

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application for	)	
Establishment of a Unique	)	Case No. 21-1205-EL-AEC
Arrangement for Toshi CMC, LLC	)	

---

**TOSHI CMC, LLC's UNOPPOSED MOTION FOR CLARIFICATION  
AND MEMORANDUM IN SUPPORT**

---

**Matthew R. Pritchard (Reg. No. 0088070)**  
(Counsel of Record)  
**Bryce A. McKenney (Reg. No. 0088203)**  
MCNEES WALLACE & NURICK LLC  
21 East State Street, 17<sup>TH</sup> Floor  
Columbus, OH 43215  
Telephone: (614) 469-8000  
Telecopier: (614) 469-4653  
mpritichard@mcneeslaw.com  
bmckenney@mcneeslaw.com  
(willing to accept service by e-mail)

**COUNSEL FOR TOSHI CMC, LLC**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application for	)	
Establishment of a Unique	)	Case No. 21-1205-EL-AEC
Arrangement for Toshi CMC, LLC	)	

---

**UNOPPOSED MOTION FOR CLARIFICATION**

---

Toshi CMC, LLC (“Toshi”) seeks confirmation from the Public Utilities Commission of Ohio (“Commission”) regarding the scope of the Commission’s approval of the reasonable arrangement for Toshi in this matter. While Toshi believes the Commission’s existing authorization resolves the issue, Toshi has run into implementation issues with FirstEnergy’s ability to enroll Toshi in the NMB transmission pilot billing outcome.<sup>1</sup> More specifically, while neither Toshi’s reasonable arrangement nor the Commission’s original authorization of the NMB transmission pilot require Toshi to shop and secure generation supply through a competitive retail electric service (“CRES”) provider in order to participate in the pilot, that is how FirstEnergy had exclusively automated the NMB transmission pilot process. Toshi, however, believes that FirstEnergy can and should utilize a manual billing process to allow Toshi to participate in the transmission pilot without having to switch to a CRES provider for generation service.

---

<sup>1</sup> Although Toshi’s original location receives service from the Ohio Edison Company, Toshi sought and received authority as part of its reasonable arrangement to locate additional sites in any of the three FirstEnergy Ohio electric distribution utility services areas and participate in the NMB transmission pilot billing outcome. For sake of simplicity in this motion Toshi has generically referred to the three electric distribution utilities (“EDU”) as FirstEnergy.

Through this unopposed motion, Toshi seeks confirmation from the Commission that FirstEnergy can and should manually bill Toshi directly or through an assignment of costs to a CRES provider for transmission service consistent with the NMB transmission pilot billing outcome while Toshi remains on the standard service offer (“SSO”). Such manual billing should be authorized until such time as FirstEnergy determines if an automated process can reasonably be implemented based on time, cost, and scope of work. While Toshi does not believe FirstEnergy would have demonstrable incremental costs to undertake the manual billing option, Toshi agrees that to the extent there would be demonstrable incremental costs they should not be passed on to customers not participating in the manual billing option of the NMB transmission pilot.

Finally, Commission Staff and the Office of the Ohio Consumers’ Counsel (“OCC”), the only other parties to the proceeding, have authorized Toshi to indicate that Staff and OCC do not oppose the relief Toshi seeks herein so long as the manual billing option would not result in other ratepayers incurring any additional costs as a result of FirstEnergy manually billing the transmission pilot for the pilot participant.

Respectfully submitted,

/s/ Matthew R. Pritchard

**Matthew R. Pritchard (Reg. No. 0088070)**

(Counsel of Record)

**Bryce A. McKenney (Reg. No. 0088203)**

MCNEES WALLACE & NURICK LLC

21 East State Street, 17<sup>TH</sup> Floor

Columbus, OH 43215

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

[mpritchard@mcneeslaw.com](mailto:mpritchard@mcneeslaw.com)

[bmckenney@mcneeslaw.com](mailto:bmckenney@mcneeslaw.com)

(willing to accept service by e-mail)

**COUNSEL FOR TOSHI CMC, LLC**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application for	)	
Establishment of a Unique	)	Case No. 21-1205-EL-AEC
Arrangement for Toshi CMC, LLC	)	

---

**MEMORANDUM IN SUPPORT**

---

**I. BACKGROUND**

FirstEnergy's NMB transmission pilot was approved as part of a stipulation that resulted in FirstEnergy's current electric security plan, ESP IV.<sup>2</sup> The NMB transmission pilot alters the billing outcome for transmission service that would otherwise occur through FirstEnergy's Rider NMB and aligns the allocation process used by PJM.

