

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, the Cleveland Electric)	
Illuminating Company, and the Toledo)	Case No. 23-301-EL-SSO
Edison Company for Authority to Establish)	
A Standard Service Offer Pursuant to R.C.)	
4928.143 in the Form of an Electric)	
Security Plan)	

**INITIAL POST HEARING BRIEF OF DIRECT ENERGY BUSINESS LLC, DIRECT
ENERGY SERVICES LLC, RELIANT ENERGY NORTHEAST LLC DBA NRG HOME
AND NRG BUSINESS, STREAM OHIO GAS & ELECTRIC LLC, AND XOOM
ENERGY OHIO LLC**

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I. INTRODUCTION

In this proceeding, FirstEnergy¹ requests approval of its fifth Electric Security Plan (“ESP”). As active Competitive Retail Electric Service (“CRES”) providers in the FirstEnergy service territory that have been serving residential and commercial customers since the early 2000s, the NRG Retail Companies² (“NRG”) encourage the Commission to approve their proposals for FirstEnergy’s fifth ESP, as permitted by R.C. 4928.143(C)(1), to further Ohio’s energy policy set forth in R.C. 4928.02 and provide meaningful benefits to customers.

NRG believes that the primary improvement the Commission can make to this proposed ESP is to direct FirstEnergy to move all SSO customers with an advanced meter to a retail rate design that bills them on-peak and off-peak rates. The Commission can provide this benefit to SSO customers with an advanced meter simply by replacing the existing default rates in its Generation Service Rider (“Rider GEN”) with the Time-of-Day Option rates, also in Rider GEN, that were approved by the Commission in Case No. 20-50-EL-ATA.³ This simple change will position customers to realize the full benefits of a smart grid and provide them a return on their investment in FirstEnergy’s grid-modernization programs.

The Commission also should reject FirstEnergy’s proposal to bring back from extinction its energy efficiency and peak demand reduction (“EE/PDR”) portfolio plan. The Ohio legislature has eliminated mandatory EE/PDR plans. While R.C. 4928.143(B)(2)(i) permits an electric distribution utility (“EDU”) to implement energy efficiency programs as a component of an ESP,

¹ For purposes of this brief, “FirstEnergy” means the three applicants: Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

² Direct Energy Business LLC, Direct Energy Services LLC, Reliant Energy Northeast LLC dba NRG Home and NRG Business, Stream Ohio Gas & Electric LLC, and XOOM Energy Ohio LLC.

³ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of New Tariff Language for a Time-Varying Rate*, Case No. 20-50-EL-ATA, Finding and Order (Jan. 27, 2021).

any such programs should be consistent with Ohio energy policy, including the promotion of competitive options by competitive providers.⁴ As the Commission has stated, “the future for EE programs in this state will be best served by reliance upon market-based approaches such as those available through PJM and competitive retail electric service providers.”⁵ In this case, NRG has proposed a market-based approach to encourage peak demand reduction through economic signals in the form of an opt-out time-of-use rate for all SSO customers with an advanced meter.

Further, the Commission should decline FirstEnergy’s invitation to modify the long-standing competitive bidding process (“CBP”) used to acquire standard service offer (“SSO”) supply. In particular, NRG objects to FirstEnergy’s proposal to shift volumetric risk from SSO suppliers to SSO customers through the use of a volumetric risk cap (“VRC”). FirstEnergy’s proposal would also have the detrimental effect of reducing the risk that SSO suppliers face in comparison to suppliers that primarily serve mass-market customers in Ohio’s competitive market. Neither FirstEnergy nor any other party has demonstrated that the risks the VRC would impose on retail customers would be offset by corresponding improvements in SSO pricing. Likewise, no party has demonstrated that the risk faced by SSO suppliers is not equally faced by mass-market suppliers, who always face the risk that their customers will return to the SSO. The Commission should reject FirstEnergy’s proposed VRC experiment.

While the Commission should reject many of FirstEnergy’s ESP proposals, as explained above, the Commission should *approve* FirstEnergy’s proposed modifications to its Non-Market-Based Services Rider (“Rider NMB”). NRG believes that use of Network Service Peak Load

⁴ See R.C. 4928.02(C), (D), (G), (H)

⁵ *In the Matter of the Application of Duke Energy Ohio, Inc., For Approval of Its 2021 Energy Efficiency and Demand Side Management Portfolio of Programs and Cost Recovery*, Case No. 20-1013-EL-POR, *et al.*, Entry ¶ 9 (June 17, 2020).

