

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

I. SCHUMANN & COMPANY, LLC,)	
Complainant,)	
)	Case No. 17-473-EL-CSS
v.)	
)	
THE CLEVELAND ELECTRIC)	
ILLUMINATING COMPANY,)	
Respondent.)	

**I. SCHUMANN & COMPANY, LLC'S
POST-HEARING REPLY BRIEF**

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I. Introduction.

I. Schumann & Company, LLC ("Schumann") has satisfied its burden in this case, showing that The Cleveland Electric Illuminating Company ("CEI") unreasonably and improperly rejected a service change request required to meet the needs of a long-time industrial customer of CEI. Schumann's initial brief presented a thorough analysis of CEI's tariff and explained why Schumann was both eligible for and qualified for Subtransmission Service under Rate GSU. Schumann also pointed to the record evidence that shows CEI discriminated against Schumann and that CEI considered the revenue it would lose when coming up with reasons to deny Schumann's request. Schumann has met its burden of proof in this case, including establishing that outages are a costly problem for Schumann's energy intensive alloy melting operations. The record supports Schumann in this proceeding.

CEI's response to the record is to argue that Schumann does not qualify for Subtransmission Service under Rate GSU because Schumann does not "require" Subtransmission Service. CEI also argues that its denial was appropriate under its tariff, the Commission's rules and Ohio law. But in making those arguments, CEI ignores the express language of its tariff and admissions by FirstEnergy's Rates Department personnel and CEI's employees that the tariff is at best ambiguous. CEI also ignores its admission in its initial brief that the customer's needs must be considered when determining whether a customer requires Subtransmission Service.

CEI also argues that its denial was not discriminatory and that as a general matter, its denial was reasonable. But CEI cannot avoid the record which shows that CEI's Planning and Protection Department only became involved after Mr. Hrdy, CEI's customer support manager,

became concerned that other customers would also request Subtransmission Service.

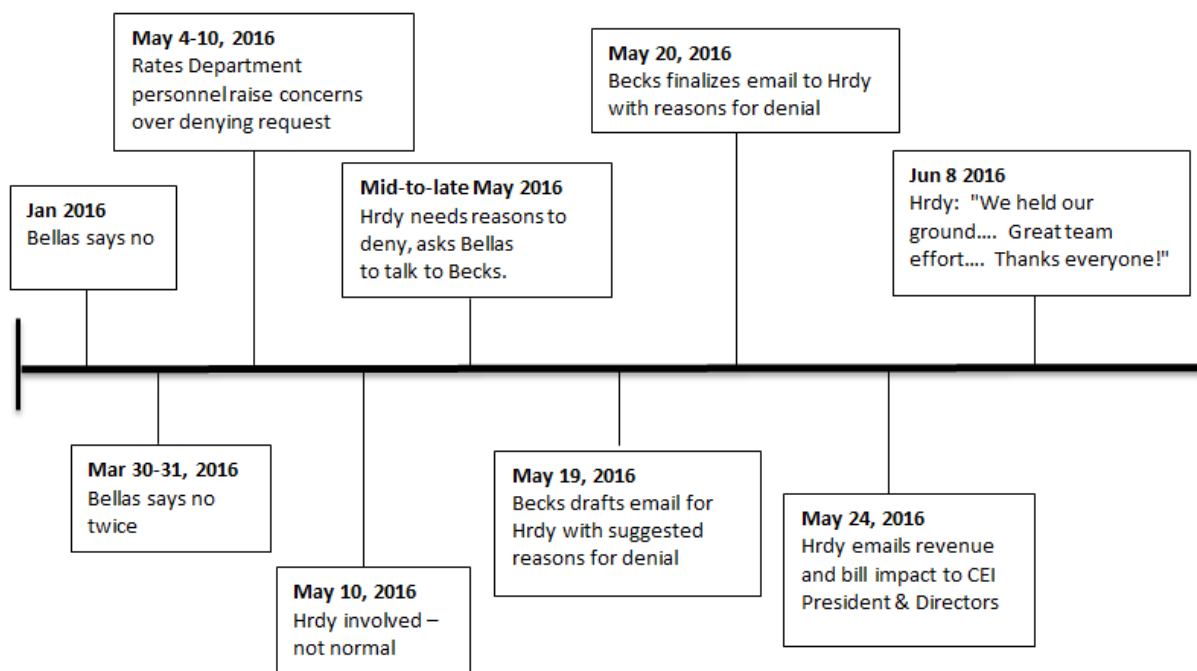
Mr. Hrdy's quest to manufacture reasons to deny Schumann's request and not lose revenue was contrary to the statements of FirstEnergy's Rates Department personnel, who did not see a reason to deny Schumann's request.

These facts along with other evidence in the record support Schumann's claims in this proceeding, and support a finding by this Commission that CEI unlawfully and unreasonably denied Schumann's request for Subtransmission Service. Schumann needs and requires Subtransmission Service and should not be forced to tolerate a service that is less reliable, will constrain Schumann's growth and is not the most economical electric service available to Schumann.

II. Counter-Statement of Facts.

A. A simple timeline based on CEI's own emails shows CEI's response to Schumann's requests for Rate GSU service was abnormal and discriminatory.

What CEI dismisses as "much ado about emails" is actually very helpful to reveal the whole story. As shown in the following timeline based on CEI's own emails, what started in September 2015 with meetings of the parties concerning 36 kV service under Rate GSU was followed by CEI's abnormal and discriminatory handling and denials of Schumann's multiple requests for Rate GSU service:



After Ms. Bellas denied two additional requests from Schumann, Schumann made an additional request, through counsel, on October 11, 2016 which CEI summarily denied.¹

¹ Compare Schumann Ex. 2, Ex. C (Nov. 11, 2016 Ltr. R. Endris to M. Settineri) (re review) with Schumann Ex. 11 (stating first and last dates of review were "on or about May 24, 2016").

B. CEI has no support for and greatly overstates the speculative risks to its subtransmission system if Schumann was connected.

CEI greatly overstates the hypothetical risks of connecting a single customer to its subtransmission system when the reality is CEI did not make any determination of any actual risk to the system from connecting Schumann to a 36 kV circuit adjacent to its plant. This is illustrated by the following table:

<u>Issue</u>	<u>CEI's Evidence and Admissions</u>
Is it difficult to connect Schumann to the 36 kV circuit?	<ul style="list-style-type: none">➤ No physical difficulty.²➤ Can be done safely.³
What is the risk of connecting? Schumann?	<ul style="list-style-type: none">➤ CEI did not analyze risk.⁴➤ CEI did not quantify risk.⁵➤ No study of increase in incremental degradation.⁶➤ Protective equipment and steps are available.⁷➤ "Relatively small increase in risk."⁸
If there was an outage, could it really impact "a dozen or more distribution substations" and "tens of thousands of customers"? ⁹	<ul style="list-style-type: none">➤ May 2016: Ms. Becks didn't know.¹⁰➤ August 2017: Ms. Becks didn't know.¹¹➤ August 17, 2017: 2 substations, ≥ 4,000 customers.¹²

² Tr. Vol. II at 330:9-16.

³ Tr. Vol. II at 330:9-16.

⁴ Tr. Vol. II at 327.

⁵ Tr. Vol. II at 319.

⁶ Tr. Vol. II at 299.

⁷ Tr. Vol. II at 321-23.

⁸ Tr. Vol. II at 328-29.

⁹ CEI Initial Brief at 5, 21.

¹⁰ Tr. Vol. II at 283:22-284:12.

¹¹ Tr. Vol. II at 284:17-285:17.

¹² Tr. Vol. II at 296:8-12.

When the hearing ended, it was clear that the engineers who testified agreed on three critical facts, as shown below:

<u>Fact</u>	<u>Phillips and Becks (CEI)</u>	<u>Kumar (Schumann)</u>
Customers can be and are connected to subtransmission systems without unreasonable risk to system reliability.	<ul style="list-style-type: none"> ➤ "CEI has significant experience in making connections to subtransmission systems."¹³ ➤ Not aware of any outage to CEI's subtransmission system caused by a customer connection.¹⁴ ➤ Existing connections are left in place, even if no longer required.¹⁵ 	<ul style="list-style-type: none"> ➤ "Utility customers, especially industrial customers, can be and are connected to subtransmission circuits without unreasonably impairing system reliability."¹⁶
Schumann can be connected to a 36 kV circuit.	<ul style="list-style-type: none"> ➤ Not physically difficult.¹⁷ ➤ Can be done safely.¹⁸ 	<ul style="list-style-type: none"> ➤ No physical reason can't connect.¹⁹
There is no engineering evidence that connecting Schumann will reduce reliability of that circuit.	<ul style="list-style-type: none"> ➤ Did not analyze risk.²⁰ ➤ Did not quantify risk.²¹ ➤ No study of increase in incremental degradation.²² ➤ Protective equipment and steps available.²³ ➤ "Relatively small increase in risk."²⁴ 	<ul style="list-style-type: none"> ➤ No "evidence of any technical justification" for its "vague and non-specific" claims.²⁵ ➤ No evidence CEI used programs and procedures available to determine reliability risks.²⁶

¹³ Tr. Vol. II at 330.

¹⁴ Tr. Vol. II at 325-26.

¹⁵ Company Ex. 27, Becks Dir. Test. 4:13-15.

¹⁶ Schumann Ex. 4, Kumar Dir. Test. 3:7-8.

¹⁷ Tr. Vol. II at 330:9-16.

¹⁸ Tr. Vol. II at 330:9-16.

¹⁹ Tr. Vol. I at 152:24-153:15.

²⁰ Tr. Vol. II at 327.

²¹ Tr. Vol. II at 319.

²² Tr. Vol. II at 299.

²³ Tr. Vol. II at 321-23.

Because CEI's response to Schumann's requests was abnormal, unreasonable and discriminatory, as the timeline above shows, and because CEI has no support for its exaggerated risks if Schumann were connected to a 36 kV subtransmission circuit, CEI's legal arguments cannot withstand scrutiny. Therefore, as explained in the following arguments, Schumann has sustained its burden of showing that it qualifies for Subtransmission Service under Rate GSU and CEI's refusal to provide that service violates the tariff and is unreasonably discriminatory.

III. CEI's Arguments Supporting its Theory of its Tariff are Contrary to the Express Tariff Language and Not Supported by the Record.

CEI argues that Schumann does not require Subtransmission Service and that CEI's tariff gives CEI the option to choose the delivery voltage.²⁷ To the contrary, CEI's tariff and the record in this proceeding establish that Schumann is eligible for Subtransmission Service, that Schumann requires Subtransmission Service and that CEI's tariff, when read properly, limits CEI's discretion to choose a customer's delivery voltage and requires CEI to focus on the customer's needs.

