

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)	Case No. 23-301-EL-SSO
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.)	

INITIAL POST-HEARING BRIEF OF OHIO ENERGY LEADERSHIP COUNCIL

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I. INTRODUCTION.

Ohio Energy Leadership Council (“OELC”) respectfully submits this initial post-hearing brief following fourteen days of evidentiary hearing on the fifth Electric Security Plan (“ESP V”) proposed in this proceeding by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy” or the “Companies”).

As discussed in detail in this post-hearing brief, several important aspects of FirstEnergy’s ESP V application are critically flawed and unreasonable, and they should be modified by the Commission in order to approve FirstEnergy’s ESP V. Specifically, FirstEnergy’s proposed “NMB 2” rate for its Non-Market-Based Services Rider (“Rider NMB”) for transmission charges would only apply initially to a minority of non-residential customers with interval or advanced meters, and the record shows that the NMB 2 rate would result in discriminatory charges and significant rate shock for those customers. Likewise, certain changes proposed by FirstEnergy to its Economic Load Response Rider (“Rider ELR”) would undermine the interruptible rate program and its reliability and economic development benefits. In addition, the ESP V term should only be approved for a six-year term, instead of the requested eight-year term, the Commission should reject the costly and unnecessary Energy Solutions for Business program proposed by FirstEnergy, the Commission should reject FirstEnergy’s proposed volumetric risk cap, and the Commission should reject the proposed Vegetation Management Rider.

Accordingly, as discussed in detail below, OELC respectfully requests that the Commission carefully consider the potential impacts to FirstEnergy’s customers of these aspects of the ESP V application, and modify the ESP V proposal accordingly. Without the requested modifications, FirstEnergy’s application fails the statutory ESP vs. MRO test that the Commission uses to evaluate proposed electric security plans under Ohio law.

II. STANDARD OF REVIEW FOR ELECTRIC SECURITY PLANS.

Under Ohio law, an electric distribution utility must provide a “standard service offer” (“SSO”) for generation service to customers in the utility’s service territory.¹ The utility may offer SSO through a market-rate offer (“MRO”) under Ohio Revised Code 4928.142, or in the alternative through an electric security plan (“ESP”) under Ohio Revised Code 4928.143.² MROs for SSO are generally determined through a competitive-bidding process open to competitive electricity suppliers.³ If the utility seeks to offer SSO through an ESP, the statute provides the utility some measure of flexibility in fashioning rate plans under an ESP.⁴

However, the utility’s proposed ESP must meet several important statutory requirements, including the statutory ESP vs. MRO test set forth in Ohio Revised Code 4928.143(C)(1): “[T]he commission by order shall approve *or modify and approve* an application filed under division (A) of this section 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.”⁵ Moreover, under the statute, “[t]he burden of proof in the proceeding shall be on the electric distribution utility.”⁶

¹ See O.R.C. § 4928.141(A).

² *Id.*; see also O.R.C §§ 4928.142 (concerning MROs), 4928.143 (concerning ESPs).

³ See O.R.C §§ 4928.142(A)(1).

⁴ See *In re Application of Columbus S. Power Co.*, 134 Ohio St.3d 392, 393 (Ohio law “does not provide a detailed mechanism for establishing rates under an ESP”); see also *In re Ohio Power Co.*, 155 Ohio St. 3d 320, 321 (2018).

⁵ See O.R.C §§ 4928.143(C)(1) (emphasis added).

⁶ *Id.* In addition, the Commission must annually review whether the ESP results in “significantly excessive earnings” relative to companies facing comparable risk. O.R.C. § 4928.143(F). And if the proposed ESP lasts longer than three years, the Commission must review the ESP in its fourth year to determine whether the ESP “continues to be more favorable in the aggregate and during the remaining term of the plan as compared to [an MRO.]” O.R.C §§ 4928.143(E).

