

conversations with CEI engineers, Schumann has failed to establish that it was treated differently than any similarly situated CEI customer.⁵ At the end of the day, the record demonstrates that it was Jean Becks in CEI's Planning and Protection Department who determined that Schumann did not qualify for sub-transmission service,⁶ and there is no evidence whatsoever that Ms. Becks considered revenue (or any other financial factor) in reaching her decision⁷.

In balancing Schumann's desire for a potentially better rate⁸ with the Company's interest in protecting the integrity of its sub-transmission system for all customers, the Commission should not order CEI to connect Schumann to the sub-transmission system, because Schumann has not demonstrated that it requires sub-transmission service. Any other outcome would create an untenable situation where any customer who simply wishes to receive a higher service voltage in order to receive a potentially better rate could receive it – regardless of CEI's Tariff-imposed responsibility to choose delivery voltage for its customers, and regardless of the impact on other customers and overall system and grid reliability. Schumann is not prejudiced by this action.

Proceedings ("Hearing Tr."), 240:7-24 (Confidential Session). Notably, Schumann did not call Messrs, Fanelli, Weis and Hrdy or Ms. Mikkelsen as witnesses.

⁵ As explained in Section IV.B., *infra*, the only (arguably) similarly situated customer to Schumann is PCC Airfoils, LLC. CEI also denied PCC Airfoil's request to receive sub-transmission service because the request lacked a valid engineering reason and/or was made solely for economic purposes. There is no discrimination where the only two customers making similar requests for sub-transmission service received the same response from CEI based upon the same reasoning.

⁶ Company Ex. 27, Direct Testimony of Jean Becks on Behalf of The Cleveland Electric Illuminating Company ("J. Becks Direct Testimony"), 6:16-21; 7:15-20.

⁷ See generally, Hearing Tr.

⁸ Schumann takes the position that it will have more reliable service on the sub-transmission circuit. However, as the record demonstrates, Schumann never contacted CEI regarding any service issues prior to CEI's denial of Schumann's request for sub-transmission service. Indeed, had it contacted CEI, CEI would have evaluated whether the issues were caused by CEI's system as opposed to a problem with Schumann's system, and, if there was an issue on CEI's distribution circuit, the Company would have addressed the issue for all of its customers on that circuit. See Hearing Tr., 297:1-12.

Should Schumann's need for electric service change in the future, CEI can and will review that request at that time.⁹ Thus, the Commission should deny Schumann's complaint.

II. RESPONSE TO SCHUMANN'S FIRST ARGUMENT: SCHUMANN DOES NOT QUALIFY FOR RATE GSU UNDER CEI'S TARIFF.

A. Schumann Does Not Qualify for Rate GSU Because it Does Not Require Sub-Transmission Service.

CEI's denial of Complainant's request to receive Rate GSU was proper because Complainant is not eligible for Rate GSU under CEI's tariff ("Tariff").¹⁰ The Tariff explicitly states that Rate GSU is "[a]vailable to general service installations *requiring* Subtransmission service."¹¹ Moreover, the Tariff places responsibility for determining customers' appropriate service delivery voltage solely upon CEI.¹² Thus, CEI is obligated to choose the appropriate service delivery voltage for each customer.¹³ Section IV.C. of the Electric Service Regulations in the Company's Tariff provides: "Delivery voltage will be *specified by the Company* and will be based upon the availability of lines in the vicinity of the customer's premises and commensurate with the size of the customer's load."¹⁴ Moreover, the rate schedules for Rates GS, GP, GSU, and GT each indicate that "[c]hoice of voltage shall be *at the option of the Company*."¹⁵

⁹ Hearing Tr., 294:8-295:8.

¹⁰ CEI's tariff is PUCO No. 13 ("Tariff"), on file with the Commission.

¹¹ See Tariff, Original Sheet 22 ("Rate GSU Schedule") (emphasis added).

¹² See Tariff, §IV.C.

¹³ *Id.*; see also, Company Ex. 29, Direct Testimony of Dean E. Philips, P.E. on Behalf of The Cleveland Electric Illuminating Company ("D. Philips Direct Testimony") at 5:4-7.

¹⁴ Tariff, §IV.C (emphasis added); see also, D. Philips Direct Testimony at 5:4-7.

¹⁵ See D. Philips Direct Testimony at 5:1-9 (emphasis added); see also, Tariff, Rate GSU Schedule; Tariff, Original Sheet 20 ("Rate GS Schedule"); Tariff, Original Sheet 21 ("Rate GP Schedule"); and Tariff, Original Sheet 23 ("Rate GT Schedule").

Here, Complainant has presented no evidence whatsoever to indicate that it *requires* sub-transmission service. In fact, the evidence demonstrates the opposite.¹⁶ Specifically, and with regard to the factors that the Company seeks to balance in determining delivery voltage,¹⁷ the evidence in this proceeding shows that: (1) Schumann’s electric load and power requirements are well-within the levels that can be served from their existing secondary service voltage,¹⁸ Schumann is adequately served from its current service (and has been for years), and Schumann is not planning to add any load¹⁹ nor does it have any specific plans for future growth;²⁰ (2) Schuman’s current electric load characteristics do not cause objectionable power quality impacts for other customers;²¹ (3) if Schumann were connected to the sub-transmission system, it would negatively impact overall system reliability;²² (4) the existing facilities, voltages, and capacities in the area are adequate to serve Schumann;²³ and (5) if Schumann were connected to the sub-transmissions system, there would be adverse effects on the Company’s operations, including increasing the complexity of, and time-consumed by, switching operations required to perform line work.²⁴

Schumann claims, without basis or citation, that: “36 kV service is commensurate with the size of Schumann’s load. That conclusion is supported by the record evidence.”²⁵ However,

¹⁶ See, e.g., The Cleveland Electric Illuminating Company’s Initial Post-Hearing Brief, pp. 18-22.

¹⁷ D. Philips Direct Testimony, 5:10-6:10.

¹⁸ See Hearing Tr., 39:14-24; 40:6-11; 42:16-19; 52:5-10. See also, J. Becks Direct Testimony, 7:1-6.

¹⁹ Hearing Tr., 43:4-6; see also, Hearing Tr. 68:8-13, 69:1-10 (Confidential Session).

²⁰ D. Bellas Direct Testimony, 4:18-23. See also, Hearing Tr., 43:4-6; 68:8-13 (Confidential Session); 69:1-10 (Confidential Session).

²¹ Hearing Tr., 319:22-24.

²² D. Philips Direct Testimony, 8:1-7; see also, Hearing Tr., 323:5-8.

²³ J. Becks Direct Testimony, 7:1-8.

²⁴ D. Philips Direct Testimony, 6:6-10; see also, Schumann Ex. 1, “Schumann Set 1-INT-009” (Page 9 of 58).

²⁵ Complainant’s Brief, p. 14.

as discussed in detail above and in CEI's Initial Post-Hearing Brief, 36 kV delivery voltage is not commensurate even with Schumann's highest recent load of [REDACTED].²⁶ Moreover, Schumann's load has actually *decreased* over time by nearly [REDACTED]%,²⁷ which is a significant amount. Schumann's current secondary service is – and has been – commensurate with the size of Schumann's load, and Schumann has been adequately served by secondary service for nearly 50 years.²⁸

Schumann's self-described "potential load"²⁹ is irrelevant to the matter before the Commission in this proceeding. First, Schumann has no actual plans to increase its load.³⁰ Second, even if Schumann does have plans to increase its load if an opportunity presents itself, the Tariff does not contemplate "potential" load. Instead, it says "[d]elivery voltage will be specified by the Company and will be based upon the availability of lines in the vicinity of the customer's premises *and commensurate with the size of the customer's load*."³¹

The voltage at which a single customer receives service can have a significant negative impact on the quality and reliability of service for every customer in an area.³² Each connection to the Company's sub-transmission system adds a potential point of failure for tens of thousands of customers.³³ Accordingly, CEI must (and does) take into consideration the needs of all of its

²⁶ S. Schumann Direct Testimony, 7:10-12.