A. The express terms of CEI's tariff do not support CEI's denial of Schumann's request.

1. CEI must follow the express terms of its tariff.

When analyzing CEI's tariff, it is important to note that "[o]nce approved, a tariff has the same binding effect as a law." *See Complaint of City of Reynoldsburg v. Columbus Southern*

²⁴ Tr. Vol. II at 328-29.

²⁵ Schumann, Ex. 5, Kumar Dir. Test. 6:17 – 7:3.

²⁶ Schumann Ex. 4, Kumar Dir. Test. 3:8-12.

²⁷ See Parts A and B of CEI's Initial Brief at 18-24.

Power Co., 134 Ohio St. 3d 29, 39; 2012-Ohio-5270 ¶41 (citations omitted). As recently confirmed by this Commission, "[t]he General Assembly has vested with the Commission the statutory authority to review and approve tariffs and, once approved, a tariff has the same binding effect as a law."²⁸ Under this authority, CEI must follow the express terms of its tariff and cannot develop policies or make decisions that do not comply with its tariff.

2. CEI's tariff limits CEI's discretion when choosing a customer's delivery voltage.

When claiming at page 23 of its initial brief that it has the option to choose the voltage under Rate GSU, CEI ignores the unambiguous language of its Electric Service Regulations, in Section IV.C. of its tariff. The applicable section of the regulations states (emphasis added):

ELECTRIC SERVICE REGULATIONS

C. **Delivery Voltage:** Subject to the provisions of paragraph IV.B above, and after the Company determines that facilities of adequate capacity are available and adjacent to the premises to be served, the types of service available with the nominal voltages are:

1. **Secondary Service** - Less than or equal to 600 volts
2. **Subtransmission Service** - 11,000 volts three wire and 36,000 volts three wire
3. **Transmission Service** - Greater than or equal to 69,000 volts
4. **Primary Service** - All other available voltages

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. Customers with demands in excess of twenty-five hundred (2,500) kW will generally be served at Transmission Service

CEI, in its brief, emphasized the phrase "specified by the Company" in the highlighted sentence above, but ignored the phrase "and will be based upon" which clearly limits CEI's discretion on selecting a delivery voltage to the availability of lines in the customer's vicinity

²⁸ *In re Application of Columbia Gas of Ohio, Inc. for Approval of Demand-Side Management Programs for its Residential and Commercial Customers*, 2016 Ohio PUC LEXIS 1156, *27, Case No. 16-1309-GA-UNC, ¶37, Opinion and Order dated December 21, 2016.

and whether the delivery voltage is "commensurate with the size of the customer's load."

Regardless of any claim by CEI that the various rate schedules give it the "choice of voltage," the express tariff language in the Electric Service Regulations makes it clear that CEI's discretion when determining the delivery voltage is to be based on only two factors. CEI failed to consider those factors when denying Schumann's request, and as explained in Schumann's initial brief, Schumann's load and the availability of lines next to its facility make Schumann eligible for Subtransmission Service.

Indeed, CEI has never said that Schumann's load is not commensurate with Subtransmission Service and cannot seriously do so now. And whether measured as of 2016 or today, Schumann's demand is larger than loads of customers receiving 36 kV service from the R-11 and R-24 circuits²⁹ and significantly larger than the mean and median loads of more than 130 customers being served in 2017 from CEI's 36 kV circuits.³⁰ CEI's tariff also supports the conclusion that Subtransmission Service at 36 kV is commensurate with Schumann's load. Under CEI's tariff, larger loads should be served at higher delivery voltages. For example, CEI's tariff states that, "[c]ustomers with demands in excess of twenty-five hundred (2,500) kW will generally be served at Transmission Service."³¹ If a load of 2,500 kW is commensurate with a Transmission Service delivery voltage of at least 69,000 volts, then Schumann's load of [REDACTED]

²⁹ Schumann Ex. 1 at 2-RFA-014 through 2-RFA-019 (admitting customers on R-11 and R-24 had lower monthly billing demands than Schumann).

³⁰ *Compare* Schumann Ex. 1 at 2-INT-017(b)&(C) (for monthly billing demands of all customers connected to CEI's 36 kV system from January 1, 2015 through response dated May 18, 2017, median demand of 0.45 MW & average of 1.05 MW) *with* Schumann Ex. 2C, CONFIDENTIAL Schumann Dir. Test. 7:10-18 (noting range of approximately [REDACTED] kW to [REDACTED] kW from 2012 through 2016 and range of approximately [REDACTED] kW to [REDACTED] kW in 2017).

³¹ Joint Ex. 1, CEI Tariff, Elec. Svc. Regs. § IV.C, Original Sheet 4, page 4 of 21

█] kW³² would be commensurate with a delivery voltage of 36,000 volts. In fact, a Rates Department employee, Mr. Weis, cited that specific tariff provision when he suggested that Schumann "may have a right to be served by the higher voltage [36 kV], if requested."³³

3. CEI's discretion to choose the voltage under Rate GSU is limited to the two voltages – 11 kV or 36 kV – listed for Subtransmission Service.

In arguing that it has the option to choose delivery voltage, CEI cites to the language in the Rate GSU schedule that "[c]hoice of voltage shall be at the option of the Company." CEI, however, ignores the first sentence of the tariff language that clearly states that this schedule is "[a]vailable to general service installations requiring Subtransmission Service." The complete language of the relevant section of the tariff is:

GENERAL SERVICE - SUBTRANSMISSION (RATE "GSU")

AVAILABILITY:

Available to general service installations requiring Subtransmission Service. Subtransmission Service is defined in the Company's Electric Service Regulations. Choice of voltage shall be at the option of the Company.

Following the tariff language, CEI determines the voltage after an installation is found to require Subtransmission Service. As to Rate GSU, that voltage choice is either 11 kV or 36 kV as those are the only two delivery voltages listed in the tariff as being available under that service.³⁴ Likewise, when a service installation is found to "require" Secondary Service,

³² Schumann Ex. 2C, CONFIDENTIAL Schumann Dir. Test. 7:10-18.

³³ Schumann Ex. 1 at Schumann 0029 ("....I would suggest that the customer may have a right to be served by the higher voltage, if requested. Furthermore, in the ESR it states: 'Customers with demands in excess of twenty-five hundred (2,500) kW will generally be served at Transmission Service.'")

³⁴ Under Rate GSU, Schumann would purchase and own the transformer to convert the incoming 36 kV voltage to the voltage it requires for its facility. See Schumann Ex. 2, Grady Dir. Test. at 6:7-9 (describing "engineering and

Transmission Service or Primary Service under Rates GS, GT and GP respectively, CEI must determine the voltage.³⁵ For example, Transmission Service has delivery voltages available of 69 kV and above (i.e., 69 kV, 138 kV, etc.), while Secondary Service has delivery voltages of 600 V or less. Primary Service picks up all other available voltages and CEI will pick the delivery voltage under Rate GP after determining that a customer requires Rate GP.³⁶

CEI makes this exact point (perhaps inadvertently) in its initial brief at page 27 when it stated it was willing to put Schumann on an alternative rate schedule. The record is clear that CEI was willing to put Schumann on Rate GP.³⁷ The tariff for Rate GP states in relevant part:³⁸

GENERAL SERVICE - PRIMARY (RATE "GP")

AVAILABILITY:

Available to general service installations requiring Primary Service. Primary Service is defined in the Company's Electric Service Regulations. Choice of voltage shall be at the option of the Company.

Primary Service is defined in the Electric Service Regulations as "all other available voltages." That is, Primary Service would be other than 600 V and below (Secondary Service), 11 kV or 36 kV (Subtransmission Service) or 69 kV and above (Transmission Service). By offering Rate GP to Schumann, CEI has apparently found that Schumann requires Primary Service in

infrastructure changes" required for Subtransmission Service according to a September 23, 2015 meeting with CEI). See also Joint Ex. 1, CEI Tariff, Original Sheet 21 at page 1 of 3.

³⁵ Each rate schedule provides that "Choice of voltage shall be at the option of the Company." See CEI Tariff at Rate GS at Original Sheet 20, Page 1 of 3, Rate GP at Original Sheet 21, Page 1 of 3, & Rate GT at Original Sheet 23, Page 1 of 3.

³⁶ Compare CEI Tariff, Elec. Svc. Regs. § IV.B (stating Primary Service is all available voltages above 600 V, below 69 kV, and other than 11 kV and 36 kV) with id., Rate GP at Original Sheet 21, Page 1 of 3 (choice of voltage).

³⁷ Tr. Vol. I at 209:6-9 & Schumann Ex. 1 at Schumann 0019 (Bellas March 30, 2017 email saying Schumann "can either go GS Rate (CEI owns equipment) or GP (customer owns equipment). Those are there [sic] options"). See also Schumann Ex. 2, Schumann Dir. Test. at 20:1-3.

³⁸ See Joint Ex. 1, CEI Tariff, Original Sheet 21 at page 1 of 3.

addition to requiring Secondary Service. And having found that Schumann requires Primary Service, CEI has the option to pick the voltage under the Rate GP schedule.

Importantly, **by offering Rate GP to Schumann, CEI admits that under its tariff, a customer may be eligible for more than one service.** As well, by offering Rate GP, **CEI admits that Schumann requires something other than its current service.** Thus, CEI cannot deny that Schumann, in addition to being eligible for Secondary Service and Primary Service, may also be eligible for Subtransmission Service. This leads to the one remaining issue under CEI's tariff – whether Schumann requires GSU service.

B. Contrary to CEI's claim, the record shows that Schumann requires Subtransmission Service.

1. By CEI's own admission, a customer's needs are to be considered in determining whether it requires Subtransmission Service.

The first sentence of the Rate GSU schedule makes it clear that whether Rate GSU is available to a customer depends on whether **the customer** requires Subtransmission Service. Specifically, the tariff states that Rate GSU is "[a]vailable to general service installations requiring Subtransmission Service." In other words, the focus is on what the customer requires and not what CEI requires. Even CEI admits that the focus is on what the customer requires, stating at page 2 of its initial brief that, "... the Tariff gives CEI the responsibility of determining the appropriate service voltage a customer should receive **based on the customers' stated needs.**"³⁹

Yet, in the face of the unambiguous language in the Rate GSU schedule, and for the first time, CEI argues that the factors CEI witness Phillips said CEI uses when choosing the delivery

³⁹ CEI Initial Brief at 2 (emphasis added).

voltage go to whether Schumann "requires" Subtransmission Service.⁴⁰ This is contrary to Mr. Phillip's testimony in which he claimed the factors go to the choice of voltage, citing the language of the Electric Service Regulations and the sentence in the CEI rate schedules that states "[c]hoice of voltage shall be at the option of the Company."⁴¹ He never testified that the factors should be applied to determine whether Schumann requires Subtransmission Service.

Indeed, a simple listing of the alleged "engineering reasons" listed by CEI at page 19 of its initial brief shows that, save for one factor, CEI has created factors that do not fit under the tariff's requirement that the *customer's needs* be considered.