PJM allocates and bills for transmission service on, relatively, a more transparent peak demand basis that sends a price signal to customers to respond to peak loads on the transmission network and reduce load during system peaks. FirstEnergy, however, allocates transmission service in a different manner where customers do not have visibility to the peak information used to allocate costs. FirstEnergy also bills for transmission service based on yet another demand statistic that is not based on a customer's demand coincident to the peak information that FirstEnergy utilizes to allocate costs. Accordingly, while customers can respond to the price signals the PJM methodology sends there are not transparent price signals for customers to respond to

---

<sup>2</sup> *In the matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of An Electric Security Plan, Case No 14-1297-EL-SSO ("ESP IV Case").*

under the NMB rider. The NMB transmission pilot allows customers to return to a methodology that allows customers to respond to market price signals and provide benefits to the transmission grid by reducing overall demand during transmission system peaks. Benefits from PJM's market design and price signals flow to all customers in the form of avoided transmission investment/costs that would otherwise be needed to serve the increased peak demand on the system.

To restore PJM's transparent price signals and the production of overall system benefits, the NMB transmission pilot was created in the *ESP IV Case*. The NMB transmission pilot language provides in part:

The Companies agree to deploy a small-scale pilot program providing an alternative means for customers to obtain and pay for services provided by or through the Non-Market-Based Services Rider ("Rider NMB"). More specifically, the purpose of this pilot program is to explore whether certain customers could benefit from opting out of the Companies' Rider NMB and obtaining, directly or indirectly through a CRES provider, all transmission and ancillary services through the Open Access Transmission Tariff and other PJM governing documents ("OATT") approved by the Federal Energy Regulatory Commission, in effect from time to time, as modified by FERC, and applicable to the zone in which the end user is located or whether the administrative burden to the Companies, and the cost and risk to the customer, would render this option impractical.<sup>3</sup>

In its Opinion and Order that approved FirstEnergy's ESP IV, the Commission described the transmission pilot as set forth in the supplemental stipulation as follows:

The Companies will deploy a small-scale pilot program offering an alternative means for customers to obtain and pay for services through the Non-Market-Based Services Rider (Rider NMB). The purpose of the program is to explore whether certain customers could benefit from opting out of the Companies' Rider NMB and obtaining all transmission and ancillary services through the Open Access Transmission Tariff and other PJM governing documents approved by the Federal Energy Regulatory

---

<sup>3</sup> *ESP IV Case*, Supplemental Stipulation and Recommendation at 3 (May 28, 2015).

Commission (FERC), in effect from time to time, as modified by FERC, and applicable to the zone in which the end user is located or whether the administrative burden to the Companies, and the cost and risk to the customer, would render this option impractical.<sup>4</sup>

Later in the Order when discussing whether the NMB transmission pilot as part of the Stipulation package met the 3-part settlement test the Commission described the NMB pilot as follows:

Finally, the pilot program for large customers to obtain non-market based transmission services outside of Rider NMB provides the opportunity to determine if industrial customers can obtain substantial savings by obtaining certain transmission services outside of Rider NMB without imposing significant costs on other customers. The Rider NMB pilot program will provide better price signals to industrial customers and promote job retention and economic development in this region (Co. Ex. 3 at 3; Tr. Vol. XXIV at 7021-22; Tr. Vol. XXVI at 5325-26).<sup>5</sup>

In its Initial Brief in the *ESP IV Case*, FirstEnergy also described the NMB Pilot as providing for an alternative path to utilizing a competitive supplier to participate in the transmission pilot: “[t]his pilot will explore whether certain customers could benefit from obtaining these services directly from PJM or indirectly from a CRES provider.”<sup>6</sup>

Like the language governing the transmission pilot, in its reasonable arrangement application in this proceeding, Toshi sought approval to designate an account(s) to be exempt from Rider NMB and instead “secure transmission services provided through Rider NMB either directly or through a competitive retail electric service (“CRES”) provider.”<sup>7</sup> Just like the transmission pilot, Toshi’s reasonable arrangement does not contain any requirement that Toshi must secure generation

---

<sup>4</sup> *ESP IV Case*, Opinion and Order at 18-19 (March 31, 2016).