(“NSPL”) as a billing determinant for the NMB 2 charge to customers with advanced meters will provide benefits to those customers.

NRG also supports OMAEG’s recommendation that FirstEnergy should publish public hosting capacity maps. These public hosting capacity maps will promote economic development in FirstEnergy’s territories and improve Ohio’s competitiveness in the region. Finally, NRG supports FirstEnergy’s proposed spend of \$16 million on an EV initiative provided none of this commitment is diverted to anti-competitive grid storage initiatives and Staff’s recommendations are adopted.

II. STANDARD OF REVIEW

FirstEnergy must provide customers an SSO, whether as an ESP or an MRO, “on a comparable and nondiscriminatory basis within its certified territory.”⁶ FirstEnergy proposes an ESP—*i.e.*, ESP V—pursuant to R.C. 4928.143. Under R.C. 4928.143(C)(1), FirstEnergy has the burden of proof as the applicant proposing the ESP.⁷ That section also provides that the Commission, in ruling on FirstEnergy’s application, “shall approve or modify . . . [the] application if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code.”⁸

⁶ R.C. 4928.141(A).

⁷ R.C. 4928.143(C)(1) (“The burden of proof in the proceeding shall be on the electric distribution utility.”).

⁸ *Id.*

Section 4928.143 identifies specific requirements for an ESP. Under Section 4928.143(B), an ESP must include provisions relating to the supply and pricing of generation service.⁹ An ESP may also provide for automatic recovery of certain costs, a reasonable allowance for certain construction work in progress (“CWIP”), an unavoidable surcharge for the cost of certain new generation facilities, conditions or charges relating to customer shopping, automatic increases or decreases, provisions to allow securitization of any phase-in of the SSO price, provisions relating to transmission-related costs, provisions related to distribution service, and provisions regarding economic development, job retention, and energy efficiency programs.¹⁰

Chapter 4928 of the Revised Code provides an “integrated system of regulations in which specific provisions were designed to advance state policies of ensuring access to adequate, reliable, and reasonably priced electric service in the context of significant economic and environmental challenges.”¹¹ In reviewing an application for an ESP, the Commission takes into consideration the policy provisions of R.C. 4928.02 and “use[s] these policies as a guide in [its] implementation of Section 4828.143, Revised Code.”¹² Section 4928.02 of the Revised Code states that it is the policy of the state to, among other things:

(A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service; * * *

(C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and

⁹ R.C. 4928.143(B)(1).

¹⁰ R.C. 4928.143(B)(2).

¹¹ In the Matter of the Application of Ohio Edison Co., the Cleveland Elec. Illuminating Co., & the Toledo Edison Co. for Auth. to Establish A Standard Serv. Offer Pursuant to Section 4928.143, Revised Code in the Form of an Elec. Sec. Plan, PUCO No. 08-935-EL-SSO, 2008 WL 5411710, at 8 (Opinion and Order, Dec. 19, 2008).

¹² *Id.* at 12.

suppliers and by encouraging the development of distributed and small generation facilities;

(D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure; * * *

(G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;

(H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates; * * *

(J) Provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates; * * *

(L) Protect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource; * * *

R.C. 4928.02.

In ruling on FirstEnergy's application, the Commission must base its decision on the evidence in the record. *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 89-90, 706 N.E.2d 1255 (1999) (quoting *Ideal Transp. Co. v. Pub. Util. Comm.*, 42 Ohio St.2d 195, 326 N.E.2d 861 (1975) at syllabus) ("The Public Utilities Commission must base its decision in each case upon the record before it."). Based upon this standard of review, NRG respectfully requests that the Commission adopt its proposal to implement time-of-use rates for all SSO customers with an advanced meter and find that with these time-of-use rates FirstEnergy's ESP V meets the Revised Code's standard of review for approval of an ESP.