CEI Factor or "Engineering Reason"	Focuses On
<ul style="list-style-type: none"> The customer's load and power requirements. 	<ul style="list-style-type: none"> Customer
<ul style="list-style-type: none"> Whether the customer's load characteristics are likely to cause objectionable power quality impacts to other customers. 	<ul style="list-style-type: none"> CEI
<ul style="list-style-type: none"> The potential impact the customer's connection may have on system reliability. 	<ul style="list-style-type: none"> CEI
<ul style="list-style-type: none"> System expansion (i.e., whether the Company's facilities in the area are adequate to serve the customer's needs). 	<ul style="list-style-type: none"> CEI
<ul style="list-style-type: none"> The impact the customer's connection will have on [CEI's] operations. 	<ul style="list-style-type: none"> CEI

The factors' lack of consideration of the "customer's needs" reinforces why CEI's claimed policy of putting customers on the lowest voltage level available unless there is an "appropriate

⁴⁰ CEI Initial Brief at 19.

⁴¹ Company Ex. 29, Phillips Dir. Test. at 5:3-9.

engineering reason" requiring a higher voltage⁴² is contrary to CEI's tariff. CEI is not looking at "engineering reasons" from a customer's standpoint. And as a result of CEI's unauthorized policy, CEI does not consider a customer's requirement for more reliable service with fewer outages and interruptions.⁴³ Nor does CEI consider a customer's requirement for Subtransmission Service to support capital investment, growth and additional employment or whether Rate GSU would provide a customer the most economical service available to meet its stated needs.⁴⁴

Also undercutting CEI's claim that it only allows connections to its subtransmission system when required for "engineering reasons," is that other customers have been allowed to connect to CEI's subtransmission system and yet CEI cannot identify any engineering reasons for almost two-thirds of all new connections to its subtransmission system since 2012.⁴⁵ CEI's conduct – allowing other customer connections to the subtransmission system without evidence of any engineering reason – undercuts CEI's claim that "requiring" means "appropriate engineering reason."

CEI cannot adopt or implement a policy contrary to its tariff. CEI's tariff states that Rate GSU is "[a]vailable to general service installations **requiring** Subtransmission Service." In CEI's own words, "... the Tariff gives CEI the responsibility of determining the appropriate service voltage a customer should receive **based on the customers' stated needs.**"⁴⁶ And contrary to

⁴² CEI Initial Brief at 3 & n.9; 4-5 & n.25; 19 & n.130 - 131.

⁴³ Tr. Vol. II at 300:22-301:6 & 363:20-364:12.

⁴⁴ Tr. Vol. II at 363:20-364:8.

⁴⁵ Schumann Ex. 1 at 4-INT-002, 4-INT-004 & 4-INT-004 Attachment 1 (showing reasons for only 8 of 21 connections); Schumann Ex. 5; Tr. Vol. I at 222:18-228:18.

⁴⁶ CEI Initial Brief at 2.

CEI's claim at pages 18-19 of its initial brief and as explained below, Schumann has presented substantial and credible evidence in this record showing why Schumann requires Subtransmission Service.

2. Schumann has presented evidence that Subtransmission Service will be more reliable and will have less costly and problematic outages than CEI's low voltage distribution circuit.

It is telling that CEI's initial brief makes no mention of Schumann's requirement for more adequate and reliable service from the 36 kV circuit.⁴⁷ As noted by Mr. Kumar, reliable service is extremely important to industrial customers and is an important reason they often request and receive subtransmission service.⁴⁸ Because Schumann's production schedule depends on continuous operation⁴⁹ of electric and gas furnaces, massive fans and other heavy-duty industrial equipment,⁵⁰ outages and momentary interruptions are extremely costly.⁵¹ Whether

⁴⁷ CEI's Initial Brief does not once use the word "outage" or "interruption" despite the fact that that outages and interruptions were identified by Schumann as a reason for its formal request for Rate GSU service (Schumann Ex. 2 at Ex. C (Oct. 11, 2016 Ltr. M. Settineri to R. Endris)), despite the fact that outages and interruptions were the subject of extensive testimony at hearing, and despite the fact that CEI admits outages and interruptions are more frequent on its 13.2 kV line than on its 36 kV line (Tr. Vol. II at 343:21 – 344:11) and does not deny that Schumann has been experiencing them or that they are a problem for Schumann (Tr. Vol. I at 213:11-215:22, 217:21-218:7; Tr. Vol. II at 338:8-339:5).

Instead, CEI spends three-pages of its Initial Brief trying to show that Schumann has no evidence that incoming voltage spikes have damaged its equipment. See CEI Initial Brief at 12-14. As shown by the exhibits in evidence, Schumann [REDACTED]

[REDACTED] Company Ex. 1C CONFIDENTIAL email January 24, 2014 at ISCO_CEI00001332. Schumann [REDACTED]

[REDACTED] Id. at ISCO_CEI 00001333.

⁴⁸ Schumann Ex. 4, Kumar Dir. Test. 5:7-16 & 7:16-8:2.

⁴⁹ Tr. Vol. I at 74.

⁵⁰ Schumann Ex. 3, Grady Dir. Test. 3:14-4:2 & Ex. A.

⁵¹ Schumann Ex. 2C, CONFIDENTIAL Schumann Dir. Test. 7:4-8. Schumann Ex. 2, Schumann Dir. Test. 6:15-7:3.

an outage lasts hours, minutes or less, Schumann's "maintenance employees have to work through a complicated restart which can take up to an hour or more."⁵²

Schumann thus requires and will receive much more reliable service from the 36 kV circuit than it receives from the 13.2 kV circuit. CEI witnesses admitted that the 36 kV circuits adjacent to Schumann's premises "have less outages – both momentary interruptions as well as sustained outages – than the 13.2 kV system that Schumann is currently on."⁵³ For the period March 2015 through March 2017, CEI's records (which may underreport momentary interruptions⁵⁴) show only one outage on each of the 36 kV circuits adjacent to Schumann's premises compared to 12 outages on the 13.2 kV circuit serving Schumann.⁵⁵ Since March 2017, the period postdating CEI's records, there have been at least twelve electric service outages or momentary interruptions to Schumann, including one in March, nine in April, one in May and one in June.⁵⁶

Contrary to any claim by CEI, Schumann has presented evidence to this Commission that to obtain more reliable service for its industrial operations, Schumann requires 36 kV service.

3. The record shows that Subtransmission Service will better position Schumann for expansion in a changing and competitive global market.

Subtransmission Service will not only provide Schumann with more reliable service, it will provide Schumann with opportunities for growth, capital investment and possible additions

⁵² Schumann Ex. 2, Schumann Dir. Test. 6:11-14.

⁵³ Tr. Vol. II at 343:21 – 344:11.

⁵⁴ Tr. Vol. II at 336:7-18 & 289:3-7.

⁵⁵ See Schumann Ex. 1 at Schumann Set 1-INT-003 and Schumann Set 1-INT-003 (showing 13.2 kV outages) & Attachment 1 with Schumann Set 1-INT-004 and Schumann Set 1-INT-004 Attachment 1 (showing 36 kV outages).

⁵⁶ Schumann Ex. 2, Schumann Dir. Test. 11:15-16.

to employment.⁵⁷ As Schumann's Chief Operating Officer testified, "Schumann is operating in a highly competitive and difficult market that has become global in nature during the past ten to fifteen years."⁵⁸ [REDACTED]

[REDACTED].⁵⁹ Those "opportunities can come up quickly"⁶⁰ as the market changes.

Service from CEI's 13.2 kV circuit will leave Schumann facing potential capacity constraints, paying higher electric service costs, and suffering numerous costly outages and momentary interruptions in electric service.⁶¹ Schumann should not be made to wait until the market change has already occurred before it can take 36 kV service. Waiting could result in missed opportunities.⁶²

For example, Scott Schumann testified about the timing of a new furnace, noting delivery could take from [REDACTED].⁶³ As CEI's witness Ms. Becks testified, the lead time for a new transformer to accommodate Subtransmission Service could be up to a year.⁶⁴ This creates the potential that Schumann would have a new furnace on site in [REDACTED] months but the transformer necessary to go to Subtransmission Service would be delivered [REDACTED] months later (one year lead time). Schumann should not have to take on the risk of delays in addition to possibly losing opportunities for expansion because CEI refuses now to allow Schumann to take the service it requires – Subtransmission Service.

⁵⁷ Schumann Ex. 2, Schumann Dir. Test. 8:14-16.

⁵⁸ Schumann Ex. 2, Schumann Dir. Test. 8:18-19.

⁵⁹ Schumann Ex. 2C, Schumann Dir. Test. 8:18-9:9 & 10:3-9.

⁶⁰ Schumann Ex. 2, Schumann Dir. Test. 9:12.

⁶¹ Schumann Ex. 2, Schumann Dir. Test. 9:17-20.

⁶² Schumann Ex. 2, Schumann Dir. Test. 9:12-20; Schumann Ex.2C, CONFIDENTIAL Schumann Dir. Test. 8:18-9:3.

⁶³ Tr. Vol. I CONFIDENTIAL at 68:14-25.

⁶⁴ Tr. Vol. II at 305:2-7.

Waiting also would not provide Schumann any assurance that it would later qualify for Rate GSU service. CEI has no policy regarding how much, how likely or when Schumann must increase load to qualify for Subtransmission Service.⁶⁵ Because CEI would provide Schumann with Rate GSU service based not on Schumann's load but, instead, based on distribution circuit capacity, which is both variable and not something Schumann knows, there is no assurance that Schumann would be allowed to take Subtransmission Service even if it increased its load.

As noted at the hearing of this matter, CEI's unwritten policy and moving target leave Schumann with a very real chicken-and-egg business planning problem.⁶⁶ Schumann's ability to make capital investments and prepare for expected but uncertain business trends depend greatly on Schumann's ability to take Subtransmission Service.⁶⁷ But CEI will not provide Schumann with Subtransmission Service even though Schumann requires that service and, instead, leaves Schumann to guess when or even if CEI would find that changed circumstances meet CEI's uncertain "engineering reasons" test. CEI's unwritten, ambiguous and improper interpretation of its tariff is thus limiting Schumann's opportunities for economic growth, capital investment, and possible additions to employment.⁶⁸

⁶⁵ Tr. Vol. II at 303:22-304:8.

⁶⁶ Tr. Vol. II at 294:18-295:8.

⁶⁷ Schumann Ex. 2, Schumann Dir. Test. 8:14-16. *See also* Schumann Ex.2C, CONFIDENTIAL Schumann Dir. Test. 10:1-9.

⁶⁸ Schumann Ex. 2, Schumann Dir. Test. 8:14-16.

4. The record shows that Rate GSU is the most economical service available to meet Schumann's needs as an industrial customer.