²⁷ Schumann acknowledges that in recent years, its load was as high as [REDACTED] kW and that as a result of some efforts it has undertaken, its load has come down to approximately [REDACTED] kW. [REDACTED] See Complainant's Brief, p 14.

²⁸ See, S. Schumann Direct Testimony, 3:19-21. See also, D. Bellas Direct Testimony, 3:8-10.

²⁹ Complainant's Brief, p. 12.

³⁰ D. Bellas Direct Testimony, 4:18-23. See also, Hearing Tr., 43:4-6; 68:8-13 (Confidential Session); 69:1-10 (Confidential Session).

³¹ See Tariff, §IV.C (emphasis added).

³² See D. Philips Direct Testimony, 6:18-7:4.

³³ *Id.* See also, D. Philips Direct Testimony, 8:3-10.

customers when exercising its control over access to this system.³⁴ Here, CEI acted in accordance with that duty (and its Tariff) by choosing the appropriate delivery voltage at which to serve Complainant and restricting access to its sub-transmission system to only those customers that require sub-transmission service. On balance, Schumann's desire for a potentially better rate cannot outweigh the Company's interest and obligation in protecting the integrity of its sub-transmission system for all customers. The Commission should not order CEI to connect Schumann to the sub-transmission system, because Schumann has not demonstrated that it requires sub-transmission service.

B. CEI Did Not Base Its Decision on Revenue Considerations.

Jean Becks in CEI's Planning and Protection Department determined that Schumann did not qualify for sub-transmission service because it was adequately served from its existing distribution service.³⁵ It is undisputed that Ms. Becks is the person who made the determination regarding Schumann's request.³⁶ Ms. Becks evaluated Schumann's request based on the same factors she would consider for any other customer.³⁷ There is no record evidence that Ms. Becks considered CEI's revenue (or any financial factors) in making her determination.³⁸ Only Schumann's speculation, innuendo, and distortions suggest that revenues were the foundation of the decision, while CEI's clear testimony is that it was not considered at all. CEI's determination regarding Schumann's request for sub-transmission service was proper, non-discriminatory, and in the best interest of all CEI customers served directly or indirectly by the sub-transmission system.

³⁴ *Id.*, 6:13-16, 6:21-23.

³⁵ J. Becks Direct Testimony, 6:16-21; 7:15-20.

³⁶ *See generally*, Hearing Tr.

³⁷ J. Becks Direct Testimony, 5:8-15, 7:22-8:5.

³⁸ *See generally*, Hearing Tr.

C. Schumann Misstates and Mischaracterizes the Evidence.

In its Initial Post Hearing Brief, Schumann takes frequent liberties with the record evidence in this proceeding, including the testimony of CEI witnesses. In addition, Schumann has selectively excerpted and mischaracterized a handful of emails authored by CEI and FirstEnergy employees in an attempt to categorize CEI's decision as discriminatory and revenue-driven. However, the employees who authored and received these emails did not make the decision as to whether Schumann qualified for sub-transmission service;³⁹ thus, their emails are not relevant to the bases of CEI's determination. Moreover, none of the authors or recipients of these emails testified at hearing regarding their impressions, thought processes, intentions, or what they meant (or did not mean) in writing the emails.⁴⁰ CEI produced these emails to Schumann in response to the *first* of eight sets of discovery that Schumann issued in this case.⁴¹ Thus, Schumann had ample time to subpoena the emails' authors and/or recipients to testify at deposition and/or hearing, but it failed to do so, choosing instead to rely upon purposefully excerpted passages and its own biased interpretations of their meaning. CEI requests that the Commission give the emails and Schumann's arguments based upon them little or no weight. Similarly, to the extent that Schumann's arguments are premised upon mischaracterized testimony, those arguments necessarily fail. Finally, the Commission should disregard Schumann's attempts to impugn the character of numerous FirstEnergy and CEI employees based on Schumann's contorted and tortured readings of company emails and hearing testimony.

³⁹ See, e.g., J. Becks Direct Testimony, 7:15-20.

⁴⁰ See generally, Hearing Tr. Although Schumann's witness, Scott Schumann, testified self-servingly that a person can deduce an email's meaning "based on a reading of the plain English" even where that person is neither a sender nor a recipient (see Hearing Tr., 56:24-57:5), he was unable to testify about the meaning of emails that were directed to him by Schumann's own consultants (see Hearing Tr., 59:9-18 and Company Ex. 2C; see also, Hearing Tr., 63:16 – 65:16 and Company Ex. 4C). Thus, his testimony about the meaning of emails authored by CEI and FirstEnergy employees should be given no weight.

⁴¹ See, Schumann Ex. 1, at unnumbered page denoted as "Schumann Set 1, RPD-001, Attachment 1" (this is the page immediately preceding Bates No. SCHUMANN 0019).

1. Ms. Bellas' Rate Calculation and Monthly Reports to Her Supervisor Were Not Prepared for Purposes of CEI's Consideration of Schumann's Request.

As only one example of mischaracterization (among many), Schumann incorrectly states in its Brief that: “[t]he fact that CEI considered its lost revenues in its decision process is alone sufficient for the Commission to take action.”⁴² However, there is no record evidence that Jean Becks “considered lost revenues” in making her decision. Moreover, the mere fact that the revenue impact was calculated and known by others at CEI does not mean that it played any role in Ms. Becks’ decision process. Ms. Bellas performed a rate calculation, but [REDACTED],⁴³ not for purposes of deciding if Schumann qualified for sub-transmission service. Her supervisor, Mr. Hrdy, [REDACTED],⁴⁴ and the evidence shows that [REDACTED]⁴⁵ Ms. Bellas prepared monthly reports for Mr. Hrdy, but as she explained, the purpose of the reports was [REDACTED]
[REDACTED]
[REDACTED]⁴⁶ She prepared the reports on a monthly basis in the ordinary course of her job so that her direct supervisor would know what she was working on.⁴⁷ The reports were her standard practice and involved numerous projects and customers – they were not generated as a result of Schumann’s request for sub-transmission service.

⁴² Complainant’s Brief, p. 2.

⁴³ Hearing Tr., 248:18-249:6 (Confidential Session).

⁴⁴ *Id.*, 249:7-9 (Confidential Session).

⁴⁵ *Id.*, 258:11-261:3 (Confidential Session).

⁴⁶ *Id.*, 208:5-9; 249:13-250:14 (Confidential Session).

⁴⁷ *Id.*

2. Contrary To Schumann's Brief, Company Witness Philips Did Not Testify that CEI Considered Revenue.

Schumann misstates that: “[e]ven [Company witness] Dean Philips. . . said that it would be unreasonable if, *as here*, lost revenues to CEI were considered and included as part of CEI’s decision to deny Schumann’s request to switch to GSU service.”⁴⁸ But Mr. Philips was asked two *hypothetical* questions, both premised on Schumann’s counsel’s propositions:

EXAMINER PRICE: Hypothetical.

BY MR. SETTINERI:

Q. Hypothetical: If CEI based its decision on Schumann's request to switch to GSU service on the fact that CEI would lose revenue, you would find CEI's decision to be unreasonable, correct?

A. If that was the basis of your decision, I would.

Q. And if it was considered and included as part of that decision, you would also find that to be unreasonable, correct?

MS. DUNN-LUCCO: Objection.

EXAMINER PRICE: Grounds?

MS. DUNN-LUCCO: Mischaracterizes the facts, lack of foundation, vague.

EXAMINER PRICE: He's asking a hypothetical; so overruled.