Accordingly, in this proceeding FirstEnergy bears the burden of proof that its proposed ESP V “is more favorable in the aggregate” compared to the expected results of an MRO under the statute. As discussed below, the inclusion without modification of several aspects of FirstEnergy’s ESP V related to its Rider NMB transmission cost recovery rider and the Rider ELR program, as well as its proposed Energy Solutions for Business program, volumetric risk cap for SSO load auctions, and the proposed Vegetation Management Rider, would result in the failure of the ESP vs. MRO test given the expected impacts on FirstEnergy’s customers. In addition, the proposed eight-year term for ESP V should be reduced to six years, consistent with PUCO Staff’s recommendation on that issue. Thus, the Commission should adopt the modifications addressed below prior to the approval of FirstEnergy’s ESP V.

III. FIRSTENERGY’S PROPOSED ESP V WOULD RESULT IN \$2 BILLION IN DIVIDENDS TO ITS PARENT COMPANY.

In order to evaluate the modifications proposed by OELC in this post-hearing brief, it is important to place those proposed modifications in the overall financial context of FirstEnergy’s proposed ESP V. Specifically, FirstEnergy claims that ESP V includes “terms and conditions that are designed to help mitigate bill impacts to customers.”⁷ However, FirstEnergy’s own financial projections that are in the evidentiary record show that if ESP V is approved without modification, approximately \$2 billion of distributions will be made to FirstEnergy’s parent company, FirstEnergy Service Corporation (“FESC”), during the proposed eight-year term of ESP V.

Driving this considerable sum of distributions, FirstEnergy’s operating utilities are projected to earn billions of dollars in “Sales of Electricity” and Net Income annually throughout ESP V.⁸ For example, FirstEnergy projects that Ohio Edison Company alone will earn \$16.9

⁷ Tr. Vol I at 22-23.

⁸ See Companies Ex. 1, Fanelli Testimony, at Attachment SLF-3 p. 1.

billion dollars in “Sales of Electricity” and nearly \$1.5 billion dollars in Net Income throughout the term of ESP V.⁹ Similar calculations are provided for Cleveland Electric Illuminating Company and Toledo Edison.¹⁰ Cleveland Electric Illuminating Company would earn roughly \$11.7 billion dollars in “Sales of Electricity” and \$535 million dollars in Net Income throughout ESP V.¹¹ And Toledo Edison Company would earn approximately \$6.1 billion dollars in “Sales of Electricity” and \$390 million dollars in Net Income across ESP V.¹²

Indeed, FirstEnergy’s own financial projections demonstrate that leveraging the projected revenue during ESP V to fund distributions is a key aspect of FirstEnergy’s financial operating model. Specifically, FirstEnergy anticipates leveraging the revenue streams from its operating utilities to distribute significant dividends to its parent company—FESC—each year of ESP V.¹³ Under FirstEnergy’s financial projections, each operating utility is expected to pay approximately *85% of its Net Income* to FESC annually.¹⁴ This means all three operating utilities combined would pay approximately \$189 million dollars in dividends to FESC in 2024 alone under FirstEnergy’s proposed ESP V.¹⁵ This considerable stream of dividends to FESC is projected by FirstEnergy to continue through the eight-year term of ESP V, resulting in just over \$2 billion in dividends to FESC.¹⁶

⁹ See Companies Ex. 1, Fanelli Testimony, at Attachment SLF-3 p. 1 (calculated by adding together each Ohio Edison Company “Net Income” values for years 2024 through 2032).

¹⁰ See Tr. Vol. I at 29.

¹¹ See Companies Ex. 1, Fanelli Testimony, at Attachment SLF-3 p. 2 (calculated by adding together each Cleveland Electric Illuminating Company “Net Income” values for years 2024 through 2032).

¹² See Companies Ex. 1, Fanelli Testimony, at Attachment SLF-3 p. 3 (calculated by adding together each Toledo Edison Company “Net Income” values for years 2024 through 2032).

¹³ Cf. Companies Ex. 1, Fanelli Testimony, at Attachment SLF-3 p. 7, 8, 9.