<sup>5</sup> *Id.* at 94.

<sup>6</sup> *ESP IV Case*, FirstEnergy Initial Brief at 34-35.

<sup>7</sup> Application at 7.

service through a CRES to either directly secure transmission service or secure transmission service through a CRES.

Although there was never any specific requirement that a pilot participant secure generation service through a CRES provider in order to participate in the NMB transmission pilot, Toshi understands that that is how FirstEnergy initially implemented its processes. Of course, this was not necessarily an unreasonable initial implementation process as nearly all of FirstEnergy's commercial and industrial customers were, at the time of the initial implementation, shopping and securing generation supply through a CRES provider.<sup>8</sup>

Both prior to and subsequent to the Commission's approval of the reasonable arrangement in this matter, Toshi (through its counsel) was engaged in outreach with FirstEnergy to understand the process for Toshi to enroll in the NMB transmission pilot while receiving generation service under the SSO. Ultimately and recently, FirstEnergy indicated that it could not figure out a way to implement an automated process in the near term for an SSO customer to participate in the NMB transmission pilot and that a future automated solution could come with significant costs.

Toshi's main account has received generation service under Ohio Edison's SSO since the account was opened in October 2021. Thus, from the inception of the reasonable arrangement case until today, Toshi has been receiving generation service under the SSO. For at least the time-being Toshi intends to remain on the SSO.

---

<sup>8</sup> When the NMB transmission pilot was approved in March of 2016, 97% of Ohio Edison's industrial customer class was already securing generation service through a CRES provider. Data available at the PUCO website: <https://puco.ohio.gov/utilities/electricity/resources/ohio-customer-choice-activity>. Switching percentages based on Ohio Edison March 2016 industrial class sales by volume (546,087 MWh shopping, 16,878 MWh on SSO).

## **II. ARGUMENT**

As Toshi noted in its filings in this matter, participation in the NMB transmission pilot billing outcome was a necessary predicate for Toshi's planned \$18 million initial capital investment and planned initial hiring of 38 new full-time employees. The Stipulation setting forth Toshi's reasonable arrangement was supported by Staff and not opposed by OCC, the only other parties to the proceeding. Furthermore, as noted in the Stipulation, once operational, Toshi's new load will be assigned a portion of the revenue requirement of FirstEnergy's existing riders, such as the Universal Service Fund ("USF") Rider. Accordingly, approval of Toshi's reasonable arrangement was supposed to result in substantial investment in the state, new full-time jobs, and rate decreases for other existing customers. All of this is in jeopardy if FirstEnergy cannot accommodate Toshi remaining on the SSO and participating in the NMB transmission pilot.

Initially, there is no requirement in Toshi's reasonable arrangement (or the original NMB transmission pilot) that requires Toshi to shop for generation service to participate in the NMB transmission pilot billing outcome. Rather, the plain language of the Commission-approved stipulation recognizes that all NMB transmission pilot customers could in fact choose a participation option that did not involve a CRES provider at all and would permit the pilot participant to "directly" secure transmission service under the Open Access Transmission Tariff ("OATT"). While the alternative option speaks to a pilot participant utilizing a CRES provider to secure transmission service on the pilot participant's behalf, that option also does not contain any explicit requirement for Toshi to shop for generation service to participate.



Toshi has been working with FirstEnergy throughout this summer to figure out what steps Toshi needs to take to participate in the NMB transmission pilot billing outcome while remaining on the SSO. Rather than receive clear instructions, FirstEnergy recently indicated that automating participation for SSO customers would impact its billing, supplier services, IT, and settlements systems, that it could be burdensome and expensive to implement an automated process, and that its initial assessment of the necessary changes could take 6-12 months to implement an automated solution. Accordingly, Toshi believes an automated participation option is unlikely to occur.