THE WITNESS: Yes.⁴⁹

By adding the phrase “as here,” in the above-quoted passage from its Brief, Schumann tries to make it seem as though Mr. Philips concluded that CEI considered lost revenue in denying Schumann’s request, but the record makes clear that Mr. Philips never testified that lost revenue was considered (and, in fact, it was not considered). Schumann then goes a step further and, in its mischaracterization of Mr. Philips’ testimony, it cites to emails referenced as

⁴⁸ Complainant’s Brief, p. 34 (emphasis added).

⁴⁹ Hearing Tr., 357:21-358:13.

Schumann Ex. 1 at Schumann 0108-0111.⁵⁰ However, these emails have nothing to do with Mr. Philips; he is not an author or a recipient of any of them,⁵¹ and he was not asked about them at hearing.⁵² This is another example of Schumann recklessly distorting the evidence – in this instance by misrepresenting the testimony of CEI’s witness and then bootstrapping together unrelated testimony and documents in an attempt to support its position – an unbecoming tactic.

3. Mr. Hrdy’s Concern Was for Protecting CEI’s Tariff-Imposed Responsibility to Choose Customers’ Delivery Voltage.

As another example of mischaracterization, Schumann states that “CEI’s Customer Support Manager became unusually involved because he feared that if Schumann was allowed to take 36 kV service then Schumann’s consultant would find more customers who would benefit from Rate GSU service.”⁵³ In support of this premise, Schumann cites to and selectively excerpts and mischaracterizes a May 10, 2016 email from Mr. Hrdy.⁵⁴

However, nowhere in this email did Mr. Hrdy state that he *became involved* in Schumann’s request because he feared that Schumann’s consultant would find more customers who would benefit from Rate GSU.⁵⁵ What the record evidence actually shows is that Mr. Hrdy became involved because [REDACTED]
[REDACTED],⁵⁶ and [REDACTED]⁵⁷ In fact, based on Schumann emails, it appears that the reason that the FirstEnergy Rates Department and

⁵⁰ Complainant’s Brief, p. 34.

⁵¹ Schumann Ex. 1 at Bates Nos. SCHUMANN 0108-0111.

⁵² See generally, Hearing Tr.

⁵³ Complainant’s Brief, p. 36.

⁵⁴ Schumann Ex. 1 at Schumann 0035.

⁵⁵ *Id.*

⁵⁶ Hearing Tr., 240:7-24 (Confidential Session). See also, Schumann Ex. 1, at Bates No. SCHUMANN 0030 (5/4/2016 email from Jim Risk to Eileen Mikkelsen and Santino Fanelli).

⁵⁷ Hearing Tr., 246:3-6 (Confidential Session).

Mr. Hrды became involved is [REDACTED]

[REDACTED]
[REDACTED].

For example, in March 2016, Schumann’s consultant, Carl Avers [REDACTED]

[REDACTED]
[REDACTED]⁵⁸ And, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]⁵⁹ It is particularly noteworthy that [REDACTED]
[REDACTED]⁶⁰ *not whether it would
be moved to the sub-transmission system.* Schumann’s motivation and the motivation of its
consultants were purely economic.⁶¹ Notably, none of the afore-mentioned emails from
Schumann mention any concern of adequacy or reliability of service.

Moreover, in a portion of Mr. Hrды’s email that Schumann failed to mention, he stated:

We have a customer (I Schumann) in Walton Hills who hired an
energy consultant. The consultant wants their client to install their
own transformer and be fed from the 36kV so that they can take
advantage of the GSU rate. *I would like to protect our right to
dictate the voltage with which we feed our customers.*⁶²

⁵⁸ Company Exhibit 2C, at Bates Number ISCO_00000243.

⁵⁹ Company Exhibit 4C, at Bates Number ISCO_CEI00000230.

⁶⁰ *Id.*

⁶¹ See, e.g., Schumann Exhibit 1 at Bates Number SCHUMANN 0030 (5/4/16 email from Jim Risk referencing a “rate study” performed by his firm showing proposed savings to Schumann “by receiving service *via GSU*” (emphasis added)).

⁶² Schumann Ex. 1 at Bates No. SCHUMANN 0035 (emphasis added).

Thus, the “fear” that Mr. Hrdy was expressing in his May 10, 2016 email was that Carl Avers and/or other energy consultants would continue to try to pressure the Company to connect customers to the sub-transmission system who had no legitimate need for sub-transmission service, thus compromising that system.

When the passages of Mr. Hrdy’s email are reviewed as a whole and not taken out of context, it becomes apparent that his concern was that if CEI allowed Schumann to connect to sub-transmission service without a valid engineering reason, it would be required to allow every customer that Mr. Avers (or another energy consultant) finds to do so as well. Mr. Hrdy was seeking to protect the Company’s Tariff-authorized right to dictate customer delivery voltage and thus protect the Company’s sub-transmission system from the degradation that would occur with additional, unnecessary connections.⁶³ His email also demonstrates his understanding that Schumann’s request for sub-transmission service was based upon its desire to “take advantage of the GSU rate,”⁶⁴ and not based upon any load-based engineering reason.⁶⁵

4. Mr. Hrdy Repeated His Concern in an Email to the CEI Leadership Team.

Schumann also misconstrues Mr. Hrdy’s May 24, 2016 email to CEI’s leadership team.⁶⁶ The email itself makes clear that Mr. Hrdy was advising Company leadership about an issue with “an energy consultant,” and appropriately notifying them that Schumann would likely file a complaint with the Commission.⁶⁷ In a portion of the email omitted by Schumann, Mr. Hrdy also explained that Schumann can be adequately served from the existing distribution circuit,⁶⁸

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Complainant’s Brief, p. 10. *See also*, Schumann Ex. 1, at Bates No. SCHUMANN 0110 (mis-cited in Complainant’s Brief, p. 10, n. 56 as SCHUMANN 0111).

⁶⁷ Schumann Ex. 1, at Bates No. SCHUMANN 0110.

⁶⁸ *Id.*

and he explained the reasons for his concern about allowing customers to choose their delivery voltage: “[a]llowing our customers to decide what circuit they will be fed off of based solely on economics will impact our reliability, create capacity issues, and make it more difficult to operate our system (36kV must be worked dead and grounded).”⁶⁹ Stated differently, if CEI were to allow customers to connect to the sub-transmission system for purely economic reasons, then energy consultants would sell this concept – based on the type of cost-savings referenced in Mr. Hrdy’s email – to innumerable customers, and those customers would demand to be connected to the sub-transmission system, severely degrading the reliability of that system.⁷⁰ In essence, control over system integrity would transfer from CEI’s engineers to customers’ accountants.

5. FirstEnergy’s Rates Analysts Did Not Indicate that Schumann Should Receive Sub-Transmission Service.

Schumann baselessly argues that “Schumann’s interpretation of CEI’s Tariff is supported by CEI’s own rate analysts who made statements that Schumann should be able to receive Subtransmission Service.”⁷¹ This is demonstrably false. In the email exchange upon which Schumann relies, no one from the Rates Department stated that Schumann “should” be able to receive sub-transmission service.⁷² Mr. Weis stated “I would suggest that the customer *may* have a right to be served by the higher voltage, if requested.”⁷³ And Mr. Fanelli considered whether a customer such as Schumann could request a premium installation, but also expressed

⁶⁹ *Id.*

⁷⁰ *See, e.g.,* D. Philips Direct Testimony, 6:18-7:4.

⁷¹ Complainant’s Brief, p. 15.

⁷² Schumann Ex. 1, at Bates No. SCHUMANN 0029.