¹⁴ Companies Ex. 1, Fanelli Testimony, at Attachment SLF-3 p. 12; Tr. Vol. I at 37.

¹⁵ See Tr. Vol. I at 35.

¹⁶ See Companies Ex. 1, Fanelli Testimony, at Attachment SLF-3 p. 7, 8 and 9 (calculated by adding together operating utility’s “Dividends Paid” values for years 2024 through 2032).

OELC appreciates the fact that FirstEnergy’s operating companies are investor-owned utilities, and that shareholders have an expectation of profit driven by distributions/dividends funded by utility operations in Ohio. At the same time, this financial context demonstrates that the Commission can make the modifications proposed by OELC for ESP V which are necessary to avoid discriminatory charges and significant rate shock, without financial detriment to FirstEnergy. The Commission can and should consider this financial context, and the amount of expected dividends from the profits made by the operating companies, in evaluating proposed modifications to FirstEnergy’s ESP V. *See In re Columbus S. Power Co.*, 128 Ohio St. 3d 402, 407 (2011) (“while it is true that the commission must approve an electric security plan if it is ‘more favorable in the aggregate’ than an expected market-rate offer, *id.*, that fact does not bind the commission to a strict price comparison. On the contrary, in evaluating the favorability of a plan, the statute instructs the commission to consider ‘pricing *and all other terms and conditions.*’”) (emphasis in original).

IV. THE COMMISSION SHOULD REDUCE THE LENGTH OF THE PROPOSED ESP V FROM EIGHT TO SIX YEARS.

A threshold issue that the Commission should address, which will affect the timing of the riders and programs proposed for ESP V, is the term of the ESP. FirstEnergy has proposed an eight-year term for ESP V—lasting from “June 1, 2024, through May 31, 2032.”¹⁷ However, the Commission should instead adopt Staff’s recommendation of a six-year ESP V term from June 1, 2024, through May 31, 2030.¹⁸

¹⁷ See Application of FirstEnergy at 1.

¹⁸ See Staff Ex. 10, Healey Testimony, at 4.

Ohio Revised Code section 4928.143 does not prescribe specific term lengths for electric security plans.¹⁹ However, the Commission has historically approved ESPs with terms lasting between three and six years.²⁰ For example, the Commission recently approved a three-year term for AES Ohio's ESP IV.²¹ Under a pending settlement, AEP Ohio's ESP V is only proposed to last for four years.²² And, notably, FirstEnergy's own ESP IV was originally three-years long,²³ despite now representing an exception that proves the rule.²⁴ FirstEnergy was aware of these shorter-term ESPs, yet still seeks an eight-year term for its ESP V.²⁵

Although each term length presents its own advantages and drawbacks, a shorter ESP term "allows greater flexibility to account for changes in market conditions."²⁶ Correspondingly, this allows the Commission to revisit the provision of SSO and other riders and programs provided through the ESP based on more current information, and potentially change course or alter ESP terms based on developments in the market and the public interest.²⁷ In fact, FirstEnergy acknowledges that a shorter-term ESP would allow the utilities and Commission to reassess the SSO based on the most current information and monthly data.²⁸

¹⁹ See generally O.R.C. § 4928.143. However, the statute provides that any ESP longer than three years will automatically require an interim review in its fourth year. See O.R.C. § 4928.143(E).

²⁰ Staff Ex. 10, Healey Testimony, at 3-4.

²¹ See Tr. Vol. I at 173.

²² See Tr. Vol. I at 173-175.

²³ See Tr. Vol. I at 170-171.

²⁴ See Staff Ex. 10, Healey Testimony, at 3-4.

²⁵ See Tr. Vol. I at 172-74, 192-93.

²⁶ Staff Ex. 10, Healey Testimony, at 4.

²⁷ See Staff Ex. 10, Healey Testimony, at 4.

²⁸ See Tr. Vol. I at 172.

