BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of Chapter 4901:1-10 of the Ohio Administrative Code	**)** **)** **)**	**Case No. 17-1842-EL-ORD**

FIRSTENERGY SOLUTIONS CORP.'S INITIAL COMMENTS

I. INTRODUCTION

FirstEnergy Solutions Corp. ("FES") submits its Initial Comments pursuant to the July 17, 2019, Entry in the above-captioned proceeding, which concerns proposed modifications to Ohio Administrative Code Chapter 4901:1-10. Specifically, the Commission has opened this docket to review administrative rules regarding minimum electric service standards for investor-owned electric utilities and transmission owners. Though the rules are largely not applicable to CRES providers like FES, there are two provisions which will materially impact CRES providers which the Commission should reject.

FES respectfully requests modification of the proposed rules in the manner and for the reasons set forth below.

II. COMMENTS

A. Ohio Admin. Code 4901:1-10-24(H) – Customer safeguards and information.

The proposed amendment to this rule adds a new section creating a new rule to provide consumers the opportunity to block transfer of their electric service provider.

> (H) Each electric utility shall allow any customer to request a competitive retail electric service provider block be placed on their

> account. The block shall prevent the [sic] customer[1] generation service provider from being switched without the customer's authorization to the electric utility in the form of a customer provided code or other customer identifiable manner. The release shall be provided to the electric utility from the customer or other authorized persons on the account. The code shall be considered confidential customer information.

This proposed amendment is not warranted by the factual situation in Ohio where there have been virtually no reported instances of slamming. The proposed amendment also fails to address governmental aggregation, is contrary to Ohio's policy goal to encourage competition, and is not supported by any Ohio statute.

1. The amendment is not needed.

This proposed amendment is a solution in search of a problem. Since Senate Bill 3, Ohio has marched steadily towards a more competitive marketplace. In that period Ohio has experienced widespread growth in shopping among all customer classes. Despite that explosive growth in the number of customers who are shopping there have been almost no reported instances of "slamming" customers. This is evidenced by a dearth of customer complaints about slamming, as well as a lack of Commission actions against CRES providers. Instead of comments about being slammed, customer complaints are more typically focused on the terms of their contracts or on the rates charged for renewing customers by unscrupulous providers. Neither of those problems are addressed here.

There is a good reason for this almost complete lack of slamming complaints. Ohio law provides for an extensive amount of verification upon a customer's starting service with a CRES

[1] It is unclear what a "customer generation service provider" is. These comments assume that the rule intended to refer to the "customer's competitive retail electric service provider" but if there is a different intent then the rules should be recirculated to allow for parties to fully comment on the proposed rules.

provider.[2] Specifically, prior to beginning a contract CRES providers are required to make extensive disclosures to customers.[3] The CRES provider then must obtain information from the customer, including their account number.[4] After receiving that information CRES providers are prohibited from enrolling potential customers without their consent and proof of that consent (signed contracts, phone records, etc.).[5] Once that consent is obtained the customer is then provided with a 7-day rescission period with notice from an electric distribution utility.[6]

As shown by this extensive process, it is extraordinarily difficult to slam a customer in Ohio. This is undoubtedly a good thing and has led to an extraordinarily small number of customer slamming complaints in comparison to the millions of customers who currently shop. As the current system is working there is no need to introduce an untested "blocking" system which could significantly impact the competitive market.

2. The proposed amendment fails to take governmental aggregation into account.

Ohio law currently provides extensive rules addressing the formation and operation of opt-out governmental aggregation.[7] Relevant here, the customer is provided notice of the formation of the aggregation program, a summary of the program, a process by which they can withdraw from the aggregation, and extensive periodic updates about the program with opportunities to withdraw.[8] To ensure that customers are not included against their will, the governmental

[2] Chapter 4901:1-21.
[3] OAC 4901:1-21-06.
[4] OAC 4901:1-21-06.
[5] OAC 4901:1-21-06(C).
[6] OAC 4901:1-21-06.
[7] OAC 4901:1-21-16.
[8] OAC 4901:1-21-17.

aggregator is already required to ensure that the customer is not on the "do not aggregate" list, and, if they are accidentally included in the aggregation, that they are quickly removed.[9]

As shown by these protections, it is clear that once again well-established Ohio law already exists to govern the operation of aggregation programs. The Commission's current "block" proposal does not include any revisions to these programs and is inconsistent with how such programs would operate. For example, there is no way for a governmental aggregator to know whether a customer has requested a block on their account, and therefore no way to remove that customer from the opt-out aggregation program. The two concepts are simply incompatible.