⁷³ *Id.* (emphasis added).

reservation, stating “[a]m I thinking about it wrong?”⁷⁴ Both Mr. Weis and Mr. Fanelli made a point of reiterating the Tariff’s provision that “delivery voltage will be specified by the Company and will be based upon the availability of lines in the vicinity of the customer’s premises and commensurate with the size of the customer’s load.”⁷⁵ Simply because Mr. Weis (at the request of his boss who was prompted by Schumann’s consultant’s request for intervention)⁷⁶ pondered whether “this could be a situation where the region is attempting to preserve revenue. . . .” does not mean that CEI’s representatives considered revenue at all. The record shows the opposite and Schumann’s obvious distortion of the record is inappropriate.

Schumann’s argument is not supported by the emails exchanged between Mr. Weis and Mr. Fanelli – and there is nothing inappropriate about Mr. Weis and Mr. Fanelli engaging in dialogue (at the request of their boss) regarding the bases of CEI’s decision to deny Schumann’s request. At most, this simply demonstrates that CEI’s decision was carefully vetted.

6. Ms. Bellas Did Not “Refuse” Schumann’s Request in Order to “Preserve Revenue.”

In perhaps the most egregious example of Schumann mischaracterizing evidence and then cobbling it together to create a false impression, Schumann argues that “[Ms. Bellas’s] refusals [for sub-transmission service] were highly unusual and made, because, as one Rates Department employee suspected could be true and the evidence now shows, ‘the region is attempting to preserve revenue by restricting a customer from moving to another rate.’”⁷⁷ In actuality, the evidence shows that while Ms. Bellas communicated to Schumann that it did not qualify for sub-transmission service, it was Ms. Becks who reviewed Schumann’s request and

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ See n. 4, *supra*.

⁷⁷ Complainant’s Brief, p. 8 (emphasis omitted).

made the ultimate determination that Schumann did not require sub-transmission service.⁷⁸ As set forth above, there is no evidence that Ms. Becks considered revenue in making her determination. Thus, contrary to Schumann’s statement, the evidence does not show that the “region is attempting to preserve revenue. . . .”

In addition, and contrary to the impression Schumann attempts to create, no one from FirstEnergy’s Rates Department “suspected,” or more importantly concluded, that the region was trying to preserve revenue. Schumann cites to emails between Mr. Weis and Mr. Fanelli.⁷⁹ But Mr. Weis’s May 5, 2016 email – couched in conditional terms – stated that he “*believe[d]* this *could* be a situation where the region was attempting to preserve revenue. . . .” and that “the customer *may* have a right to be served by the higher voltage, if requested.”⁸⁰ Mr. Fanelli’s email says nothing about preserving revenue,⁸¹ but does question whether operational constraints have been considered.⁸² And, even if it is true that in early May 2016, after just receiving Mr. Risk’s inquiry,⁸³ Mr. Fanelli had some concerns about denying Schumann’s request,⁸⁴ those concerns were obviously assuaged over the next approximately two weeks.⁸⁵ There is no evidence to the contrary.⁸⁶ Again, if anything, these emails show that Schumann’s request and CEI’s response were carefully scrutinized, including by multiple employees at CEI and

⁷⁸ J. Becks Direct Testimony, 6:16-21; 7:15-20.

⁷⁹ Complainant’s Brief, p. 8, n. 42 (citing to Schumann Exhibit 1 at Bates Numbers SCHUMANN 0029 and 0030).

⁸⁰ Schumann Ex. 1, at Bates No. SCHUMANN 0029 (emphasis added).

⁸¹ *Id.*

⁸² *Id.*

⁸³ Schumann Ex. 1, at Bates No. SCHUMANN 0030.

⁸⁴ *See, e.g.*, Schumann Ex. 1, at Bates No. SCHUMANN 0035.

⁸⁵ Schumann Ex. 1, at Bates No. SCHUMANN 0110 (“We have been working with our Rates Department on this issue and have gained their support.”).

⁸⁶ *See generally*, Hearing Tr.

FirstEnergy, and they show that the Company would not have allowed a customer to be denied Rate GSU service solely to “preserve revenue.”

Schumann complains that Ms. Bellas waited eight months before taking its request for sub-transmission service to CEI’s Planning and Protection department,⁸⁷ but Schumann omits the fact that it never made a formal request for sub-transmission service, even though [REDACTED]⁸⁸ Had Schumann made a formal request for sub-transmission service by contacting the CEI call center, [REDACTED]⁸⁹ Thus, Schumann, and not Ms. Bellas, is responsible for any delay. Moreover, Schumann fails to identify any way in which any delay adversely affected it. Even if Schumann had made a formal request, the result would have been the same. As Ms. Bellas testified, she contacted CEI’s Planning and Protection Department and asked Jean Becks, an Engineer V in that department,⁹⁰ to review Schumann’s informal request for sub-transmission service,⁹¹ and Ms. Becks determined that Schumann did not qualify for

⁸⁷ Complainant’s Brief, pp. 28-29.

⁸⁸ Hearing Tr., 175:21-24, 232:14-16. [REDACTED]

⁸⁹ [REDACTED]
[REDACTED] See also, Hearing Tr., 206:17-24.

⁹⁰ J. Becks Direct Testimony, 2:3-4.

⁹¹ D. Bellas Direct Testimony, 4:8-11.

sub-transmission service.⁹² To the extent that Ms. Bellas told Schumann representatives that Schumann did not or would not qualify for sub-transmission service, she was correct.

D. CEI's Tariff Is Not Ambiguous.

Without identifying any actual Tariff section or provision, Schumann asserts that CEI's Tariff is ambiguous. Schumann has represented to the Commission in its brief that: "[e]ven if the statements of the Rates Department personnel are ignored (which they should not be), CEI's testimony that its tariff on this point is ambiguous means that the Commission must construe that ambiguity against CEI and in favor of Schumann."⁹³ Schumann cites to *Consumers' Counsel v. Ohio Pub. Util. Comm.*, 61 Ohio St.3d 396, 407 (1991).

Each of the three bases for Schumann's argument fails. First, the Rates Department emails do not demonstrate an ambiguity in the Tariff. Second, there is no testimony from CEI witnesses that its Tariff is ambiguous. And, third, although not disclosed by Schumann, the portion of the *Consumer's Counsel* case it cites is contained in a non-binding dissenting opinion.

CEI's Tariff is not ambiguous. There can be no doubt as to what is meant by: (1) Rate GSU is "[a]vailable to general service installations **requiring** Subtransmission service"⁹⁴; (2) "Delivery voltage will be **specified by the Company** and will be based upon the availability of lines in the vicinity of the customer's premises and commensurate with the size of the customer's load"⁹⁵; and (3) "[c]hoice of voltage shall be at the option of the Company."⁹⁶

⁹² J. Becks Direct Testimony, 7:15-20.

⁹³ Complainant's Brief at p. 22.

⁹⁴ Tariff, Rate GSU Schedule (emphasis added).

⁹⁵ Tariff, §IV.C.

⁹⁶ See Tariff, Rate GSU Schedule; Tariff, Rate GS Schedule; Tariff, Rate GP Schedule; and Tariff, Rate GT Schedule.

1. The Emails from FirstEnergy's Rates Department Do Not Establish Any Ambiguity in CEI's Tariff.

Schumann points to two emails dated May 5 and 9, 2016 authored by Mr. Fanelli and Mr. Weis.⁹⁷ It bears repeating that neither Mr. Fanelli nor Mr. Weis testified regarding these emails or their thought processes or intentions in writing them, nor did they testify regarding the emails' meanings.⁹⁸ Mr. Schumann, who purported to sponsor the emails,⁹⁹ is not an author or recipient of the emails,¹⁰⁰ and he conceded that he had never spoken to Mr. Fanelli or Mr. Weis about Schumann's request for sub-transmission service or CEI's determination.¹⁰¹

At most, these emails show that Mr. Weis and Mr. Fanelli were attempting to gather information and fully consider all aspects of an email inquiry from Schumann's consultant, Jim Risk – including Mr. Risk's assertions and questions about what CEI's Tariff allows.¹⁰² Schumann's statement that "Rates Department personnel reviewed Schumann's request for 36 kV service under Rate GSU and found *no basis* in the CEI Tariff to deny Schumann's request for 36 kV service"¹⁰³ is patently false. Nowhere in either email does Mr. Fanelli or Mr. Weis conclude or state that they "found no basis in the CEI Tariff...."¹⁰⁴ Mr. Weis actually quotes a portion of the Tariff that does provide such a basis where he states that "[p]er the ESR: 'Delivery voltage will be specified by the Company and will be based upon the availability of lines in the

⁹⁷ Complainant's Brief at p. 21, n. 111 – 114.