As CEI acknowledges,⁶⁹ OAC 4901:1-1-03(B)(2) provides that CEI should provide information and assistance so that Schumann may obtain the most economical service conforming to its stated needs. It is beyond debate that 36 kV Subtransmission Service would be the most economical service meeting Schumann's needs for reliability and potential to expand and grow operations, employment and the plant. Indeed, according to calculations done by CEI employees, a switch from Rate GS to Rate GSU would provide Schumann with savings of about \$[REDACTED] for a peak month and savings of \$[REDACTED] per year.⁷⁰

CEI ignored whether Rate GSU would be the most economical service available to Schumann. Instead, CEI considered whether circuit capacity was sufficient to keep Schumann on the 13.2 kV circuit,⁷¹ considered whether other 13.2 kV customers were being affected by Schumann's load,⁷² and considered its own potential lost revenue as shown by its own internal calculations and communications, including emails to CEI's President Mr. Skory.⁷³ Evaluation without regard for Schumann's requirements and stated needs is improper under the tariff and Rule 4901:1-1-03(B)(2). The record establishes that Rate GSU is the most economical service

⁶⁹ CEI Initial Brief at 2 n.5.

⁷⁰ Schumann Ex. 1C at CONFIDENTIAL Schumann 0083 (showing "material savings" of approximately "\$[REDACTED] per year" & CONFIDENTIAL Schumann 0110 (showing a calculation of each rate for their peak month of [REDACTED]a big savings").

⁷¹ Company Ex. 27, Becks Dir. Test. 7:1-20.

⁷² Company Ex. 27, Becks Dir. Test. 7:1-20.

⁷³ Schumann Ex. 1 at Schumann 0029 (Weis' email regarding attempts to preserve revenue), Schumann 0035 (Hrdy's email regarding fear of customer benefits), Schumann 0083 (Pajevic email providing calculation to Fanelli), Schumann 0110 (Hrdy email to Skory stating "annual revenue" and "big savings" on a monthly bill calculation).

available to Schumann, and that fact should be considered when determining whether Schumann requires Subtransmission Service under the Rate GSU schedule.

C. Even if CEI's factors were allowed under its tariff, CEI's rationalizations for denying Schumann's requests for Rate GSU are unreasonable and unsupported.

Even if CEI's five "engineering reason" factors were allowed under its tariff (which they are not), they do not support CEI's decision to deny Schumann's requests for Rate GSU service. Schumann's load more than meets CEI's first factor concerning its load and power requirements. Even at today's levels, Schumann's load is commensurate with Subtransmission Service and is actually larger than the majority of other customers receiving that service from CEI.⁷⁴ In addition, the need for uninterrupted electric service to support Schumann's industrial melting operations favors switching Schumann to a more reliable 36 kV circuit.

Application of CEI's second factor – whether Schumann's load characteristics cause objectionable power quality impacts for other customers – is simply not relevant to whether **Schumann requires** 36 kV service under any definition. Regardless, the record makes clear that Schumann's operations have not caused any problems for other customers on CEI's 13.2 kV system,⁷⁵ and there is no evidence in the record that Schumann's operations would cause any problems for other customers on CEI's 36 kV circuits.

Schumann has also satisfied CEI's third factor, regarding the potential impact (if any) the customer's connection may have on subtransmission system reliability. **It is notable that CEI**

⁷⁴ Compare Schumann Ex. 1 at 2-INT-017(b)&(C) (for monthly billing demands of all customers connected to CEI's 36 kV system from January 1, 2015 through response dated May 18, 2017, median demand of 0.45 MW & average of 1.05 MW) with Schumann Ex. 2C, CONFIDENTIAL Schumann Dir. Test. 7:10-18 (noting range of approximately [REDACTED] kW to [REDACTED] kW from 2012 through 2016 and range of approximately [REDACTED] kW to [REDACTED] kW in 2017).

⁷⁵ Tr. Vol. II at 319:13-24.

says that Schumann should only go to the 36 kV system if Schumann's load characteristics are causing objectionable impacts on the 13.2 kV system.⁷⁶ If CEI believes that the 36 kV system can accommodate customers with objectionable load characteristics, Schumann's unobjectionable load characteristics should not add unacceptable impact to the 36 kV system. Nor does CEI have or present any technical evidence that connecting Schumann to the 36 kV circuit would have any negative impact on reliability of that circuit.⁷⁷ CEI's engineers did not analyze any such risk.⁷⁸ Nor did they quantify any such risk.⁷⁹ Indeed, although CEI claims that each connection incrementally increases degradation of the system, they have no study to support that claim.⁸⁰ The most CEI's engineers could say is that there would be a "relatively small increase in risk" of reliability impacts.⁸¹ And, CEI witness Phillips admitted that any risks could be reduced by certain protective equipment and measures.⁸² As Mr. Kumar explained, "there is no evidence of any reasonable engineering or system planning reason that I. Schumann should not be connected to CEI's subtransmission circuit."⁸³

Schumann also satisfies CEI's fourth factor. The fourth factor allegedly looks to system expansion (i.e., whether the Company's facilities in the area are adequate to serve the customer's needs), which is not a requirement for Schumann and not relevant here. CEI admits that there are subtransmission facilities readily available with adequate capacity to serve

⁷⁶ CEI Initial Brief at 19-21.

⁷⁷ Schumann, Ex. 4, Kumar Dir. Test. 6:17 – 7:3.

⁷⁸ Tr. Vol. II at 327.

⁷⁹ Tr. Vol. II at 319.

⁸⁰ Tr. Vol. II at 299.

⁸¹ Tr. Vol. II at 328-29.

⁸² Tr. Vol. II at 321-23.

⁸³ Schumann Ex. 4, Kumar Dir. Test. 3:3-6.

Schumann. System expansion would not be required to provide Schumann with 36 kV service.

The fourth factor weighs in Schumann's favor.

CEI's fifth and final factor – concerning the impact the customer's connection will have on CEI's operations – should not prevent Schumann's connection to the 36 kV circuit. This factor also has nothing to do with ***Schumann's requirements***. Regardless, it too is not a problem. CEI would expect to connect Schumann only to one of the two available 36 kV circuits.⁸⁴ CEI's expert, Mr. Phillips, agreed on cross-examination that he did not foresee any physical difficulty connecting Schumann to either the R-11 or R-24 circuit and that work could be done safely on those connections.⁸⁵ He agreed as well that "CEI has significant experience in making connections to subtransmission systems" and, as Mr. Kumar noted, maintenance and adjustments are part of the utility business and a utility like CEI can, if needed, "schedule outages and work with customers to lower outage exposure and mitigate disruptions to their service."⁸⁶

The record evidence is more than sufficient to show that, even though Schumann should not have to satisfy CEI's five factors or "engineering reasons" in order to be found to "require" Subtransmission Service and to connect to the R-11 or R-24 circuits, it does so nonetheless. Even under CEI's tariff interpretation theory, it was improper for CEI to refuse Schumann's request for 36 kV service.

⁸⁴ Tr. Vol. II at 320:21-25.

⁸⁵ Tr. Vol. II at 330:9-16.

⁸⁶ Schumann Ex. 4, Kumar Dir. Test. 7:9-12.

D. CEI's own rate analysts did not see any reason to deny Schumann service under Rate GSU.

CEI acknowledges the admissions made by multiple FirstEnergy Rates Department employees that the tariff supports Schumann's request, but then claims that their email statements are irrelevant because they only looked at the tariff because [REDACTED] and [REDACTED] that Jean Becks was (allegedly) the final decision maker on Schumann's request.⁸⁷ The record evidence shows that the Rates Department became involved around May 4, 2016 when Mr. Risk emailed Mr. Fanelli to provide some details for a call they had each attempted.⁸⁸ Mr. Risk explained that Schumann was "willing to pay for" equipment and infrastructure to connect to the "subtransmission service which runs by their plant" but that "CEI has said they will NOT allow Schumann to tie into the new 33kV [sic] service and associated GSU Tariff."⁸⁹ Having reviewed the GSU tariff and finding nothing that "would prevent Schumann from receiving access to the GSU tariff," Mr. Risk asked Mr. Fanelli for help and "what if anything can be done to grant this GSU request?"⁹⁰

Regardless of why the Rates Department became involved, it is undisputed that the Rates Department personnel are knowledgeable about CEI's tariff⁹¹ and "familiar with CEI's

⁸⁷ See CEI Initial Brief at 11 and 2.

⁸⁸ Schumann Ex. 1 at Schumann 0083-0084.

⁸⁹ Schumann Ex. 1 at Schumann 0084.

⁹⁰ Schumann Ex. 1 at Schumann 0084.

⁹¹ Tr. Vol. I at 194:11-14.

tariff and everything that went into it."⁹² And as CEI witness, Dean Phillips admitted, ***Rates Department personnel are more familiar with the CEI tariff than CEI's witnesses.***⁹³

The opinions of the Rates Department personnel matter. The emails from the Rates Department demonstrate that personnel in that department (Weis and Fanelli):

- Were "not sure what tariff support we would have to deny" Schumann's request;⁹⁴
- Believed "this could be a situation where the region is attempting to preserve revenue by restricting a customer from moving to another rate...."⁹⁵
- Suggested that Schumann "may have a right to be served by the higher voltage, if requested."⁹⁶

Even Ms. Bellas, who repeatedly denied Schumann's request, admitted at hearing that she "can see both arguments; [she] can see Schumann trying to go off the subtransmission rate...."⁹⁷ And Mr. Hrdy, who initiated an interdepartmental effort to find reasons to reject Schumann's request, admitted that CEI's "tariff language, however, leaves some wiggle room for both arguments" of CEI and Schumann.⁹⁸ This evidence, if not prima facie proof that CEI's tariff outright allows Schumann's request, is at least proof that CEI's tariff is ambiguous and should be construed in favor of Schumann. *See Saalfeld Pub. Co. v. Pub. Util. Com.*, 149 Ohio St. 113, 77 N.E.2d 914 (1948), paragraph two of the syllabus ("Where the meaning of the provisions in a rate schedule is doubtful or ambiguous, they are to be construed favorably to

⁹² Tr. Vol. 1 194:15-20.

⁹³ Tr. Vol. II at 316:23-317:1.

⁹⁴ Schumann Ex. 1 at Schumann 0029.

⁹⁵ Schumann Ex. 1 at Schumann 0029 & 0030 (emphasis added)).

⁹⁶ Schumann Ex. 1 at Schumann 0029. Mr. Weis also indicated Section V.B of CEI's Electric Service Regulations as supporting the switch in service. *Id.*

⁹⁷ Tr. Vol. I at 202:25-203:5.