Further, substantial market changes can occur within the requested eight-year period.²⁹ FirstEnergy acknowledges that such changes may occur.³⁰ The scope of changes could depend on factors as divergent as geopolitical changes, emerging technologies, inflation, recessions, changes in wholesale market processes, and an evolving legal landscape.³¹ Thus, a six-year ESP V term would better allow the Commission to reassess the market at an earlier date to account for alterations unanticipated during FirstEnergy's Application.³² Accordingly, the Commission should authorize only a six-year ESP V term as recommended by PUCO Staff.

V. THE COMMISSION SHOULD NOT AUTHORIZE FIRSTENERGY'S PROPOSED NMB 2 RATE FOR ITS NON-MARKET-BASED SERVICES RIDER.

A. Overview of FirstEnergy's Rider NMB and Rider NMB Pilot Program.

FirstEnergy's Rider NMB recovers non-market-based transmission-related charges imposed on FirstEnergy by PJM Interconnection, LLC ("PJM").³³ These transmission costs include Network Integration Transmission Service ("NITS"), Regional Transmission Expansion Plant ("RTEP") costs, and other PJM transmission costs.³⁴ PJM bills FirstEnergy NITS and RTEP charges based on FirstEnergy's Network Service Peak Load ("NSPL") value.³⁵ However, those PJM charges are allocated by FirstEnergy to its rate schedules based on the four coincident peaks ("4CP") for the various rate classes from the summer of the previous year.³⁶ Rider NMB is revenue-neutral for the utilities, except for possible carrying costs, meaning that FirstEnergy does

²⁹ See Staff Ex. 10, Healey Testimony, at 4.

³⁰ See Tr. Vol. I at 173.

³¹ See Staff Ex. 10, Healey Testimony, at 4.

³² See Staff Ex. 10, Healey Testimony, at 4.

³³ See Companies Ex. 7, Lawless Testimony, at 7-8.

³⁴ See Companies Ex. 7, Lawless Testimony, at 7-8.

³⁵ See Tr. Vol. V at 1095.

³⁶ See Tr. Vol. V at 1095; *see also* Companies Ex. 7, Lawless Testimony, at 7-8.

not make any profit through the rider.³⁷ Rather, Rider NMB is designed for the sole purpose of allowing FirstEnergy to recover its transmission-related costs from its customer base.

Rider NMB was initially authorized by the Commission when it approved FirstEnergy's ESP II on August 25, 2010.³⁸ Since that approval more than thirteen years ago, Rider NMB charges have been assessed by FirstEnergy to residential and lighting customers based on their monthly kWh use, and assessed by FirstEnergy to nonresidential customers based on monthly billing demand.³⁹ Because these charges are nonbypassable, the customer pays Rider NMB charges regardless of whether they receive generation service from a Competitive Retail Electric Service ("CRES") supplier or FirstEnergy—unless, however, the customer participates in the Rider NMB Pilot Program.⁴⁰ Rider NMB rates are updated annually, and vary based on FirstEnergy's distribution utility and rate schedule.⁴¹

The Rider NMB Pilot Program was established with the Commission's approval of the stipulation in FirstEnergy's ESP IV case, and made effective June 1, 2016.⁴² For participants in the Rider NMB Pilot Program, FirstEnergy removes Rider NMB charges from its distribution utility bill, and those charges are instead the responsibility of the supplier providing CRES service to the customer.⁴³ Further, instead of monthly billing demand, the CRES supplier assesses those transmission charges to pilot program participants based on the NSPL value for the customer's

³⁷ See Tr. Vol. VI at 1215; Companies Ex. 7, Lawless Testimony, at 11.

³⁸ ESP II, Opinion and Order (August 25, 2010). Case No. 10-388-EL-SSO.

³⁹ See Companies Ex. 7, Lawless Testimony, at 8. Monthly billing demand is generally the customer's highest thirty (30) minute integrated demand measured in kW or kVA. See OELC Ex. 32, Brakey Testimony, at 6 and fn. 6.