⁹⁸ *See generally*, Hearing Tr.

⁹⁹ *See, e.g.*, S, Schumann Direct Testimony, pp. 16 – 17.

¹⁰⁰ Hearing Tr., 55:6-14.

¹⁰¹ *Id.*, 53:18 – 54:8.

¹⁰² Schumann Ex. 1 at Bates No. SCHUMANN 0029 and 0030. Mr. Risk stated: "I have reviewed the GSU Tariff and the electric service agreement and there does not appear to be anything that I can find that would prevent Schumann from receiving access to the GSU tariff. *What am I missing? Can you help?*" (Emphasis added).

¹⁰³ Complainant's Brief at p. 21 (emphasis added).

¹⁰⁴ Schumann Ex. 1 at Bates No. SCHUMANN 0029 and 0030.

vicinity of the customer's premises and commensurate with the size of the customer's load.'"¹⁰⁵ Mr. Fanelli did not state that there was no basis in CEI's Tariff to deny Schumann's request. Rather, his email poses questions back to Mr. Weis, and it is apparent that he is seeking additional information in order to respond to the inquiry made by Mr. Risk.¹⁰⁶ It stands to reason that if Mr. Fanelli, the Director of FirstEnergy's Ohio Rates Department, were making an official pronouncement about the meaning of CEI's Tariff, he would not do so in a question-filled email to one of his team members¹⁰⁷ in which he sought additional information and "feedback."¹⁰⁸

Moreover, there is no evidence in the record that the May 5 and 9, 2016 emails represent the full and complete thoughts, considerations, or conclusions reached by Mr. Fanelli or Mr. Weis regarding CEI's Tariff or Schumann's request. In fact, in a later email from Mr. Hrdy, dated May 24, 2017, he explained that:

Allowing our customers to decide what circuit they will be fed off of based solely on economics will impact our reliability, create capacity issues, and make it more difficult to operate our system (36 kV must be worked dead and grounded). *We have been working with our Rates Department on this issue and have gained their support. . . .*"¹⁰⁹

Mr. Hrdy's statement about the Rates Department's support is unrefuted in the record.¹¹⁰ Neither of the Rates Department emails establishes any ambiguity in CEI's Commission-approved Tariff.

¹⁰⁵ Schumann Ex. 1 at Bates No. SCHUMANN 0029 (emphasis omitted).

¹⁰⁶ Schumann Ex. 1 at Bates No. SCHUMANN 0029 and 0030. Mr. Fanelli wrote: "[a]ny feedback would be helpful and appreciated. Maybe we can discuss for a minute at your convenience so that I can get back to Mr. Risk." SCHUMANN 0029.

¹⁰⁷ Hearing Tr., 194:1-8.

¹⁰⁸ Schumann Exhibit 1 at Bates Number SCHUMANN 0029.

¹⁰⁹ Schumann Exhibit 1 at Bates Number SCHUMANN 0110 (emphasis added).

¹¹⁰ See generally, Hearing Tr.

2. There is No Testimony That CEI's Tariff Is Ambiguous.

Schumann claims that there is “CEI[] testimony” in support of its position.¹¹¹ This is plainly false – there is no testimony from CEI that its Tariff is ambiguous. In making this claim, Schumann is apparently referring to CEI employees Denise Bellas and Michael Hrdy.¹¹² However, Mr. Hrdy did not testify in this matter, so it is not possible for there to be any testimony from him about any supposed ambiguity, as Schumann well knows. And Ms. Bellas did not testify that she “can see both arguments,” as Schumann incorrectly posits.¹¹³ What she actually testified about (as explained by the Attorney Examiner in a portion of the transcript not cited by Schumann) was “her understanding” of Mr. Hrdy’s email.¹¹⁴ She explained that ***she did not know what Mr. Hrdy meant*** in his email when he used the phrase “wiggle room.”¹¹⁵ And she explained that she could look at his email as meaning that ***he*** could see both arguments – *i.e.*, Schumann’s argument that it was trying to receive sub-transmission service and the Company’s argument that, based on Planning and Protection and what is contained in the tariffs, that Schumann did not qualify for sub-transmission service.¹¹⁶

To suggest that Ms. Bellas’ testimony about a possible meaning of an email authored by Mr. Hrdy (who did not testify at hearing) somehow amounts to testimony by CEI that its Tariff is ambiguous is disingenuous. And, even if it had been established in the record that Mr. Hrdy could understand why Schumann would want to connect to the sub-transmission system, it would

¹¹¹ Complainant’s Brief at p. 22.

¹¹² *Id.*, pp. 21-22. Schumann incorrectly refers to Ms. Bellas and Mr. Hrdy as the “the two employees who either denied or sought reasons to deny Schumann’s request . . .” (*See* Complainant’s Brief at p. 21). However, as the record shows, Jean Becks in CEI’s Planning and Protection Department made the determination that Schumann did not qualify for sub-transmission service – not Ms. Bellas or Mr. Hrdy. (J. Becks Direct Testimony, 6:16-21; 7:15-20).

¹¹³ Complainant’s Brief, p. 22.

¹¹⁴ Hearing Tr., 202:8-23.

¹¹⁵ *Id.*, 202:24-203:25 (emphasis added).

¹¹⁶ *Id.*, 202:24-203:5.

be nonsensical to suggest that the Customer Support Manager trying to understand the position taken by a customer somehow creates an ambiguity in a Commission-approved tariff.

3. Schumann's Citation to a Dissenting Opinion Is Not Binding Upon the Commission Here.

Schumann's reference to *Consumers' Counsel v. Pub. Util. Comm.*, 61 Ohio St.3d 396, 407, 575 N.E.2d 157, 164 (1991) in support of its ambiguity argument must be disregarded by the Commission. While not explained by Schumann in its brief,¹¹⁷ the portion of the case cited by Schumann is actually contained within the dissenting opinion of Justice Brown, and is therefore, not binding upon the Commission in this proceeding. There is no discussion, let alone any holding, regarding ambiguity in the majority opinion. *Id.* at 401-404.

In addition, the facts of *Consumers' Counsel* are distinguishable from those in the present case. In *Consumers' Counsel*, the OCC on behalf of two condominium associations argued that the rate charged for electric service in certain common areas of the condominiums (*e.g.*, sidewalks, roadways, tennis courts, swimming pools, and yard areas¹¹⁸) should be the utility's residential rate, and not its general service rate.¹¹⁹ A "condominium clause" in the utility's tariff allowed for certain commonly used facilities within the condominium to be billed at the lower residential rate, but there was a dispute as to whether the areas at issue fell within the clause.¹²⁰ The Commission weighed not just the interests of the parties in the proceeding, but also the "numerous other customers" served by the utility¹²¹ and determined that the "condominium clause" was inequitable to ratepayers who did not live in condominiums (*e.g.*, those who live in

¹¹⁷ Complainant's Brief, p. 22.

¹¹⁸ *Consumers' Counsel v. Pub. Util. Comm.*, 61 Ohio St.3d 396, 399 (1991).

¹¹⁹ *Id.* at 397.