⁹⁸ *See* Schumann Ex. 1 at Schumann 0110.

the shipper."); Opinion and Order; *Horning v. Columbus & Southern Elec. Co.*, Case No. 82-1209-EL-CSS at 4 (Jan. 31, 1984) ("Inasmuch as a utility tariff represents a contract with its customers, and the customer had no bargaining power in the transaction, such tariff must be construed in favor of the customer.").⁹⁹

CEI's initial brief also bears out the ambiguity in CEI's tariff. CEI's legal argument originally was that it could reject Schumann's request because it has discretion to specify delivery voltage and to choose voltage under Rate GSU. Mr. Hrdy made the argument internally.¹⁰⁰ Then, CEI's counsel made the argument when he rejected Schumann's October 16, 2016 request for service¹⁰¹ and CEI witness Dean Phillips made that same argument in his direct testimony.¹⁰² But for the first time in its initial brief, CEI argues that the use of the word "requiring" in the Rate GSU schedule means that there must be an "engineering reason" "requiring" Subtransmission Service.¹⁰³ CEI's new reliance on a different tariff term is prima facie proof that CEI's tariff, if it does not outright allow Schumann's request, is at least ambiguous.

The statements of the Rates Department personnel as well as Ms. Bellas show that Schumann qualifies for 36 kV Rate GSU service – either because they expressly say so or

⁹⁹ In its Initial Brief, Schumann supported the same proposition with a citation to *Consumer's Counsel v. Ohio Pub. Util. Comm.*, 61 Ohio St.3d 396, 407 (1991). See Schumann's Initial Brief at 23. Although that citation was to the dissent in *Consumer's Counsel*, the authority relied upon by the dissent is the same as that relied upon here by Schumann.

¹⁰⁰ Schumann Ex. 1 at Schumann 0082.

¹⁰¹ Schumann Ex. 2 at Ex. C (Nov. 1, 2016 Ltr. R. Endris to M. Settineri).

¹⁰² Company Ex. 29, Phillips Dir. Test. at 5:3-9.

¹⁰³ CEI Initial Brief at 1, 18-19 & 27.

because they show that there is relevant ambiguity in CEI's tariff, which by law must be construed in favor of Schumann.¹⁰⁴

IV. CEI's own emails and cross-examination testimony show that CEI's decision to deny Schumann's request for 36 kV Rate GSU service was discriminatory.

In its brief, CEI offers three arguments why its response to Schumann's request was not discriminatory.¹⁰⁵ Those arguments, as explained below, are contradicted by CEI's own emails, discovery admissions, and testimony on cross-examination.

A. CEI did not follow the same procedure as it would for other customers making requests similar to Schumann's request.

In support of its argument that its denial of Schumann's request was not discriminatory, CEI first argues that it followed the same procedure as it does for other customers making similar requests.¹⁰⁶ That is simply not true, as shown by comparing CEI's alleged procedure to CEI's actual response to Schumann's request.

According to CEI, the procedure for responding to customer requests like Schumann's is a simple process, as Ms. Bellas explained:

If a customer contacts its customer support representative, as Schumann did here, regarding initiating new service or changing its current service, the customer support representative forwards such request to CEI's Planning and Protection department to analyze.¹⁰⁷

¹⁰⁴ See *Saalfeld Pub. Co.*, 149 Ohio St. 113 at paragraph two of the syllabus; Opinion and Order; *Horning*, Case No. 82-1209-EL-CSS at 4 (Jan. 31, 1984).

¹⁰⁵ CEI Initial Brief at 24-26.

¹⁰⁶ CEI Initial Brief at 24.

¹⁰⁷ Company Ex. 25, Bellas Dir. Test. 4:14-17 (emphasis added).

CEI's brief says that Schumann's request was handled that way – that Schumann inquired about Rate GSU, that Ms. Bellas responded by discussing it with Ms. Becks in Planning, and that Ms. Becks analyzed the request.¹⁰⁸

The facts contradict CEI's claim. As shown by the timeline in the Counter Statement of Facts, above, CEI did NOT follow that procedure when responding to Schumann's service change request. Instead and as discussed below, before Ms. Bellas discussed Schumann's request with Ms. Becks in mid to late May 2016: it was denied multiple times by Ms. Bellas, it was escalated to the Director of Rates, and it was routed to the Customer Support Manager, leading to a "team effort" to deny Schumann's request.

1. Ms. Bellas denied multiple requests before contacting Ms. Becks.

Ms. Bellas did not discuss Schumann's request with Ms. Becks until mid-to-late May 2016.¹⁰⁹ Before then, she personally denied Schumann's request multiple times:

- First, on January 15, 2016, Ms. Bellas denied a request by Schumann for Rate GSU service,¹¹⁰ four months before she discussed it with Ms. Becks.
- Second, on March 30, 2016, Ms. Bellas denied another request by Schumann for Rate GSU service,¹¹¹ more than a month before she discussed it with Ms. Becks.
- Third, on March 31, 2016, Ms. Bellas denied another request by Schumann.¹¹²
- Fourth, before May 2016, Ms. Bellas' wrote yet another email stating that Schumann was not eligible for Rate GSU service.¹¹³

¹⁰⁸ CEI Initial Brief at 7. Company Ex. 25, Bellas Dir. Test. 3:16-4:17 & 7:9-14.

¹⁰⁹ Tr. Vol. I at 180:6-181:2.

¹¹⁰ Schumann Ex. 2, Schumann Dir. Test. 13:5-8; Schumann Ex. 3, Grady Dir. Test. 6:21-7:2.

¹¹¹ Schumann Ex. 1 at Schumann 0019.

¹¹² Schumann Ex. 1 at Schumann 0019.

¹¹³ Tr. Vol. I at 182:10-18 (admitting that, before May 2016, she wrote an email to Mr. Avers indicating that "Schumann was not eligible for subtransmission service").

Multiple times before May 2016, Schumann made a request to Ms. Bellas for Rate GSU and each time she denied the request before forwarding it to Ms. Becks in Planning, in plain violation of CEI's procedure.

2. CEI's Rates Department analyzed Schumann's request before Ms. Becks.

When Ms. Bellas' refused request after request, Mr. Risk traded calls with and sent an email on May 4, 2016 to Mr. Fanelli in CEI's Rates Department.¹¹⁴ Mr. Risk's email attached his emails from Ms. Bellas, explained that he saw nothing in the GSU tariff that "would prevent Schumann from receiving access to the GSU tariff," and asked Mr. Fanelli "what if anything can be done to grant [Schumann's] GSU request?"¹¹⁵ His request was forwarded to Richard Weis in the Rates Department, who discussed it with Ms. Bellas.¹¹⁶ **Although she had not yet discussed Schumann's request with Ms. Becks in Planning, Ms. Bellas told Mr. Weis that "Planning & Protection stated 'that the customer does not have enough load to justify'" Subtransmission Service.**¹¹⁷

The record shows that Mr. Weis was not convinced by Ms. Bellas. In fact, after talking with Ms. Bellas, Mr. Weis "believe[d] this could be a situation where the region is attempting to preserve revenue by restricting a customer from moving to another rate...."¹¹⁸ Indeed, he suggested that Schumann "may have a right to be served by the higher voltage, if

¹¹⁴ Schumann Ex. 1 at Schumann 0029-0030 & Tr. Vol. I at 191:18-192:18.

¹¹⁵ Schumann Ex. 1 at Schumann 0029-0030 & Tr. Vol. I at 191:18-192:18.

¹¹⁶ Schumann Ex. 1 at Schumann 0029-0030 & Tr. Vol. I at 191:18-192:18.

¹¹⁷ Schumann Ex. 1 at Schumann 0029-0030 & Tr. Vol. I at 191:18-192:18.

¹¹⁸ Schumann Ex. 1 at Schumann 0029 & 0030 (emphasis added).

requested."¹¹⁹ Mr. Weis emailed his thoughts to Mr. Fanelli, Director of the Rates Department, who also had "some concerns over [CEI] denying this customers request"¹²⁰ and "was not sure what tariff support we would have to deny the customer's request."¹²¹

3. Schumann's request went to Mr. Hrdy before going to Ms. Becks.

About May 10, 2016, Mr. Weis sent Mr. Hrdy the string of emails beginning with Mr. Risk's May 4, 2016 email.¹²² At that point in time, CEI was already in violation of its stated procedure. Schumann's request had been rejected multiple times by Ms. Bellas, but not yet discussed with Ms. Becks. Schumann's request had been considered by Rates Department employees, but not yet discussed with Ms. Becks. And, Schumann's request had been presented to Mr. Hrdy, but not to Ms. Becks.

If CEI was following its stated procedure, Ms. Bellas would simply have asked in Planning and Protection to review Schumann's request in January 2016. Instead, after Mr. Weis emailed Mr. Hrdy asking to discuss the matter, Mr. Hrdy became aware that Mr. Fanelli had "concerns over" denying Schumann's request and emailed CEI's Engineering Manager for help *rejecting* Schumann's request:

"I would like to get together with you and or *someone on your team (planning maybe?) who can give us some reasons not to allow this. My real fear is that this being a consultant they are going to dig up more customers that would benefit from going on the GSU service.*"¹²³

¹¹⁹ Schumann Ex. 1 at Schumann 0029-0031.

¹²⁰ Schumann Ex. 1 at Schumann 0035.

¹²¹ Schumann Ex. 1 at Schumann 0029 & Schumann 0035.

¹²² Schumann Ex. 1 at Schumann 0029-0031 & Schumann 0035.

¹²³ Schumann Ex. 1 at Schumann 0035 (emphasis added).

That soon led him to being involving Ms. Becks, who after preparing drafts issued a final internal CEI email outlining reasons to deny Schumann's request.¹²⁴

B. CEI's internal emails show that Ms. Becks analyzed Schumann's request only after and because Mr. Hrdy feared lost revenue and wanted reasons to deny Schumann's request.

Although CEI *argues* that it followed procedure here, it *knows* that Ms. Bellas did not. Accordingly, CEI claims that it does not matter what the CEI employees said in their emails because, on or about May 24, 2016,¹²⁵ Ms. Becks "ultimately made the determination regarding Schumann's request" and her determination was not "based on discriminatory or economic reasons."¹²⁶ But CEI's emails do matter because they tell the story, as it happened, in the words of the CEI employees themselves. They show that Mr. Hrdy feared lost revenue if Schumann was allowed to take service under Rate GSU, that Rates Department personnel did not see a reason to deny Schumann's request, that Ms. Becks was contacted only after and because Mr. Hrdy wanted reasons to deny Schumann's request, and that Ms. Becks was but one player among many in a "team effort" to refuse Schumann's request.¹²⁷

The record is clear that Mr. Hrdy was trying to preserve revenue. On a monthly basis, Ms. Bellas sent him reports that, among other things, reported project revenues, including

¹²⁴ Tr. Vol I 184:11-16 (Hrdy asked Bellas to talk to Becks); Tr. Vol II 282:4-285:21 (Hrdy made "atypical" request that Becks put in writing reasons Schumann did not qualify for 36 kV service and Becks prepared draft and final email to Hrdy).

¹²⁵ Schumann Ex. 8, 1-INT-002(a) (saying that the "first and last dates" that "'CEI's planning and protection engineers have carefully reviewed Schumann's request to be served from the subtransmission system'" was "on or about May 24, 2016").