III. ARGUMENT

A. **The Commission Should Direct FirstEnergy to Make the Time-of-Day Option in Rider GEN the Default Option for SSO Customers With Advanced Meters so that These SSO Customers May Receive the Benefits of Time-Varying Rates.**

The Commission should direct FirstEnergy to move all SSO customers with an advanced meter to a time-of-use rate as an *opt-out* program. FirstEnergy is proposing that Rider GEN continue under the same terms and conditions today as in ESP IV,¹³ with FirstEnergy continuing to provide time-varying rates to the very few customers that *opt-in*. The Commission should instead make a time-varying rate the *default* (i.e., an *opt-out*), rather than an *opt-in* option, for all SSO customers with an advanced meter.

1. **NRG's Proposal**

As explained in the Direct Testimony of Travis Kavulla, NRG proposes that the FirstEnergy utilities move all SSO customers to a retail rate design that bills them on-peak and off-peak rates.¹⁴ NRG's proposal would apply only to those SSO customers with advanced meters because they provide required data with a sufficient level of granularity.¹⁵ FirstEnergy's time-varying rates in Rider GEN are its Time-of-Day Option (Residential) and Time-of-Day Option (Commercial).¹⁶ These rates were approved by the Commission in Case No. 20-50-EL-ATA¹⁷ and, thus, have been available to SSO customers for several years on an opt-in basis. FirstEnergy used historical real-time LMP rates to establish seasonal, midday-peak and shoulder-peak hours to

¹³ Direct Testimony of Dhara Patel ("Patel Test."), p. 2:20 - 3:1.

¹⁴ Direct Testimony of Travis Kavulla ("Kavulla Test."), p. 3:6-7.

¹⁵ Tr. Vol. 8, 1611:20-1612:4.

¹⁶ Kavulla Test., p. 5:4-10.

¹⁷ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of New Tariff Language for a Time-Varying Rate*, Case No. 20-50-EL-ATA, Finding and Order (Jan. 27, 2021).

the average LMP price for all hours, and, after feedback from stakeholders, designed these rates for residential and non-residential customers to achieve a midday-peak to off-peak price ratio of approximately 2:1.¹⁸ These time-varying rates were designed to be revenue neutral.¹⁹ Although these time-varying rates are superior to the opt-out SSO default rate in many ways, they are unlikely to gain significant subscribership unless made the SSO default option.²⁰

2. The Benefits of time-varying rates for SSO customers are well recognized and undisputed.

Implementing a time-varying rate as the default option will empower and incentivize non-shopping customers to control their energy usage with the added benefit of better utilizing FirstEnergy's advanced metering infrastructure.²¹ Making the SSO default rate the currently tariffed Time-of-Day Option rate will better align retail prices with costs, which aligns with the bedrock regulatory principle of cost causation.²² This conveys to non-shopping customers a price signal that encourages those customers to avoid using electricity at peak times when prices are higher and to shift their demand to non-peak times.²³ As Mr. Kavulla explained, by getting customers to avoid using power during times of high cost, "you save not only them money but all nonshopping customers."²⁴ Ultimately, NRG's proposal will reduce purchased power expense and peak demand, which results in lower capacity and transmission costs in the short term, and lower capital expenditures in the long term.²⁵

¹⁸ *Id.*, p. 7:7-11.

¹⁹ *Id.*, p. 7:16-17.

²⁰ *Id.*, p. 6:15-17.

²¹ Kavulla Test., p. 10:18-20.

²² Kavulla Test., p. 10:12-15.

²³ Tr. Vol. 8, 1610:23-1611:8.

²⁴ Tr. Vol. 8, 1611:6-8.

²⁵ Kavulla Test., p. 8:6-8.

The benefits to NRG’s proposal to implement *opt-out* time-of-use rates are substantial. Indeed, the Commission already found in the *Grid Mod I* case that FirstEnergy’s “commitment to offer a time-varying rate” would be “[o]f significant benefit” to customers.²⁶ Directing FirstEnergy to make the Time-of-Day Option in Rider GEN the default for SSO customers with an advanced meter merely aligns with the benefits that FirstEnergy and the Commission have already recognized in the Grid Mod I case. Indeed, adopting NRG’s proposal will implement a program that the Commission has already found provides significant benefits to consumers.²⁷ These benefits include better aligning retail prices with the cost to serve, empowering customers by giving them some capability to control their costs, and reducing purchased power costs by shaving demand peaks.²⁸

Staff has supported the implementation of time-varying rates, and has emphasized the numerous benefits that such reforms would provide to consumers.²⁹ As Staff witness Krystina Schaefer observed in this case, “Staff is generally supportive of the implementation of time-differentiated pricing to encourage innovation and market access for cost-effective supply and demand side retail electric service, pursuant to R.C. 4928.02(D).”³⁰ Ms. Schaefer reiterated Staff’s general support of time-varying rates at hearing: “It’s State policy to support time varying rates,

²⁶ *In The Matter of the Filing by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company of a Grid Modernization Business Plan*, Case No. 16-481-EL-UNC, Opinion and Order at ¶ 110 (July 17, 2019) (the “Grid Mod I Case”).