¹²⁰ *Id.*

¹²¹ *Id.* at 399.

apartments).¹²² The Commission ordered the deletion of the clause from the company's tariff.¹²³ On appeal to the Ohio Supreme Court, the OCC argued that the Commission improperly considered the impact of the “condominium clause” upon other, non-condominium customers *sua sponte*,¹²⁴ but the Ohio Supreme Court upheld the Commission’s determination.¹²⁵ Thus, *Consumers’ Counsel* is not applicable to the present case or to Schumann’s request for sub-transmission service.

III. RESPONSE TO SCHUMANN’S SECOND ARGUMENT: SCHUMANN IS CURRENTLY RECEIVING ADEQUATE SERVICE

A. Schumann Is Adequately Served From the Distribution Circuit.

In considering Schumann’s request, CEI investigated the adequacy of Schumann’s current electric service. Specifically, Ms. Becks considered the loading of the Krick substation transformer (the substation from which Schumann receives services) and the 1-KK feeder (the specific circuit out of the Krick substation from which Schumann receives service).¹²⁶ She looked into the Company’s load forecasting data management system and determined that the loading of both the transformer and the circuit board allowed room for Schumann’s load¹²⁷ and that the loading of the Krick substation transformer and the 1-KK feeder are well below capacity.¹²⁸ Ms. Becks concluded that there were no capacity issues with Schumann’s existing service and that there have been no negative effects on other customers due to Schumann’s load

¹²² *Id.* at 401.

¹²³ *Id.*

¹²⁴ *Id.*, at 401.

¹²⁵ *Id.* at 402.

¹²⁶ J. Becks Direct Testimony, 7:1-2, 7:4-5.

¹²⁷ Hearing Tr., 191:21-192:2.

¹²⁸ J. Becks Direct Testimony, 7:2-6. *See also*, Company Exhibit 28C.

on the distribution circuit; thus, she determined that Schumann is adequately served from its existing distribution service and, therefore, does not qualify for sub-transmission service.¹²⁹

Mr. Schumann acknowledged at hearing that Schumann has been able to run its equipment at higher demand to meet short-term growth opportunities, and its existing electric service was capable of handling that demand.¹³⁰ [REDACTED]

[REDACTED]¹³¹ Mr. Schumann was unable to identify any instance where Schumann had missed an opportunity to serve a customer because it lacked adequate electric capacity.¹³²

B. Schumann Did Not Complain About Alleged Reliability Issues Until Nearly One Year After First Inquiring About Rate GSU.

Schumann has been served from CEI's distribution system for nearly 50 years, since 1968.¹³³ Throughout that period, as today, Schumann has been involved in the manufacture of brass and bronze alloys.¹³⁴ In this proceeding, Schumann contends that "every electrical outage, even a momentary outage lasting just a few seconds, requires a complicated restart of plant operations . . ." and that "[e]ach outage and restart is very costly for us."¹³⁵ Yet despite the problems and costs that Schumann now claims to incur due to outages and momentary interruptions, Schumann never notified its CEI customer support representative that it was having reliability issues until September 2016 – nearly one year after conversations regarding

¹²⁹ J. Becks Direct Testimony, 6:19-21, 7:15-20.

¹³⁰ Hearing Tr., 40:6-11.

¹³¹ *Id.*, 116:14-17 (Confidential Session).

¹³² *Id.*, 39:14-24.

¹³³ *See generally*, S. Schumann Direct Testimony, 3:19-21. *See also*, D. Bellas Direct Testimony, 3:8-10.

¹³⁴ S. Schumann Direct Testimony, 3:18-21.

¹³⁵ *Id.*, 6:11-14.

Schumann's request for Rate GSU began.¹³⁶ In fact, from 2011 to August 2017, Schumann had only called CEI's outage line six times to report issues with power.¹³⁷

CEI's records show that the L-1-KK circuit from which Schumann currently receives its service has had one outage and no momentary interruptions in 2017, two outages and six momentary interruptions in 2016, and three outages and three momentary interruptions in 2015.¹³⁸ [REDACTED]

[REDACTED]

[REDACTED]¹⁴⁰ [REDACTED]

[REDACTED]¹⁴¹ and

[REDACTED]¹⁴²

Schumann complains that there are "many other momentary outages at the plant over the same time period that are not shown in CEI's documents."¹⁴³ However, it offers no basis for this assertion, and there is no documentary or corroborating evidence of these "outages."¹⁴⁴ Even if these "outages" occurred, there is no evidence that they were caused by CEI as opposed to a power quality issue within Schumann's plant (*e.g.*, an issue caused by Schumann's own

¹³⁶ D. Bellas Direct Testimony, 6:11-18. *See also*, Hearing Tr., 213:11-17.

¹³⁷ D. Bellas Direct Testimony, 6:1-6.

¹³⁸ Schumann Ex. 1, at Schumann Set 1-INT-003, Attachment 1.

¹³⁹ An outage is an interruption in service lasting longer than five minutes; a momentary interruption is an interruption lasting five minutes or less. *See Hearing Tr.*, 214:13-18.

¹⁴⁰ Hearing Tr., 239:10-14 (Confidential Session).

¹⁴¹ *Id.*, 239:16-22 (Confidential Session).

¹⁴² *Id.*, 239:23-25 (Confidential Session).

¹⁴³ S. Schumann Direct Testimony, 11:8-10.

¹⁴⁴ *See generally*, S. Schumann Direct Testimony and Hearing Tr. and Exhibits.

equipment).¹⁴⁵ Finally, Mr. Schumann testified that since March 2017 there have been at least 12 outages, resulting in nine hours of lost production time; however, this testimony is not supported by any documentation from Schumann and it conflicts with CEI's outage documentation.¹⁴⁶ Mr. Schumann conceded at hearing that he did not know the cause of any of these "outages."¹⁴⁷ And further, Schumann presented no evidence that it even explored, let alone found unavailable, any measures to mitigate impacts to its operations from outages or voltage fluctuations.

Although the sub-transmission system has redundant circuits that enhance reliability,¹⁴⁸

[REDACTED]

[REDACTED]¹⁴⁹ More importantly, though, the fact that the sub-transmission system is generally more reliable is immaterial and not a relevant consideration for the Company's determination of delivery voltage pursuant to the Tariff. All electric customers are disrupted when there is an outage or interruption in service. Schumann is not unique. In fact, Schumann acknowledges that it is similar to other alloy and steel manufacturers in this regard.¹⁵⁰ If CEI was required to determine a customer's appropriate delivery voltage based on that customer's desire for increased reliability, every distribution customer would be entitled to switch to the sub-transmission system. This is an untenable proposition. In fact, it would detrimentally affect the reliability of the sub-transmission system, because each added

¹⁴⁵ See, e.g., Complaint at ¶¶ 6, 10; Hearing Tr., 44:16-45:2, 46:7-22. Indeed, Schumann's own plant engineer testified that [REDACTED]. See Hearing Tr., 95:13 – 96:13 (Confidential Session). Schumann has failed to rule this out as a cause of its alleged "outages."

¹⁴⁶ Schumann Ex. 1, at Schumann Set 1-INT-003, Attachment 1.

¹⁴⁷ Hearing Tr., 66:6-21.

¹⁴⁸ *Id.*, 288:21-24.

¹⁴⁹ *Id.*, 250:19-255:23 (Confidential Session).