¹²⁶ CEI Initial Brief at 25.

¹²⁷ Schumann Ex. 1 at 0035 ("give us some reasons") and Schumann 0122 ("We held our ground... Great team effort....").

information on CEI's revenues from Schumann.¹²⁸ And after discussing Mr. Risk's email with Ms. Bellas, Mr. Weis "believe[d] this could be a situation where the region is attempting to preserve revenue by restricting a customer from moving to another rate...."¹²⁹ Not fifteen minutes after Mr. Weis sent him emails on the matter, Mr. Hrdy wrote that his "real fear was that this being a consultant they are going to dig up more customers that would benefit from going on the GSU service."¹³⁰ Most revealing is Mr. Hrdy's email to CEI's President John Skory and Directors in which revenue was the central theme. The heart of his email, sent to "make [the President and Directors] aware of an issue we are having with an energy consultant hired by" Schumann is dominated by annual revenue and a bill impact calculation as follows:¹³¹

Annual total revenue is approximately \$[REDACTED]

The Company hired an energy consultant who recommended that the company install their own transformation to get a more attractive rate. **Our plan is to continue to feed the customer from the same distribution circuit and put them on the General Primary (GP) rate.** However, the consultant is demanding that Schumann be fed from our 36kV system which would put them on the General Subtransmission (GSU) rate. **To give you an idea of the impact on the customer's monthly bills we did a calculation of each rate for their peak month (see below).**

GS - \$[REDACTED]

GP - \$[REDACTED]

GSU - \$[REDACTED]

As you can see there is a big savings for the customer to go on the GSU rate.

¹²⁸ Tr. Vol. I at 208:5-20.

¹²⁹ Schumann Ex. 1 at Schumann 0029. Mr. Weis also indicated Section V.B of CEI's Electric Service Regulations as supporting the switch in service. Id.

¹³⁰ Schumann Ex. 1 at Schumann 0035.

¹³¹ Schumann Ex. 1 at Schumann 0110 (emphasis added).

Regardless of any other statements in his email, the inescapable point to CEI's President and Directors – made in the very center of the email and spaced for easy reading – was that CEI's annual total revenue of about \$[REDACTED] could be cut by more than half if Schumann went to Rate GSU. Indeed, just four days earlier, a CEI rates' analysts had calculated that the change from Rate GS to Rate GSU would result in about \$[REDACTED] per year of savings with all riders....¹³² Mr. Hrdy's email also shows that CEI's "plan" to "put [Schumann] on the" GP Rate would only reduce CEI's revenue by about \$[REDACTED] per month (a roughly [REDACTED]% reduction), saving CEI more than \$[REDACTED] per year in revenue versus switching Schumann to Rate GSU.

Second, other CEI employees who considered Schumann's request either thought it should be allowed or did not see support for denying it, as shown here:

- Mr. Uhlig, Engineering Manager, couldn't "find anything in the Engineering practices that support our position"¹³³ to deny Schumann's request.
- Mr. Coleman, Manager of Distribution Standards, thought CEI would "have to do what the customer wants...."¹³⁴
- Mr. Fanelli, Rates Director, had "concerns over [CEI] denying this customer's request"¹³⁵ and was "not sure what tariff support we would have to deny" Schumann's request.¹³⁶
- Mr. Weis, in the Rates Department, suggested that Schumann "may have a right to be served by the higher [36 kV] voltage, if requested."¹³⁷

¹³² Schumann Ex. 1 at Schumann 0083 (May 20, 2016 email from Pajevic to Fanelli regarding the "impact of going from 2 Rate GS accounts to one Rate GSU account.")

¹³³ Schumann Ex. 1 at Schumann 0035 & Schumann 0081-0082.

¹³⁴ Schumann Ex. 1 at Schumann 0082 (per Mr. Uhlig). Mr. Uhlig indicated that Mr. Coleman wanted to "do some more checking," but there is no further evidence of Mr. Coleman's involvement. When Mr. Hrdy thanked certain people for a "great team effort" in holding "our ground" against Schumann's request, he did not include Mr. Weis or Mr. Coleman.

¹³⁵ Schumann Ex. 1 at Schumann 0035.

¹³⁶ Schumann Ex. 1 at Schumann 0029.

¹³⁷ Schumann Ex. 1 at Schumann 0029. Mr. Weis also indicated Section V.B of CEI's Electric Service Regulations as supporting the switch in service. Id.

Third, Ms. Becks was contacted only after and because Mr. Hrdy became involved on or about May 10, 2016 wanting to get together with someone "to give us some reasons not to allow" Schumann's request.¹³⁸ He then asked Ms. Bellas to talk to Ms. Becks in Planning.¹³⁹ Per Ms. Bellas, Mr. Hrdy normally does not get involved in customer requests to change service.¹⁴⁰ Then, he asked Ms. Becks to put into writing the reasons Schumann did not qualify for Subtransmission Service.¹⁴¹ That was not normal either per Ms. Becks.¹⁴² By the time Ms. Becks analyzed Schumann's request, it was only to provide "some reasons" to rationalize a decision that already had been made.

In context, then, CEI cannot simply rely on Ms. Becks and wash its hands of the rest. Ms. Becks was not involved as a result of the typical procedure described by Ms. Bellas (customer contact to customer support to planning). Instead, she was one of multiple CEI employees who, in response to Mr. Risk's May 4, 2016 request that Schumann be provided 36 kV service, put in a "team effort."¹⁴³ Indeed, thinking (erroneously) that Schumann decided to stay on Rate GS, Mr. "we held our ground," recognizing a "great team effort" by several employees (including Ms. Becks), and "Thank[ing] everyone!"¹⁴⁴

¹³⁸ Mr. Hrdy became involved on May 10, 2016. See Schumann Ex. 1 at Schumann 0035. He made the abnormal request that Ms. Bellas talk to Ms. Becks. See Tr. Vol I 184:11-16. Ms. Bellas did not discuss Schumann's request with Ms. Becks until mid-to-late May 2016. Tr. Vol. 1 180:20-181:2. Ms. Becks analyzed Schumann's request after May 10, 2016 – sometime in mid-to-late May 2016 and perhaps as late as May 24, 2016. See Tr. Vol II 276:11-279:17.

¹³⁹ Tr.184:11-16.

¹⁴⁰ Tr.184:11-16.

¹⁴¹ Tr. Vol. II at 281.

¹⁴² Tr. Vol. II at 281.

¹⁴³ Schumann Ex. 1 at Schumann 0122.

¹⁴⁴ Schumann Ex. 1 at Schumann 0122.

C. The Commission should reject CEI's argument that other customer connections are irrelevant.

As part of its effort to show that it did not discriminate, CEI claims that comparison to other customers is irrelevant because each connection to the subtransmission system is allowed based on the facts and circumstances that existed at the time and because many subtransmission system customers are served off a much older 11 kV system.¹⁴⁵

There are two reasons the Commission should consider the comparative information in the record. First, the tariff requires CEI to consider whether Subtransmission Service is commensurate with the size of a customer's load when specifying delivery voltage. The comparative data on load size provided by CEI does not include customers or premises connected to the 11 kV system. Instead, it shows that Schumann's load is larger than both the mean and median loads of all other customers on the 36 kV system¹⁴⁶ and is larger than other customers on the two 36 kV lines adjacent to Schumann's plant (R-11 and R-24).¹⁴⁷ It is legally relevant, factually limited to the 36 kV system, and prima facie evidence of discrimination against Schumann.

¹⁴⁵ CEI Initial Brief at 25-26. CEI claims as well that Schumann does not know if customers being served off the R-11 and R-24 circuits could have been served off of distribution circuits. *Id.* at 26. That is true for two reasons beyond Schumann's control. First, CEI would not provide site-specific data and information for those locations. Second, CEI did provide limited information for those locations, but it was provided for attorneys' eyes only. If CEI makes any claims or assertions regarding that data (or the absence of its use), Schumann will seek leave to file a reply to fully explain on the record that nature and relevance of that data in relation to this case.

¹⁴⁶ *Compare* Schumann Ex. 1 at 2-INT-017(b)&(C) (for monthly billing demands of all customers connected to CEI's 36 kV system from January 1, 2015 through response dated May 18, 2017, median demand of 0.45 MW & average of 1.05 MW) *with* Schumann Ex. 2C, CONFIDENTIAL Schumann Dir. Test. 7:10-18 (noting range of 2012 through 2016 ranged from approximately [REDACTED] kW to [REDACTED] kW from 2012 through 2016 and range of approximately [REDACTED] kW to [REDACTED] kW in 2017).

¹⁴⁷ Schumann Ex. 1 at 2-RFA-014 through 2-RFA-019 (admitting customers on R-11 and R-24 had lower monthly billing demands than Schumann).

Second, because CEI has refused Schumann Rate GSU service allegedly for want of an engineering reason, it is particularly relevant whether it has recently allowed other customers to take Subtransmission Service without evidence of any engineering reason. While facts and circumstances may vary, they may do so only within the criteria in the tariff. Thus, if CEI's interpretation of the tariff is that Subtransmission Service is available only on proof of an "engineering reason," CEI must apply that interpretation consistently. The evidence shows that CEI has not been consistent on this allegedly essential issue. For nearly two-thirds of all new connections to the subtransmission system since 2012, CEI has no evidence of why, if at all, a connection was allowed or required.¹⁴⁸ Indeed, for six out of ten connections allowed since 2015, *including two in 2017*, CEI also has no evidence why those connections were required.¹⁴⁹

Having refused to disclose most customer specific information in discovery, and given its wholesale failure to follow its own policy in response to Schumann's requests, CEI should not be able to rely on an inference or presumption that undisclosed "facts and circumstances" prove anything. CEI limited the information it provided to Schumann in discovery about other customer connections, and the information in the record shows CEI's inconsistent application of a policy that has unjustly and unreasonably disadvantaged Schumann.

V. Contrary to CEI's assertion, the record shows CEI's response was unreasonable.

CEI's last argument in its initial brief is that its response to Schumann's request was reasonable. That is not true because as discussed above, CEI did not consider Schumann's needs when denying the request, ignoring the express language of its tariff. For those reasons

¹⁴⁸ Schumann Ex. 1 at 4-INT-002, 4-INT-004 & 4 INT 004 Attachment1; Schumann Ex. 5; Tr. Vol. I at 222:18-228:18.

¹⁴⁹ Schumann Ex. 1 at 4-INT-002, 4-INT-004 & 4 INT 004 Attachment1; Schumann Ex. 5; Tr. Vol. I at 222:18-228:18.

alone, CEI's response was unreasonable. As well, CEI's claim that it acted reasonably and "made prudent choices" when rejecting Schumann's request is contradicted by the record evidence.

A. CEI did not consider Schumann's needs regarding reliability, less outages and expansion at its site when denying the request.