²⁷ *Id.*

²⁸ See NRG Exh. 2, NRG Set 01-INT-011 (“the Companies’ current SSO time-varying rate options provide SSO customers opportunities for incentives to shift usage to offpeak periods and potential reduce their energy costs and peak usage.”); NRG Exh. 3, NRG Set 01-RFA-003 (“the Companies admit that pricing signals can incentivize customers to shift their electricity use peak to lower price periods which could include off-peak periods.”). See also Tr. Vol. 13, 2331:3-18.

²⁹ See Direct Testimony of Krystina Schaefer (“Schaefer Test.”), pp. 9-12.

³⁰ Schaefer Test., p. 12:3-4.

so Staff is supportive of implementing the State policy; but, yet, we have generally been supportive [of] time-of-use rates.”³¹ Ms. Schaefer also stated that Staff is generally supportive of the implementation of the two time-of-day options that are in Rider GEN, stating: “Yes. Staff filed a Staff Report in that case that I referenced, Case No. 20-50, that was later approved, and Staff was supportive of the implementation of that rate.”³² Further, Staff has discussed internally whether customers should have time-varying rates such as the time-of-day options that are in Rider GEN as the default for Rider GEN.³³

Ms. Schaefer elaborated at hearing on the benefits of implementing time-varying rates. When cross-examined on the benefits to customers from encouraging participation in FirstEnergy’s different time-varying rates, Ms. Schaefer explained that time-varying rates advance State policy and can produce generation- and distribution-related benefits:

So, namely, having a time-differentiated rate in support of a Smart Grid program would further State policies defined in 4928.02. I think to the extent and depending on the specific design of the time-of-use rate, there could be benefits in terms of reduced usage during on-peak periods or specifically targeted reduced usage or demand in areas of high congestion on the distribution system. Potentially a generation- or distribution-related benefit could be possible depending on the specific time-of-use rate design and objectives.³⁴

By implementing time-varying rates as the SSO default, the Commission will grasp the opportunity to introduce a new retail rate design at the same time (or shortly after) advanced meters are deployed and also ensure that the optimal rate design is deployed for customers who already have advanced meter technology.³⁵

³¹ Tr. Vol. 13, 2329:24-25.

³² Tr. Vol. 13, 2330:10-16.

³³ Tr. Vol. 13, 2330:17-20.

³⁴ Tr. Vol. 13, 2331:3-18.

³⁵ Tr. Vol. 8, 1613:12-21.

3. Regulatory action is needed to ensure FirstEnergy's SSO customers access the benefits of time-varying rates.

Regulatory action by the Commission is necessary to ensure that the benefits of time-varying rates are fully realized. Under the current framework, regulated utilities generally lack a persistent and routine incentive to manage the fuel and purchased power costs they face because those costs are passed through in riders that are now commonplace in utility regulation.³⁶ Flat, around-the-clock prices charged by utilities convey no incentive for customers to shift usage between times when the cost to supply them is higher or lower.³⁷ Rectifying this disincentive requires regulatory initiative to make time-varying rates the default option.³⁸ And regulators, not utilities or consumers, must take the initiative to encourage consumers to shift their usage.³⁹ An obvious way to do so is to adopt NRG's proposal here—i.e., to proactively require the adoption of a rate design that encourages a more active demand side, even if the incumbent utility takes no further action to encourage it.⁴⁰

Absent regulatory action, the facts show that non-shopping customers are less inclined to *opt in* to new rate designs than they are to accept the default option. Government has a role in the “choice architecture” facing consumers, whether acknowledged or not.⁴¹ From a regulatory standpoint, program designs that require a consumer to make an affirmative choice to adopt a more complicated but also more cost-reflective rate (i.e., a time-varying rate), in effect decide that such

³⁶ Kavulla Test., Ex. B, p. 19.

³⁷ Kavulla Test., Ex. B, p. 19.