¹⁵⁰ Complainant's Brief, p. 23.

connection to the sub-transmission system results in incremental degradation of that system.¹⁵¹ Schumann falsely states that CEI has no evidence of incremental degradation,¹⁵² but none of Schumann's citations actually support its statement.¹⁵³ And while the impact of the incremental degradation may not have been precisely quantified,¹⁵⁴ CEI's expert witness engineers¹⁵⁵ have testified that incremental degradation occurs with each connection, and this testimony remains unrefuted in the record.¹⁵⁶

Most notably, Schumann's sudden assertion of reliability problems, after all of its efforts to obtain Rate GSU had failed, simply rings hollow. Throughout an entire year of numerous communications with CEI, not once did Schumann or its consultants mention reliability issues.¹⁵⁷ If Schumann had been experiencing numerous, ongoing, and costly electric reliability issues, it seems reasonable to expect that its president and chief operating officer¹⁵⁸ would know whether

¹⁵¹ Hearing Tr., 299:2-8. *See also*, D. Philips Direct Testimony, 6:13-16; 6:18-7:4.

¹⁵² Complainant's Brief, p. 11.

¹⁵³ *Id.*, n. 63. First, Schumann cites Hearing Tr., 292:9-22, but this portion of the transcript does not include any discussion of incremental degradation. Second, Schumann cites Hearing Tr., 319:5-8, but this is merely testimony that Mr. Philips has not quantified risk to CEI's system if Schumann connected to sub-transmission service – it does not establish a lack of incremental degradation. Finally, Schumann cites Hearing Tr., 321:22-24, but this testimony pertains to the operation of a reclosure.

¹⁵⁴ Hearing Tr., 299:9-12.

¹⁵⁵ Mr. Philips has 37 years of electric system engineering experience. *See*, D. Philips Direct Testimony, 2:6-11 and Attachment DEP-1. Ms. Becks has 28 years of electric system engineering experience. *See*, J. Becks Direct Testimony, 2:6-14.

¹⁵⁶ *See generally*, Hearing Tr.

¹⁵⁷ *See*, D. Bellas Direct Testimony, 3:16-18 (Schumann first contacted CEI about upgrading its service in September 2015), 5:7-12 (as of the time Schumann had requested sub-transmission service, it had not notified CEI of any recurring issues related to CEI's electric service), 6:1-6 (Schumann never contacted Ms. Bellas regarding issues with power prior to September 2016). *See also*, Hearing Tr., 213:11-17 (Schumann never notified Ms. Bellas that it was having reliability issues until September 2016 – nearly one year after conversations regarding Schumann's request for Rate GSU began). *See also*, Schumann Ex. 1, Bates No. SCHUMANN 0019 – 0020 (3/30/2016 emails from Schumann's consultant, Jim Risk, with no mention of alleged reliability issues); Schumann Ex. 1, Bates No. SCHUMANN 0030 (5/4/2016 email from Mr. Risk with no mention of alleged reliability issues); Schumann Ex. 1, Bates No. SCHUMANN 0085 (undated email from Mr. Risk to Ms. Mikkelsen with no mention of alleged reliability issues); Schumann Ex. 1, Bates Nos. SCHUMANN 0197 – 0203 (June and July 2016 emails from Schumann consultants Jim Bensen and Al Schneider and Schumann CFO Donald Robertson, with no mention of alleged reliability issues).

¹⁵⁸ S. Schumann Direct Testimony, 2:2-4.

the company had reported such problems to its CEI customer support representative and what the outcome of those reports was. Here, though, Scott Schumann acknowledged that he did not know if anyone from Schumann had contacted Denise Bellas, prior to the filing of the complaint in this proceeding, to discuss service quality issues.¹⁵⁹ Nor has Schumann provided even a single document from any of its many consultants or vendors¹⁶⁰ concluding that the quality of power delivered by CEI has caused damage to Schumann's equipment as alleged in the Complaint¹⁶¹ and in Mr. Schumann's testimony.¹⁶² Even if Schumann's reliability allegations were true, the relief it seeks (*i.e.*, connection to CEI's sub-transmission service) would actually be discriminatory in its favor to the detriment other CEI customers. Specifically, if there truly were reliability issues with the distribution circuit from which Schumann is currently served (and if CEI were made aware of them), CEI would evaluate whether the issues were on CEI's system, and if they were, then CEI would determine the cause of the problem and try to mitigate it for all of the customers served from that circuit.¹⁶³ In other words, in the event of a true reliability issue, the solution is not to move one customer to sub-transmission service while disregarding any impact to other customers.

¹⁵⁹ Hearing Tr., 47:11-18.

¹⁶⁰ *Id.*, 86:21-88:8. *See also* Company Ex. 5.

¹⁶¹ Complaint, ¶¶ 6, 10.

¹⁶² Hearing Tr., 43:10-14. *See also*, S. Schumann Direct Testimony, 10:17-18.

¹⁶³ Hearing Tr., 296:24-297:12.

IV. RESPONSE TO SCHUMANN’S THIRD ARGUMENT: CEI’S DECISION WAS NOT DISCRIMINATORY.

A. Schumann’s Continued Misplaced Reliance on Rates Department Emails and Its Mischaracterization of Record Evidence and Testimony Does Not Establish Discrimination Here.

Schumann continues to improperly rely upon emails from employees in FirstEnergy’s Rates Department and upon its self-serving mischaracterization of record evidence and testimony – including the hearing testimony of CEI witness Dean Philips – in an attempt to argue that CEI’s determination was discriminatory.¹⁶⁴ CEI has already explained in detail in this brief and in its Initial Post-Hearing Brief the myriad flaws in Schumann’s arguments and the numerous ways in which Schumann has confabulated record evidence. In an attempt at brevity, CEI will not restate its explanations here, but rather it adopts and incorporates its previous explanations and arguments, including without limitation those set forth in this brief at sections II. B., II. C., and II. D. 1 and 2.

B. Schumann’s Attempted Comparisons to Other CEI Customers Receiving Sub-Transmission Service Do Not Establish Discrimination, and *Allnet Communications Serv.*, Cited By Schumann, Supports CEI’s Position.

Allnet Communications Serv., Inc. v. Pub. Util. Comm., 70 Ohio St.3d 202, 207 (1994), cited by Schumann, supports CEI’s position in this case. In that case, Allnet, the Complainant, argued that it was discriminatory for Ohio Bell to “offer itself one-plus dialing and not its intra-LATA competitors.”¹⁶⁵ The Ohio Supreme Court explained that under O.R.C. § 4905.35(A) “discrimination is not prohibited *per se* but is prohibited only if without a reasonable basis.”¹⁶⁶

¹⁶⁴ Complainant’s Brief, pp. 26-27, 31-34.

¹⁶⁵ *Allnet Communications Serv., Inc. v. Pub. Util. Comm.*, 70 Ohio St.3d 202, 207 (1994).

¹⁶⁶ *Id.*

The court upheld the Commission's determination that there was no discrimination,¹⁶⁷ and quoted the Commission's decision where it stated that:

Nor was there a showing by Allnet that Allnet and Ohio Bell are *similarly situated*, or that Allnet is treated differently than any other IXC. The mere fact that both Allnet and Ohio Bell are engaged in intraLATA interexchange market is not sufficient to prove unjust discrimination, as both companies differ in a myriad of ways, e.g., Ohio Bell provides basic local exchange service and under Ohio regulation, is the carrier of last resort.”¹⁶⁸

The court further held that “[c]learly, the dialing disparity results from ‘unlike circumstances,’ and Allnet has failed to sustain its burden on this issue.”¹⁶⁹

Similarly here, Schumann has failed to satisfy its burden. Schumann argues that its load is larger than the mean and median loads of other customers receiving 36 kV service.¹⁷⁰ However, this does not evidence any discrimination towards Schumann. For there to have been discrimination, Schumann must demonstrate that CEI treated Schumann differently than similarly situated customers. Schumann has presented no evidence indicating that the customers on 36 kV service (either as a whole or solely those connected to the circuits adjacent to Schumann's facility) are similarly situated to Schumann.¹⁷¹ And while Mr. Schumann testified that there are customers on the sub-transmission lines adjacent to Schumann's facility with an electric load less than Schumann's,¹⁷² there is no evidence that those customers are similarly situated to Schumann, and Mr. Schumann acknowledged that he does not know if those

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* (emphasis added).