It is undisputed that CEI did not consider the impact of outages or momentary interruptions on Schumann's operations, the type of equipment Schumann utilizes in its manufacturing process or Schumann's requirement for more reliable service with fewer outage and interruptions.¹⁵⁰ Yet, CEI claims that it acted reasonably because it believes that Schumann's current service is more than adequate to serve Schumann's existing load and "there is no proposed load increase or change in load characteristics that would cause this situation to change."¹⁵¹ That statement, as indicated above, ignores the costly outages that Schumann has been tolerating on its current Secondary Service and the limitations on expansion that that service provides. It also ignores the undisputed fact that Schumann's load is commensurate with Subtransmission Service and 36 kV lines are immediately adjacent to Schumann's premises.

Schumann's circumstances here fit with Mr. Kumar's expert testimony about generally when customers are allowed to change to a subtransmission service:¹⁵²

¹⁵⁰ Tr. Vol. II at 289:11-290:3 (Becks did not look at outages or interruptions to determine adequacy of service), 300:18-301:14 (Becks admitted that "consideration of momentary interruptions is not part of the Planning and Protection review required in determining a customer's delivery voltage" and if Schumann indicated in May 2016 "that it was having momentary outage problems, ... that would not have affected [her] Planning and Protection review"), 312:17-24 (Phillips did not provide testimony regarding impact of outages or momentary interruptions on Schumann's operations), 315:14-316:13 (Phillips isn't familiar with the equipment used at Schumann's facility, didn't "consider the type of equipment that Schumann utilizes in its manufacturing processes" or the "impact of outages or momentary interruptions on Schumann's manufacturing process when deciding whether the company acted reasonably in its response to Schumann's request to switch from GS to GSU service").

¹⁵¹ CEI Initial Brief at 26-27.

¹⁵² Schumann Ex. 4, Kumar Dir. Test., page 5:5-16.

Q.9 In your experience, what circumstances allowed an industrial customer like I. Schumann to change to subtransmission service?

A. Industrial customers typically wanted to change service for one of several reasons. In my experience, the most important consideration for them was reliability of electric service. Industrial customers also wanted to reduce their tariff costs, in many cases so that they could increase capital investment. And, many wanted to be "future proof" by increasing flexibility to expand load as needed. More accurate billing was also a reason that industrial customers wanted to change service.

Requests by industrial customers to change to sub transmission or transmission systems were often supported by the utility. By changing to a higher delivery voltage, customers were able to obtain increased reliability, improved accuracy in billing, and lower tariff rates.

In contrast with Mr. Kumar's utility experience,¹⁵³ CEI did not consider reliability of electric service and Schumann's needs. Instead, as explained above beginning at page 29, CEI improperly considered its lost revenue denying Schumann's request for Rate GSU service.

CEI's consideration of the money it would lose if Schumann switched to Rate GSU is concerning and problematic. Not long after Mr. Weis expressed his belief that "the region [could be] attempting to preserve revenue by restricting a customer from moving to another rate,"¹⁵⁴ Mr. Hrdy went looking for reasons to reject Schumann's request for fear that, if allowed, there would be "more customers that would benefit from going on the GSU service." He also reported revenue numbers and a billing impact calculation to CEI's President and Directors.¹⁵⁵ Just the appearance that CEI took into consideration the money it would lose if it granted Schumann's request is sufficient to find CEI's decision unreasonable. As CEI's own

¹⁵³ Tr. Vol. I at 137:1-138:15 (establishing that Mr. Kumar's opinions are based on his academic experience and decade of experience with AEP, including responsibility for geographical territories that varied over the years and included, in his last assignment, requests in Ohio or Indiana for AEP Ohio).

¹⁵⁴ Schumann Ex. 1 at Schumann 0029 & 0030 (emphasis added).

¹⁵⁵ Schumann Ex. 1 at Schumann 0035.

engineering witness testified, it would be unreasonable for CEI to consider its lost revenue in the decision to deny or approve the service connection.¹⁵⁶

B. CEI's warnings of system impacts to "all of the Company's customers" are unsupported and unreasonable.

CEI argues that it reasonably refused Schumann's request because connecting Schumann to an available 36 kV circuit would contribute to "a reduction in sub-transmission system reliability" and "potentially negative reliability impact to all of the Company's customers...."¹⁵⁷ The Commission should reject this argument because it is unsubstantiated and contrary to the testimony in this proceeding, including the testimony of Mr. Kumar, an expert electrical engineer and former utility system planner.¹⁵⁸

1. CEI's own expert admits it would not be difficult to connect Schumann to a 36 kV circuit and CEI has not studied, analyzed or quantified any alleged risks to that circuit or CEI's system.

CEI simply cannot support its argument that it was reasonable to deny Schumann's request for Rate GSU service based on "the potentially negative reliability impact to all of the Company's customers...."¹⁵⁹ CEI has no evidence that connecting Schumann to a 36 kV circuit would have any measurable impact on reliability of that circuit. CEI's engineering witnesses admitted that they have not studied, analyzed or quantified any alleged risk that Schumann's connection to a 36 kV circuit would have any negative impact on the customers indirectly

¹⁵⁶ Tr. Vol. II at 357:7-358:13.

¹⁵⁷ CEI Initial Brief at 27.

¹⁵⁸ Schumann Ex. 4, Kumar Dir. Test. 3:3-6.

¹⁵⁹ CEI Initial Brief at 27.

served from R-11 and R-24.¹⁶⁰ Ms. Becks admitted she has no evidence that individual customer connections incrementally degrade the subtransmission system.¹⁶¹ In fact, for all its warnings about every single connection creating an additional point of exposure, ***CEI leaves existing connections in place even if they are no longer required by customers.***¹⁶²

CEI's expert witness Mr. Phillips also admitted that he did not quantify or analyze any risk to CEI's subtransmission system from connecting Schumann, acknowledged that equipment could be used and steps could be taken to minimize any risk, agreed that the risk of any single customer connection was relatively small, and is not aware of any outage to CEI's subtransmission system caused by a customer connection.¹⁶³ As Mr. Phillips admitted, "CEI has significant experience in making connections to subtransmission systems...."¹⁶⁴ Not surprisingly, he testified that he does "not foresee any physical difficulty connecting Schumann to those lines."¹⁶⁵

Moreover, CEI's rationalization about system impacts is a post hoc rationalization: when Ms. Becks denied Schumann's request for Rate GSU service over a year ago, she did not know how many customers could even potentially be affected by Schumann's connection to the R-11 and/or R-24 circuits.¹⁶⁶ She didn't even know the week before the hearing when deposed.¹⁶⁷

¹⁶⁰ Tr. Vol. II at 319 (CEI did not quantify risk), 321-23 (protective equipment and steps are available), 327 (CEI did not analyze risk), 328-29 (any risk is "relatively small"), 283:22-284:12 (didn't know as of May 2016 how many substations or customers could potentially be affected by connecting Schumann), & 284:17-285:17 (didn't know as of week before deposition how many substations or customers could potentially be affected).

¹⁶¹ Tr. Vol. II at 292:9-22, 319:5-8 & 321:22-24.

¹⁶² Company Ex. 27, Becks Dir. Test. 4:7-16.

¹⁶³ Tr. Vol. II at 319, 322, 325-26, 328-29.

¹⁶⁴ Tr. Vol. II at 330.

¹⁶⁵ Tr. Vol. II at 323:15-18 & 330:13-24.

¹⁶⁶ Tr. Vol. II at 283:22-284:12.

Finally, having looked before the hearing, she testified that the two circuits available for Schumann's connection support only two distribution substations and somewhere over 4,000 customers on those substations.¹⁶⁸ **CEI cannot now claim a concern about system impact when Ms. Becks had no knowledge of the downstream system when preparing her email denial to Mr. Hrdy.**

Accordingly, because it would not be difficult to connect Schumann to the 36 kV circuit, because CEI denied Schumann's request without even knowing how many customers could potentially be affected by that connection, and because CEI admits that it has not analyzed or quantified the "relatively small" risk (if any) of connecting Schumann to the R-11 or R-24 circuits, it was unreasonable for CEI to deny Schumann's request based on speculative fear.

2. As explained by expert Bunty Kumar, industrial customers can be and are connected to subtransmission systems.

As explained by Bunty Kumar, an independent expert electrical engineer with a decade of utility system planning experience, it is unreasonable for CEI to defend its decision to deny Schumann's request based on speculative and unstudied "potentially negative reliability risk":

Utility customers, especially industrial customers, can be and are connected to subtransmission circuits without unreasonably impairing system reliability. To determine whether a customer connection could unreasonably impair system reliability, professional electrical engineers and utility system planners have programs and procedures available. I've seen ***no evidence that CEI used any of those programs or procedures when it denied I. Schumann's request to change to subtransmission service.*** As an engineer and former utility system planner, I see ***no reason why I. Schumann could not be added to a subtransmission circuit with available capacity adjacent to its plant.***¹⁶⁹

¹⁶⁷ Tr. Vol. II at 284:17-285:17.

¹⁶⁸ Tr. Vol. II at 296:4-12.

¹⁶⁹ Schumann Ex. 4, Kumar Dir. Test. 3:7-15.

Mr. Kumar testified as part of Schumann's case-in-chief "to help the Commission understand that, based on the CEI documents [he] reviewed, there is no evidence of any reasonable engineering or system planning reason that I. Schumann should not be connected to CEI's subtransmission circuit."¹⁷⁰

Mr. Kumar's testimony was largely corroborated by the admissions of CEI's engineering witness on cross-examination in three critical respects. First, the engineers agree that, generally, customers can be and are connected to subtransmission systems without unreasonable reliability risks. Mr. Kumar explained that "Utility customers, especially industrial customers, can be and are connected to subtransmission circuits without unreasonably impairing system reliability."¹⁷¹ CEI's expert witness effectively agreed, admitting that "CEI has significant experience in making connections to subtransmission" and was "not aware of any outage to CEI's subtransmission system caused by a customer connection."¹⁷² It is telling, too, that CEI leaves existing connections in place even when they are not required by a customer.¹⁷³

Second, the engineers agree that, in this case, it would not be difficult to connect Schumann to an available 36 kV circuit. CEI's witness Mr. Phillips did not foresee any physical difficulty of connecting Schumann to the R-11 or R-24 circuits.¹⁷⁴ Likewise, Mr. Kumar testified that there was no physical reason "why Schumann could not be added to a subtransmission circuit with available capacity adjacent to its plant."¹⁷⁵

¹⁷⁰ Schumann Ex. 4, Kumar Dir. Test. 3:3-6.

¹⁷¹ Schumann Ex. 4, Kumar Dir. Test. 3:7-8.

¹⁷² Tr. Vol. II at 319, 322, 325-26, 328-29.

¹⁷³ Company Ex. 27, Becks Dir. Test. 4:7-16.