⁴⁰ See Companies Ex. 7, Lawless Testimony, at 8.

⁴¹ See OELC Ex. 32, Brakey Testimony, at 6.

⁴² ESP IV, Opinion and Order (March 31, 2016). Case No. 14-1297-EL-SSO.

⁴³ See OELC Ex. 32, Brakey Testimony, at 7.

participating accounts.⁴⁴ As of March 1, 2023, there were seventy-six (76) customers representing one hundred and eight (108) accounts in the Rider NMB Pilot Program.⁴⁵

B. FirstEnergy’s proposed NMB 2 rate would bill non-residential customers with interval or advanced meters based on NSPL values.

In its ESP application, FirstEnergy proposes a brand-new rate mechanism for Rider NMB that FirstEnergy calls “NMB 2.” Claiming that the NMB 2 rate will “better promote cost causation and help customers manage their costs,”⁴⁶ FirstEnergy proposes that only commercial and industrial customers with interval or advanced meters will be subject to NMB 2, while those customers without interval or advanced meters will still be billed Rider NMB charges based on their monthly billing demand through an “NMB 1” rate.⁴⁷

FirstEnergy proposes to bill NMB 2 customers based on their account’s NSPL value. As explained by witness Matthew Brakey, the NSPL value is based on a customer’s average load during the annual five coincident peaks (5CPs) within the FirstEnergy Ohio zone (ATSI Zone), which are the five single hours in the measurement year with the highest metered demand for electricity in that zone.⁴⁸ Whether the ATSI Zone’s single highest hourly peak (or 1CP) occurs in the winter or summer months determines whether a customer’s NSPL will be based on their load during the five highest summer or winter ATSI Zone peak hours, although historically the ATSI Zone’s 1CP occurs in the summer.⁴⁹ The NSPL value is determined by averaging the customer’s

⁴⁴ *Id.*

⁴⁵ OELC Ex. 27, Exeter Report, *Review of the Non-Market-Based Services Riders Established by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company and Associated Pilot Program* dated July 2023 prepared by Exeter Associates, Inc., Case No. 22-391-EL-RDR, at p. 7.

⁴⁶ Companies Ex. 1, Fanelli Testimony, at 5.

⁴⁷ See Companies Ex. 7, Lawless Testimony, at 7-8, 10-11; OELC Ex. 32, Brakey Testimony, at 6; Tr. Vol. V at 1110.

⁴⁸ OELC Ex. 32, Brakey Testimony, at 7-8; the ATSI Zone encompasses the service territories of FirstEnergy’s Ohio electric utility companies.

⁴⁹ *Id.* at 8.

hourly demand in kW during the ATSI Zone's 5CPs (in the summer or winter months, as applicable) between a 12-month measurement period from November 1 to October 31, with scaling for line losses and reconciliation for weather normalization.⁵⁰ That NSPL value is then assigned to the customer's account for the following January 1 through December 31 calendar year.⁵¹ NSPL values change annually depending on the customer's average demand during the ATSI Zone's 5CPs during the prior measurement year.⁵² And as witness Lawless admitted during the hearing, the "[Rider] NMB2 rate [is] the first time that FirstEnergy is proposing to bill Rider NMB charges based on NSPL values to the customer."⁵³

Basing transmission charges on NSPL values has the potential to incentivize customers to reschedule, curtail, or otherwise minimize their load during the times when FirstEnergy's ATSI transmission zone load is anticipated or forecasted to be one of the five highest hourly annual levels.⁵⁴ This practice, known as "peak load shaving," helps the ATSI system by offsetting imbalances between load supply and demand and helps ensure the resiliency and reliability of the grid for all customers.⁵⁵

However, only certain types of commercial and industrial customers truly have the operational flexibility to manage their loads during potential 5CP events.⁵⁶ Examples of such commercial and industrial customers include steel mills, data centers, and certain manufacturers who can curtail business operations on short notice.⁵⁷ Most commercial and industrial

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Tr. Vol. VII at 1559.