While an automated process seems unlikely in the near term, Toshi believes it is possible for FirstEnergy to implement a manual process to allow Toshi to participate in the transmission pilot billing outcome while Toshi remains on the SSO. A manual process could be implemented with Toshi paying FirstEnergy for transmission service based on its Network Service Peak Load (“NSPL”) or FirstEnergy manually allocating transmission responsibility to a CRES provider and Toshi engaging the CRES provider as a billing agent for transmission service. Toshi is also willing to work with FirstEnergy on the manual billing outcome that is easiest for FirstEnergy to implement. Toshi would also note that FirstEnergy has not indicated that a manual billing outcome is not possible and accordingly Toshi believes it is technically feasible for FirstEnergy to move forward with a manual billing option.

Toshi also does not believe a manual billing outcome would result in incremental costs to FirstEnergy as the manual labor expense to bill Toshi would be accomplished through an existing employee whose associated cost is already recovered in base

distribution rates. Nonetheless, to the extent that FirstEnergy has demonstrable incremental expenses to manually bill Toshi for the NMB pilot program billing outcome while Toshi is on the SSO, Toshi believes it is reasonable that such costs should not be allocated to other ratepayers. Toshi would work with FirstEnergy to resolve the issue if FirstEnergy demonstrates that it has incremental costs (not already being recovered) associated with manually billing Toshi.

Prior to filing this motion, Toshi discussed the manual billing option addressed herein with Commission Staff and OCC, and both authorized Toshi to represent that Commission Staff and OCC do not oppose Toshi's requested relief that would not result in any potential future costs associated with manual billing Toshi being allocated to other customers. Again, Commission Staff and OCC are the only other parties to the proceeding and thus this motion is unopposed.

While Toshi believes the Commission's approval of the reasonable arrangement already provides for the relief requested herein, Commission approval of this motion unopposed should remove the implementation impediment that Toshi is currently facing. Removal of this impediment will allow Toshi to make the capital investment in the state, hire new employees, and produce cost savings for FirstEnergy existing customers that was outlined in the reasonable arrangement approved by the Commission. This motion seeks a just and reasonable outcome and will not result in any adverse impact on any other customer or FirstEnergy.

### **III. CONCLUSION**

Through this motion unopposed by any party to the proceeding, Toshi seeks confirmation that under the Commission's existing approval of the reasonable

arrangement, FirstEnergy should manually bill the transmission pilot outcome for Toshi unless and until a reasonable automated process becomes available for SSO customers participating in the pilot. As set forth herein, the manual billing option should not result in any incremental costs, but to the extent there were demonstrable incremental costs Toshi agrees with Commission Staff and OCC that they should not be recovered from other ratepayers. Accordingly, the Commission should approve the just and reasonable outcome sought herein that will not have any adverse effect on any other ratepayers.

/s/ Matthew R. Pritchard

**Matthew R. Pritchard (Reg. No. 0088070)**

(Counsel of Record)

**Bryce A. McKenney (Reg. No. 0088203)**

MCNEES WALLACE & NURICK LLC

21 East State Street, 17<sup>TH</sup> Floor

Columbus, OH 43215

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

mpritchard@mcneeslaw.com

bmckenney@mcneeslaw.com

(willing to accept service by e-mail)

**COUNSEL FOR TOSHI CMC, LLC**

## **CERTIFICATE OF SERVICE**

In accordance with Ohio Adm.Code 4901-1-05, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Unopposed Motion for Clarification of Toshi CMC, LLC and Memorandum in Support* was sent by, or on behalf of, the undersigned counsel for Toshi CMC, LLC, September 2, 2022.

/s/ Matthew R. Pritchard  
Matthew R. Pritchard

Maureen R. Willis  
Amy Botschner O'Brien  
Maureen.willis@occ.ohio.gov  
amy.botschner.obrien@occ.ohio.gov

On Behalf of Office of the Ohio Consumers' Counsel

Steven Beeler  
Steven.Beeler@ohioAGO.gov  
Thomas Lindgren  
Thomas.Lindgren@ohioAGO.gov

Jesse Davis  
Jesse.davis@puco.ohio.gov

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**9/2/2022 1:42:48 PM**

**in**

**Case No(s). 21-1205-EL-AEC**

Summary: Motion Unopposed Motion for Clarification electronically filed by Mr.  
Matthew R. Pritchard on behalf of Toshi CMC, LLC