¹⁷⁴ Tr. Vol. II at 330:9-16.

¹⁷⁵ Tr. Vol. I at 152:24-153:15.

Third, the engineers agree that, in this case, there is no technical evidence that connecting Schumann to a 36 kV circuit will affect circuit or system reliability. Mr. Kumar noted that there was no evidence that CEI used any of the "programs and procedures available" to engineers and system planners to determine reliability risks of a customer connection¹⁷⁶ and that CEI lacked "evidence of any technical justification" for its "vague and non-specific" claims that Schumann's requested connection might reduce "overall system reliability."¹⁷⁷ Again, as explained above, the engineers testifying for CEI admitted they did not analyze, quantify or study the risks, if any, of connecting Schumann to a 36 kV circuit.¹⁷⁸

At the end of the hearing, then, the record as to engineering matters was one-sided in favor of Schumann's request: Customers can be and are connected to subtransmission systems without unreasonable risk to system reliability, Schumann can be connected to a 36 kV circuit, and there is no evidence that doing so will reduce reliability of that circuit.

Unable to rebut Mr. Kumar's expertise and opinion, CEI offers three lines of impeachment that are immaterial and unpersuasive. First, CEI claims that Mr. Kumar's testimony is unpersuasive because it is based only on "limited documentation."¹⁷⁹ But Mr. Kumar reviewed the complaint, the answer, CEI's tariff and documents produced by CEI in discovery, "including FirstEnergy's distribution planning and protection documentation."¹⁸⁰

¹⁷⁶ Schumann Ex. 4, Kumar Dir. Test. 3:8-12.

¹⁷⁷ Schumann, Ex. 4, Kumar Dir. Test. 6:17 – 7:3.

¹⁷⁸ Tr. Vol. II at 319 (CEI did not quantify risk), 321-23 (protective equipment and steps are available), 327 (CEI did not analyze risk), 328-29 (any risk is "relatively small"), 283:22-284:12 (didn't know as of May 2016 how many substations or customers could potentially be affected by connecting Schumann), & 284:17-285:17 (didn't know as of week before deposition how many substations or customers could potentially be affected).

¹⁷⁹ CEI Initial Brief at 15.

¹⁸⁰ Schumann Ex. 4, Kumar Dir. Test. 2:19-21.

Notably, CEI's own expert (who did not become involved in this matter until April 2017¹⁸¹ after the Complaint had been filed) said in his direct testimony that his opinion was based on "certain discovery responses from Schumann, outage history for Schumann's premises," Schumann's request and correspondence between Schumann and CEI.¹⁸² And, on cross-examination at the hearing, he stated that he "relied on documents that were produced in discovery and provided to [him] by [his] attorneys...."¹⁸³

Second, CEI complains that Mr. Kumar's testimony is not persuasive because he didn't perform a feasibility study.¹⁸⁴ The fact that Mr. Kumar did not have access to CEI's system data and could not conduct a full feasibility study does not detract at all from his opinions here that industrial customers can be and are connected to subtransmission systems for the same reasons that Schumann requested a connection. Indeed, he could not recall a customer being denied subtransmission service.¹⁸⁵

Third, CEI argues that AEP Ohio's procedures and protocols do not set the "industry standard" and that AEP Ohio's tariff does not require AEP Ohio to consider factors other than whether facilities are "adequate" to serve a customer's load.¹⁸⁶ To be sure, Mr. Kumar was not testifying that CEI needs to be AEP Ohio. But his testimony does show that mere fear of reliability risk is not reasonable engineering or planning evidence. In addition and importantly, Mr. Kumar's experience was broader than his work with AEP Ohio – and throughout that work,

¹⁸¹ Tr. Vol. II at 314:9-22.

¹⁸² Company Ex. 29, Phillips Dir. Test. at 3:13-17.

¹⁸³ Tr. Vol. II 315:2-6.

¹⁸⁴ CEI Initial Brief at 16.

¹⁸⁵ Schumann Ex. 4, Kumar Dir. Test. 5:17-20.

¹⁸⁶ CEI Initial Brief at 16-17.

for AEP Ohio and other AEP utilities, with other utilities, and in response to both formal and informal requests – he did not recall an industrial customer being denied subtransmission service and noted that such requests were "often supported by the utility."¹⁸⁷

Mr. Kumar has more than two decades of experience as an electrical engineer and decade as a system planner for another utility in and around Ohio. As to three critical facts, CEI's own engineering witnesses effectively corroborated Mr. Kumar's testimony: customers can be and are connected to subtransmission systems without unreasonable risk to system reliability, Schumann can be connected to a 36 kV circuit, and there is no evidence that doing so will reduce reliability of that circuit. Accordingly, the Commission should afford significant weight to Mr. Kumar's testimony and find that that CEI had "no reasonable, reliable electrical engineering or system planning reasons that I. Schumann should not be allowed to change to subtransmission service."¹⁸⁸

C. CEI's offer of Rate GP to Schumann is not reasonable: it doesn't meet Schumann's needs.

CEI argues that it responded reasonably to Schumann's request for Rate GSU by offering Schumann an opportunity to switch to an alternate rate schedule.¹⁸⁹ While it is true that CEI offered to allow Schumann to take service under Rate GP,¹⁹⁰ the record evidence shows that CEI would serve Schumann under Rate GP from the same 13.2 kV distribution circuit that is

¹⁸⁷ Tr. Vol I at 138:5-12 (experience is broader than AEP Ohio), 146:6-7 (formal and informal requests) & Schumann Ex. 4, Kumar Dir. Test. 5:7-16.

¹⁸⁸ Schumann Ex. 4, Kumar Dir. Test. 7:16-17.

¹⁸⁹ CEI Initial Brief at 27.

¹⁹⁰ Tr. Vol. I at 209:6-9 & Schumann Ex. 1 at Schumann 0019 (Bell's March 30, 2017 email saying Schumann "can either go GS Rate (CEI owns equipment) or GP (customer owns equipment). Those are there [sic] options"). See also Schumann Ex. 2, Schumann Dir. Test. at 20:1-3.

used to serve Schumann today under Rate GS.¹⁹¹ As explained, that circuit has too many outages and momentary interruptions that are impacting Schumann's furnaces and operations.¹⁹² Because Schumann's operations must run 24 hours a day most days of the week, that is not adequate or reasonable.¹⁹³ And, while Schumann would see some reduction in its monthly bills from CEI under Rate GP, savings would be less than savings under Rate GSU.¹⁹⁴ As explained by Schumann's Chief Operating Officer: "it will cost I. Schumann about the same amount to switch to Rate GP as it would to switch to Rate GSU but Rate GP won't reduce outages, won't accommodate expanded operations or growth, and will cost more."¹⁹⁵

Rate GP would not be reasonable under the circumstances and would not be "the most economical utility service conforming to "Schumann's "stated needs."¹⁹⁶ Schumann requires Subtransmission Service and the record supports Schumann's request.

D. Contrary to CEI's alarmist assertion, granting Schumann's request would NOT "set[] a precedent that could shift control over access to CEI's sub-transmission system ... to individual customers."

CEI's also argues that it was reasonable to deny Schumann's request because the alternative would give customers control of the system.¹⁹⁷ This argument should be rejected for two reasons.

¹⁹¹ Tr. Vol I at 209:6-17; Tr. Vol. II at 339:7-19.

¹⁹² See *supra*, § III.B.2.

¹⁹³ Tr. Vol. I at 74 (describing continuous batch processing); Schumann Ex. 2, Schumann Dir. Test. 6:11-7:8 (describing complicated and costly restart process after an electric service outage).

¹⁹⁴ Schumann Ex. 1C at CONFIDENTIAL Schumann 0110 (showing peak month bill impacts under GS v. GP v. GSU). See also Schumann Ex. 1C at CONFIDENTIAL Schumann 1-INT-009 Attachment1 (showing rate impact calculations under GS v. GP v. GSU) & Tr. Vol. I at CONFIDENTIAL at 235:4-239:1 (regarding calculations).

¹⁹⁵ Schumann Ex. 2, Schumann Dir. Test. 21:1-3.

¹⁹⁶ O.A.C. 4901:1-1-03(B)(2).

First, there is no reason to believe that CEI or its system will be overrun by requests for service at higher voltage. In the last five years, CEI has had only two requests to change service to a higher voltage.¹⁹⁸ It is also important that Schumann's significant load size and energy intensive, around-the-clock industrial melting operations are not common among CEI's customers. Many customers may also not want to undertake the cost and responsibility of installing and owning necessary transformers, equipment and facilities required to go to Subtransmission Service.

Second, regardless how many, if any, other customers come forward to request service at higher voltage, CEI will still retain control of its grid. Reliability concerns, if any, can be determined and addressed, including by steps customers can take and equipment that can protect the 36 kV system.¹⁹⁹ As Mr. Kumar's testimony shows, it is possible to work with a customer, according to tariff, to provide the most economical utility service conforming to the customer's needs and still not relinquish control of the system.²⁰⁰ As well, CEI also will still be able to make case-by-case determinations whether a customer qualifies for Subtransmission Service under Rate GSU. But it must do so according to the tariff – whether lines are available, whether service is commensurate with the size of a customer's load, and whether *the customer* requires the service to meet its stated needs.

¹⁹⁷ CEI Initial Brief at 27. *See also* id. at 24 ("To the extent that Complainant may be arguing that each customer should be allowed to choose its own delivery voltage..."). As explained, Schumann makes no such claim. Instead, Schumann simply claims that CEI must specify delivery voltage according to its tariff and applicable rules.

¹⁹⁸ Company Ex.27, Becks Dir. Test. 5:3-7.

¹⁹⁹ Tr. Vol. II at 321-23.

²⁰⁰ Schumann Ex. 4, Kumar Dir. Test. 3:7-8 (explaining "industrial customers, can be and are connected to subtransmission circuits without unreasonably impairing system reliability"), 5:5-6:6 (explaining that industrial customer connections to subtransmission service were "often supported"), & 7:13-8:2 (explaining that Schumann's request and reasons "are that kinds of circumstances when industrial customers have been allowed and even encouraged to take subtransmission service").

Contrary to Mr. Phillips' claim, the record shows that CEI's denial of Schumann's request was not only contrary to its tariff, but also unreasonable. Under the facts and circumstances here, Schumann is eligible for and qualifies for Subtransmission Service under Rate GSU.

VI. Conclusion.

CEI cannot ignore the express terms of its tariff, terms that have the force of law and that, when ambiguous, must be construed in favor of the customer. CEI also cannot ignore the evidence in the record including the opinions "or statements of" FirstEnergy's Rate Department personnel that support Schumann's request for Subtransmission Service under Rate GSU. CEI may not want to lose the revenue associated with the more expensive (and less reliable) Secondary Service that it is forcing Schumann to take, but that is not a basis to keep a large industrial customer from obtaining the service that **the customer** needs and requires.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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