3. The proposal is contrary to Ohio's stated goal to encourage competition.

The General Assembly has made clear that Ohio's policy goal is to encourage the development of competitive markets. That includes ensuring the availability of retail electric service, effective customer choice of retail electric service, and recognizing the "continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment."[10] This proposal is contrary to those goals. It imposes an unnecessary roadblock which at best will complicate the customer transfer process and lead to customer confusion since the customer will likely not be aware of the significance of this "block" on their account.

The proposed rule is also vague. The proposed amendment does not contain any explanation of what such block entails, nor does it require any explanation that must be provided to a customer prior to a customer seeking a block. It fails to address how the new code is to be

[9] OAC 4901:1-21-17(E)(2).
[10] R.C. 4928.02(A), (E), and (G).

provided to customers, or how a customer "code" differs from the account number. The proposed amendment also fails to identify how utilities are expected to differentiate between a request to remove a block from a customer seeking to shop and a shopping request. The proposed amendment fails to address whether a new code can be issued in the event the customer or their agent misplaces the code originally provided by the distribution utility. Finally, the rule fails to address how the distribution utility is expected to administer this system. It instead simply requires distribution utilities to notify customers it exists.[11]

4. The proposed amendment is not associated with any new Ohio statute.

This proposal is not clerical, nor is it minor. As discussed above, it could have a major impact on Ohio CRES providers and distribution utilities. In light of the potential for significant change, one would have expected a statute which changed and clearly called for its creation. However, there is no Ohio statute which authorizes the creation of this new "block" proposal. The relevant Ohio statutes have instead been in place for more than a decade and do not expressly or implicitly authorize its creation. The Commission accordingly has no clear statutory authority to adopt this proposed rule.

In addition to not having any clear statutory support, this proposal does not appear to be consistent with Ohio's HB 166, which requires the Commission to take significant steps to cut two administrative rules for every new one adopted.[12] As stated in R.C. 121.95(A), this provision specifically applies to the Public Utilities Commission of Ohio.[13] The Commission has no

[11] Proposed OAC 4901:1-10-12(M).
[12] R.C. 121.95(F).
[13] R.C. 121.95(A).

justification to enact this new rule, particularly given that if it does so, it will have to remove two or more other existing regulatory restrictions.

B. Ohio Admin. Code 4901:1-10-33 – Consolidated billing requirements.

The proposed amendment to this rule adds a provision that prohibits non-commodity billing by third parties of the EDU, which presumably includes CRES providers such as FES. However, because "third party of the EDU" is not defined, it is unclear what parties would be subject to this proposed rule. The proposed amendment simply states:

> (L) No consolidated bill format shall contain charges for non-commodity goods or services from a [sic] thirty[14] party of the EDU.

Without defining who falls into the category of "third party of the EDU," this proposed amendment is too broad to be implemented. Additionally, assuming that CRES providers fall into the term "third party of the EDU," this proposed amendment is unnecessary, as suppliers do not currently have the authority to put non-commodity charges on a utility bill.

III. CONCLUSION

As a supplier looking into the future, the above proposed rules are anti-competitive and will not allow a supplier to grow in its offerings to consumers. Accordingly, FES respectfully requests that the Commission modify the proposed rules as set forth in these Comments.

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Respectfully submitted,

/s/ N. Trevor Alexander

N. Trevor Alexander (0080713)
Kari D. Hehmeyer (0096284)
CALFEE, HALTER & GRISWOLD LLP
1200 Huntington Center
41 South High Street

[14] The proposed rule currently states "thirty," which should be corrected to "third."

Columbus, Ohio 43215
Tel: (614) 621-7774
Fax: (614) 621-0010
talexander@calfee.com
khehmeyer@calfee.com

Attorneys for FirstEnergy Solutions Corp.

Summary: Comments Initial Comments of FirstEnergy Solutions Corp. electronically filed by Ms. Kari D Hehmeyer on behalf of FirstEnergy Solutions Corp.