³⁸ Kavulla Test., Ex. B, p. 20.

³⁹ Kavulla Test., Ex. B, p. 19.

⁴⁰ Kavulla Test., Ex. B, p. 19.

⁴¹ Kavulla Test., Ex. B, p. 20.

time-varying rates will be vastly undersubscribed.⁴² Requiring consumers to *opt in* to a time-varying rate results in more expensive fossil fuel-powered energy, more expensive capacity, and increased distribution costs while delaying customer familiarity with time-varying rates.⁴³

FirstEnergy's own data suggest that regulatory action is needed. As of July 31, 2023, only 144 residential customers were taking service under the Rider GEN Time-of-Day Option (Residential) rate, and no commercial or industrial customers were taking service under the Rider GEN Time-of-Day (Non-Residential) Option.⁴⁴ This low level of participation is hardly surprising; a growing body of literature suggests that consumers presume the default option to be the safe and proper choice, even if it is not the best one.⁴⁵ For the SSO time-varying rate, this phenomenon is amplified by two factors: (1) the concept of a time-varying rate is more complex than a flat rate, which reinforces the tendency of customers to view it as exotic or risky, and (2) the rate is marketed to non-shopping customers, who are generally the least likely consumers to make an affirmative choice to select an alternative to the default.⁴⁶ This requires regulatory action to make a time-varying rate the default service for SSO customers.⁴⁷ Without Commission action, Ohio customers are likely to continue spending a substantial amount of money in support of FirstEnergy's metering rate base, without realizing the full benefits of a smart grid.⁴⁸

⁴² Kavulla Test., Ex. B, p. 20.

⁴³ Kavulla Test., Ex. B, p. 20.

⁴⁴ Kavulla Test., p. 5:13-16.

⁴⁵ Kavulla Test., p. 6:2-6.

⁴⁶ Kavulla Test, p. 6:6-13. These results align with other jurisdictions—essentially, the only jurisdictions with significant levels of time-varying rate subscribership are those where regulators have adopted time-varying rates as the default, opt-out mode. Kavulla Test, p. 6:13-17; *see also* Kavulla Test, Ex. B, at pp. 9-11.

⁴⁷ Kavulla Test., Ex. B, p. 20.

⁴⁸ Kavulla Test., p. 3:10-12.

Thus, NRG proposes that the Commission direct FirstEnergy to continue the Time-of-Day Option (Residential) but as the default used to bill all residential SSO customers with an advanced meter. This would take the existing rate design and expand the number of customers subject to it.⁴⁹ Similarly, the Commission should direct FirstEnergy to continue the Time-of-Day Option (Non-Residential) but as the default used to bill all non-residential SSO customers with an advanced meter. Once again, this would utilize FirstEnergy's existing time-of-day rate design approved in Case No. 20-50-EL-ATA but expand the number of customers subject to it.⁵⁰ By taking this action, the Commission will be proactively incentivizing reforms to empower non-shopping customers to control their energy usage while better utilizing FirstEnergy's advanced metering infrastructure.

B. The Commission Should Reject FirstEnergy's Proposed Energy Efficiency and Peak Demand Reduction Programs.

FirstEnergy proposes four residential energy efficiency ("EE") and peak demand reduction ("PDR") programs and one commercial/industrial program at an average annual cost of \$72.1 million over 4 years.⁵¹ The Commission should either reject all of these programs or, alternatively, adopt only the low-income programs, as recommended by IGS/RESA witness White and OCC witness Shutrump.⁵² Importantly, should the Commission adopt NRG's recommendation to make time-varying rates the default option for SSO customers, they will have access to EE/PDR benefits without the substantial charges required by FirstEnergy's proposed EE/PDR programs.

⁴⁹ Direct Testimony of Travis Kavulla ("Kavulla Test."), p. 8:14-16.

⁵⁰ Kavulla Test., pp. 9:13-10:1.

⁵¹ Direct Testimony of Edward C. Miller ("Miller Test."), pp. 4-31.

⁵² Direct Testimony of Matthew White ("White Test."), pp. 9-18; Direct Testimony of Colleen Shutrump ("Shutrump Test."), pp. 3-14.