¹⁶⁹ *Id.*

¹⁷⁰ Complainant's Brief, p. 35.

¹⁷¹ *See generally*, Hearing Tr.

¹⁷² S. Schumann Direct Testimony, 15:9-10.

customers could have been served from the same distribution circuit or substation that is currently serving Schumann.¹⁷³

In response to Schumann's discovery in this case, CEI provided information regarding the number of premises that began receiving sub-transmission service from 2012 to 2017.¹⁷⁴ But Schumann has not established that these premises began receiving sub-transmission service as a result of a request to move from secondary distribution service, as Schumann has sought to do. Thus, Schumann has failed to establish that these premises are similarly situated to Schumann. Schumann inquired about the reasons why each of the premises began receiving sub-transmission service,¹⁷⁵ and now impugns the veracity of CEI and its witnesses by speculating that CEI did not have reasons for the determinations that it made.¹⁷⁶ However, as CEI explained in its responses, these requests sought information that was not in the Company's possession, custody or control,¹⁷⁷ and CEI responded with the information that was available to it at the time of the discovery responses.¹⁷⁸ At the hearing, Ms. Bellas explained what she did to respond to the requests and that some information was simply not available:

Q. You asked for reasons to fill out this chart, correct?

A. Yes.

Q. And where you were given reasons, you put those reasons in this chart, correct?

A. That is correct.

¹⁷³ Hearing Tr., 51:3-18.

¹⁷⁴ See, Schumann Ex. 5.

¹⁷⁵ Schumann Ex. 6.

¹⁷⁶ Complainant's Brief, pp. 34-35.

¹⁷⁷ Schumann Exs. 5 and 6.

¹⁷⁸ Schumann Ex. 6.

Q. And where the chart is blank in the Reason column, it is because you could not obtain a reason from either the Engineering or the Planning and Protection Department, correct?

A. Correct.¹⁷⁹

The fact that information was not available is not evidence of purported discrimination, and Schumann has failed to carry its burden.

Since 2012, CEI has only received two requests from customers to move from distribution to sub-transmission service: (1) Schumann's request, and (2) the request of PCC Airfoils, LLC,¹⁸⁰ which is also the subject of a Commission proceeding.¹⁸¹ Thus, there is only one (arguably) similarly situated customer to Schumann, and CEI also denied that customer's request to receive sub-transmission service because it lacked a valid engineering reason and/or was made solely for economic purposes. There is no discrimination where the only two customers making similar requests for sub-transmission service received the same response from CEI based upon the same reasoning.

Finally, Schumann has not presented any evidence, and has not even asserted, that CEI has ever allowed a customer to transfer from distribution voltage to sub-transmission voltage in order to improve that customer's reliability of service. There is no basis in the record, or in the Company's Tariff, for Schumann to be switched to a sub-transmission circuit on the grounds of a perceived potential improvement in reliability. As Ms. Becks testified, the proper solution to any reliability issues that may exist with the L-1-KK circuit is to troubleshoot reported outages and improve reliability for all customers on the circuit.¹⁸²

¹⁷⁹ Hearing Tr., 228:8-18.

¹⁸⁰ J. Becks Direct Testimony, 5:1-7.

¹⁸¹ PUCO Case No. 16-2213-EL-CSS.

¹⁸² Hearing Tr., 296:25 – 297:12.

V. RESPONSE TO SCHUMANN’S FOURTH ARGUMENT: SCHUMANN KNEW HOW TO MAKE A FORMAL REQUEST TO CHANGE ITS SERVICE, YET IT FAILED TO DO SO; NEVERTHELESS, CEI FOLLOWED THE SAME PROCEDURE THAT IT FOLLOWED FOR OTHER CUSTOMERS.

Schumann knew that it needed to make a formal request to change its electric service, and it knew how to do so. Ms. Bellas told Schumann’s consultant, Mr. Avers, that he needed to call the CEI call center to put in a formal request¹⁸³ for sub-transmission service for Schumann.¹⁸⁴ Schumann never submitted a formal request for sub-transmission service through the CEI call center,¹⁸⁵ thus, no request was routed through CEI’s application to the Engineering Department for review. Nevertheless, Ms. Bellas contacted CEI’s Planning and Protection Department and asked Jean Becks, an Engineer V in that department,¹⁸⁶ to review Schumann’s informal request for sub-transmission service.¹⁸⁷

Although Schumann never made a formal request for sub-transmission service, CEI followed the same procedure and used the same guidelines in response to Schumann’s request as it does for other customers making similar requests.¹⁸⁸ There was no discrimination here. If Schumann had made a formal request for sub-transmission service under the same facts and

¹⁸³ [REDACTED]
[REDACTED] See also, Hearing Tr., 206:17-24.

¹⁸⁴ Hearing Tr., 232:14-16. [REDACTED]
[REDACTED]

¹⁸⁵ *Id.*, 175:21-24.

¹⁸⁶ J. Becks Direct Testimony, 2:3-4.

¹⁸⁷ D. Bellas Direct Testimony, 4:8-11.

¹⁸⁸ J. Becks Direct Testimony, 7:22-8:5.

circumstances as were considered in this case, it would still not have qualified for sub-transmission service.¹⁸⁹

VI. CONCLUSION

CEI's denial of Complainant's request to be connected to the Company's sub-transmission system was reasonable, non-discriminatory, and in accordance with the Company's Tariff, applicable Commission rules, and Ohio law. As detailed above and in CEI's Initial Post-Hearing Brief, Complainant is not eligible for Rate GSU because it *does not require* sub-transmission service. Complainant's imprudent mischaracterizations of testimony and misleading excerpting of emails and other documents do not change this fact. Complainant did not present any evidence at hearing to indicate that its current electric service is inadequate or that there is any justifiable engineering reason requiring it to be connected to CEI's sub-transmission system. Indeed, the evidence presented at hearing demonstrates that Complainant is adequately served at secondary service and that there is no such justifiable engineering reason. Nothing in the Company's Tariff, Commission rules, or Ohio law changes this fact or requires CEI to abrogate its planning and protection responsibilities to accommodate a single customer's desire to receive a potentially more favorable rate. Moreover, CEI has provided Complainant with a reasonable alternative to its request for sub-transmission service that will not have the negative side-effect of decreasing reliability for the remainder of the Company's customers.

Accordingly, Complainant has failed to meet its burden in this proceeding, and CEI respectfully requests that the Commission dismiss the Complaint in its entirety, with prejudice.

¹⁸⁹ Hearing Tr., 281:17-282:3.

Respectfully submitted,

/s/Christine E. Watchorn

Robert M. Endris (0089886)

Counsel of Record

Carrie M. Dunn-Lucco (0076952)

Joshua R. Eckert (0095715)

FirstEnergy Service Company

76 South Main Street

Akron, Ohio 44308

Telephone: 330-384-5728

Facsimile: 330-384-3875

rendris@firstenergycorp.com

cdunn@firstenergycorp.com

jeckert@firstenergycorp.com

Christine E. Watchorn (0075919)

Ulmer & Berne LLP

65 East State Street, Suite 1100

Columbus, Ohio 43215

Telephone: 614-229-0034

Facsimile: 614-229-0035

cwatchorn@ulmer.com

ATTORNEYS FOR THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing The Cleveland Electric Illuminating Company's Post-Hearing Reply Brief was served upon the following by electronic mail on this 10th day of October, 2017:

Michael J. Settineri, Esq.
William A. Sieck
Vorys, Sater, Seymour and Pease
52 East Gay Street
Columbus, OH 43215
mjsettineri@vorys.com
wasieck@vorys.com

/s/Christine E. Watchorn
Christine E. Watchorn (0075919)
*On behalf of The Cleveland Electric Illuminating
Company*

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