NRG agrees with IGS/RESA witness White that CRES providers and energy efficiency retailers are best suited to educate customers and provide incentives to increase energy efficiency awareness.⁵³ FirstEnergy should not leverage its monopoly power to harm competition to the detriment of consumers.⁵⁴ Thus, the Commission should reject FirstEnergy's EE/PDR proposal as inconsistent with Ohio energy policy, anti-competitive, and problematic for consumers.

Instead of adopting mandatory EE/PDR programs at a cost to customers of approximately \$288.4 million (\$72.1 million annually for four years), the Commission can encourage peak demand reduction at no cost to customers by adopting NRG's proposal to move all SSO customers with an advanced meter to a time-varying rate. Under NRG's proposal, if customers do not respond to the pricing signal, their costs will still be more closely aligned with the costs of serving them.

Finally, if the Commission decides to adopt some elements of FirstEnergy's proposed EE/PDR programs, it should prohibit FirstEnergy from selling the demand response in PJM markets. IGS Witness White testified "any type of smart thermostat programs should look towards the competitive market to implement."⁵⁵ To do this, if the Commission decides to adopt any type of smart thermostat demand response program, the program should allow only CRES providers to sell the resulting demand response in PJM's demand response programs. Further, if such a program is adopted, the Commission should adopt safeguards to prevent FirstEnergy from interfering in Ohio's competitive retail market, which the Commission can do by creating a

⁵³ White Test., p. 16.

⁵⁴ *See Id.*, p. 15.

⁵⁵ *Id.*, pp. 17-18.

working group for FirstEnergy, Staff, and CRES providers to collaborate on program implementation.

C. The Commission Should Maintain, Without Changes, the Existing SSO Auction Format and Decline to Adopt the VRC experiment.

FirstEnergy proposes to modify the CBP process to add a VRC (Volumetric Risk Cap) that would limit SSO suppliers' volumetric exposure to a maximum of 20 MW above the benchmark for a tranche.⁵⁶ The objective is to insulate SSO suppliers from market risk for the portion of the SSO obligation above the market cap, with any supply above the cap evaluated each business day and supplied by FirstEnergy at real-time market prices.⁵⁷ This would, of course, "shift risk from suppliers to customers" in the hope that the harm caused directly to customers would be outweighed by the theoretical chance that the auction price might be lower than it would have been without the VRC in place.⁵⁸ Under FirstEnergy's proposal, customers would be charged for the VRC through Rider GCR.⁵⁹ The Commission should reject the VRC.

FirstEnergy witness Lee appears ambivalent about his VRC proposal.⁶⁰ If it works as designed, he recognizes then customers suffer from paying real-time market prices at a time when those market prices are likely to be relatively high.⁶¹ As Staff witness Benedict explained, any theoretical benefits of the VRC "come at the expense, however, of transferring market and migration risk from suppliers to SSO ratepayers, who would not be exposed to market prices rather

⁵⁶ Direct Testimony of Robert J. Lee ("Lee Test."), pp. 6-9.

⁵⁷ *Id.*, p. 7. It is possible that the cap could be triggered one day and not the next when the PLC per tranche is close to the cap. Tr. Vol. 4, 773:7-10. *See* Tr. Vol. 4, 774:8-13 (the purpose of "this volumetric risk cap, is to insulate suppliers to some extent from the market risk related to the portion of the SSO obligation that is above the cap, right? A. Correct.").

⁵⁸ *Id.*, pp. 8-9.

⁵⁹ Direct Testimony of Dhara Patel ("Patel Test."), p. 3.

⁶⁰ *See* Lee Test., pp. 6-9.

⁶¹ Tr. Vol. 4, 778:5-24.

than a fixed auction price should the cap be exceeded.”⁶² And the payoff? According to Mr. Lee, reduced risk “should come” because SSO suppliers “should be able to bid more aggressively” which “*may* result” in lower SSO pricing.⁶³ This is wishful thinking on Mr. Lee’s part, as opposed to persuasive, probative evidence that the Commission can rely upon. Which likely is why Mr. Lee tempers his testimony by speculating that “the volumetric risk cap may never be triggered.”⁶⁴ To summarize, the VRC is bad for the competitive marketplace and bad for customers if triggered.

Speculation that the VRC “may” generate some undefinable savings in SSO pricing is insufficient for FirstEnergy to carry its burden of proof. What is lacking in Mr. Lee’s testimony, and cannot be found elsewhere in the record, is evidence that the VRC will result in a net benefit to SSO customers as compared to the existing, Commission-approved CBP auction process. He also fails to address whether risk reduction for SSO suppliers is in the best interest of shopping customers. Particularly given that the existing CBP auction design has worked over many years precisely because it properly places volumetric risk on the party best situated to manage that risk – the SSO suppliers. As Mr. Lee explained:

One of the advantages of a descending-price clock auction format is that it provides an effective price discovery process. Only with an effective price discovery process, in which bidders submit and re-submit bids as announced auction prices fall reflecting the level of bidding competition, will bidders’ bids reflect their best bids in competition with other bidders.⁶⁵

Despite this clear testimony as to the benefits of the existing auction process when SSO bidders must incorporate risk premiums into their bids, and despite recognizing that some SSO suppliers

⁶² Direct Testimony of Timothy W. Benedict (“Benedict Test.”), pp. 3-4.

⁶³ Lee Test., pp. 8-9 (emphasis added).

⁶⁴ *Id.*, p. 9. If the VRC won’t ever be triggered, then the Commission must ask why the VRC would have any impact on SSO supplier behavior.

⁶⁵ Lee Test., p. 33.

are more sophisticated than others and that some are non-generation owners, his development of the VRC did not take SSO supplier differences into account.⁶⁶

Plus, Mr. Lee cannot offer an opinion – which he described as “speculation” – “to the degree to which individual elements of risk contribute to the overall risk premium, individual bidders are willing to include in their SSO bidding prices.”⁶⁷ Indeed, he professed that he did not “believe an analysis like that is possible.”⁶⁸ This is key, because he cannot say whether the VRC will result in a reduced risk premium and, presumably, lower SSO pricing. Of course, the existing auction process already rewards SSO bidders that include the lowest risk premiums in their bids. Although SSO customers are incapable of managing the risk that the VRC would be triggered, SSO bidders are eminently qualified to manage volumetric risk.⁶⁹ As Mr. Lee stated, SSO bidders have the ability at the time of each SSO auction to hedge energy market prices, while customers subject to the VRC have no such ability.⁷⁰

The Commission should reject FirstEnergy’s proposed VRC experiment.

D. The Commission Should Approve FirstEnergy’s Proposed Rider NMB Modifications.

FirstEnergy proposes modifications to Rider NMB that include elimination of the Rider NMB Pilot.⁷¹ Instead of the Rider NMB Pilot, Rider NMB will include a new NMB 2 charge that

⁶⁶ Tr. Vol. 4, 774:14 – 776:1.

⁶⁷ Tr. Vol. 4, 776:18-22. *See also* Tr. Vol. 4, 780:17-18 (Mr. Lee admitting that “We can’t know how SSO suppliers will value that volumetric risk cap.”).

⁶⁸ Tr. Vol. 4, 780:21-22.

⁶⁹ *See* Direct Testimony of Jim Poprocki (“Poprocki Test.”), pp. 11-12 (“SSO suppliers have the information, expertise, and tools to manage volumetric risk.”).

⁷⁰ *See* Lee Test., p. 8.

⁷¹ Direct Testimony of Juliette Lawless (“Lawless Test.”), pp. 7-12.

is applicable to commercial and industrial customers with interval or advanced meters.⁷² For customers on NMB 2, FirstEnergy will use Network Service Peak Load (“NSPL”) as the billing determinant.⁷³ As FirstEnergy witness Stein explained, “Since PJM assigns most non-market-based services costs based on NSPLs, designing retail rates for these services that are also charged on NSPL would promote cost causation principles.”⁷⁴ In addition, use of NSPL as a billing determinant for the NMB 2 charge will enable customers with advanced meters “to have better control over their usage.”⁷⁵

NRG supports the modifications to Rider NMB and the replacement of the Rider NMB Pilot with a new NMB 2 charge using NSPL as the billing determinant.⁷⁶ These modifications also are supported by OEG, Nucor Steel, and OMAEG.⁷⁷ Transmission cost responsibility for customers should not be moved out of Rider NMB to either the SSO providers or CRES providers serving those customers.⁷⁸ Thus, the Commission should approve FirstEnergy’s proposed Rider NMB modifications.

E. The Commission Should Direct FirstEnergy to Issue Hosting Capacity Maps.

OMAEG witness Seryak recommends that FirstEnergy publish publicly-available hosting capacity maps that “would provide an objective, transparent tool for defining and locating efficient sites for EV charger deployment and other needs.”⁷⁹ Hosting capacity maps show project

⁷² *Id.*, p. 11.

⁷³ Direct Testimony of Edward B. Stein (“Stein Test.”), pp. 10-11.

⁷⁴ *Id.*, p. 11.

⁷⁵ *Id.*

⁷⁶ *See* Direct Testimony of Jesse Rodriguez (“Rodriguez Test.”), pp. 5-7.

⁷⁷ Direct Testimony of Stephen J. Baron (“Baron Test.”), pp. 5-10; Direct Testimony of Dennis W. Goins (“Goins Test.”), pp. 19-20; Direct Testimony of Ryan S. Schuessler (“Schuessler Test.”), pp. 9-12.

⁷⁸ Rodriguez Test., pp. 8-9.

⁷⁹ Direct Testimony of John A. Seryak (“Seryak Test.”), pp. 18-21.

developers where existing grid infrastructure has additional capacity for new electric load, which, among other things, will support the development of industrial manufacturing sites in Ohio. FirstEnergy provides these maps in New Jersey, and other utilities provide them in states such as Maryland, Illinois, Michigan, and New York.⁸⁰ In order to place future Ohio development on equal footing with these other states, the Commission should direct FirstEnergy to publish hosting capacity maps for its Ohio territories.

F. NRG Supports FirstEnergy's Proposed \$16 million EV Initiative, Which Eliminated the Proposed Grid Innovation Initiative, Provided Staff's Recommendations Are Adopted.

FirstEnergy's Application proposed that FirstEnergy spend shareholder dollars on two initiatives: (1) an EV initiative to spend at least \$12 million to support education efforts and assist customers in EV adoption; and (2) up to \$4 million toward a grid innovation initiative involving energy storage on the distribution system.⁸¹ NRG opposes the latter of these initiatives because storage is a generation asset that should not be owned by a distribution utility. Fortunately, however, FirstEnergy witness Fanelli affirmed at hearing that FirstEnergy was not pursuing the grid modernization project and would, instead, commit to spending at least \$16 million on the EV initiative.⁸² With the diversion of these funds to a better use, NRG supports FirstEnergy's commitment of shareholder dollars exclusively for an EV initiative provided that Staff's recommendations are adopted.

Staff witness Schaefer testified that the program design for FirstEnergy's EV-related initiatives "needs to be limited to activities appropriate for an electric distribution utility company,

⁸⁰ *Id.*, p. 20.

⁸¹ Fanelli Test. pp. 9-10.

⁸² Tr. Vol. 1, 63:3-24, 64:11-17.

since the commitment is being made pursuant to R.C. 4928.143.”⁸³ Ms. Schaefer recommends that any program activities should be “limited to those directly related to providing distribution service, *e.g.*, customer education about rate options for EVSE site hosts, shareholder funded credits to encourage charging during times of low localized distribution system demand, or improvements to the siting and interconnection process for EVSE.”⁸⁴ She further recommends that FirstEnergy should meet with interested parties within 90 days of the Commission’s order approving ESP V to discuss appropriate EDU uses for these funds.⁸⁵ NRG supports each of these recommendations.

Further, NRG notes that its proposal to move SSO customers to time-of-use rates will be particularly beneficial to FirstEnergy and all customers because it encourages off-peak EV charging. With the current fixed-rate design for SSO customers, EV owners have no incentive to charge during off-peak hours, which could result in on-peak charging and additional stress on the distribution grid. By adopting an on-peak and off-peak rate for all SSO customers with an advanced meter, any such customers with an EV will have an economic incentive to charge at night or pay more commensurate with the additional costs they cause to be incurred. Accordingly, NRG supports FirstEnergy’s proposal to use shareholder dollars to support EV initiatives, with Staff’s recommendations, and believes that such initiatives pair well with NRG’s proposed time-of-use rates.

IV. CONCLUSION

For the foregoing reasons, the Commission should approve the proposals by NRG for implementation in FirstEnergy’s ESP V.

⁸³ Schaefer Test., p. 5.

⁸⁴ *Id.*, p. 6.

⁸⁵ *Id.*

Respectfully submitted,

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CERTIFICATE OF SERVICE

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/s/ James F. Lang

One of the Attorneys for the NRG Retail Companies

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