⁵⁴ See OELC Ex. 32, Brakey Testimony, at 10.

⁵⁵ See OELC Ex. 32, Brakey Testimony, at 14.

⁵⁶ See OELC Ex. 32, Brakey Testimony, at 12, 21-22.

⁵⁷ See OELC Ex. 32, Brakey Testimony, at 12.

customers—particularly those that *are* weather sensitive and must condition facilities for temperature sensitive products or occupants—operate primarily during peak hours and lack the ability to shift operations off-peak.⁵⁸ These customers, therefore, would not benefit from NSPL-based transmission charges because they cannot manage load to account for 5CP events.

C. FirstEnergy’s proposed NMB 2 rate is discriminatory, unreasonable, and would result in dramatic rate shock for many customers.

1. The NMB 2 rate is discriminatory.

Under FirstEnergy’s Rider NMB proposal, only those commercial or industrial customers with an interval or advanced meter would be subject to the NMB 2 rate that would be based on the customer’s NSPL value.⁵⁹ However, the vast majority of commercial and industrial customers do not currently have an interval or advanced meter, which would create a dramatically varied rate landscape in FirstEnergy service territory among commercial and industrial customers. FirstEnergy’s service territory includes over 200,000 nonresidential customers.⁶⁰ This includes nearly 113,421 nonresidential customers served by Ohio Edison Company, 78,812 customers served by the Cleveland Electric Illuminating Company, and 34,674 customers served by the Toledo Edison Company.⁶¹ However, only a third of these nonresidential customers have an interval or advanced meter installed.⁶² The breakdown is as follows:⁶³

⁵⁸ See OELC Ex. 32, Brakey Testimony, at 13.

⁵⁹ See Tr. Vol. V at 1109-1110.

⁶⁰ See OELC Ex. 32, Brakey Testimony, at Ex. MB-3 (PUCO-DR-010 – Supplemented and Revised).

⁶¹ See OELC Ex. 32, Brakey Testimony, at Ex. MB-3 (PUCO-DR-010 – Supplemented and Revised).

⁶² See OELC Ex. 32, Brakey Testimony, at Ex. MB-3 (PUCO-DR-010 – Supplemented and Revised).

⁶³ See OELC Ex. 32, Brakey Testimony, at 21, Ex. MB-3 (PUCO-DR-010 – Supplemented and Revised).

FirstEnergy Operating Company	Tariff	Customers Eligible for Monthly Demand Based Billing on Proposed Rider NMB 1 (A)	Customers Eligible for NSPL Based Billing on Proposed Rider NMB 2 (B)	% of Customers with Advanced or Interval Meters (B)/(A+B)
Ohio Edison Company	GS	81,730	30,238	27%
	GP	509	652	56%
	GSU	7	97	93%
	GT	1	187	99%
	Total	82,247	31,174	27%
The Cleveland Electric Illuminating Company	GS	49,086	29,008	37%
	GP	40	90	69%
	GSU	233	340	59%
	GT	-	15	100%
	Total	49,359	29,453	37%
Toledo Edison Company	GS	21,720	12,341	36%
	GP	273	266	49%
	GSU	-	8	100%
	GT	4	62	94%
	Total	21,997	12,677	37%

For example, in Ohio Edison Company service territory 31,174 nonresidential customers have an advanced or interval meter, representing only 27% of nonresidential customers in that service territory.⁶⁴ Similarly, only 37% of the nonresidential customers served by the Cleveland Electric Illuminating Company and Toledo Edison Company have advanced or interval meters installed for their accounts.⁶⁵ The remaining 153,603 customers across the three FirstEnergy utilities would be subject to monthly billing demand under the NMB 1 rate.⁶⁶

⁶⁴ See OELC Ex. 32, Brakey Testimony, at 21, Ex. MB-3 (PUCO-DR-010 – Supplemented and Revised).

⁶⁵ See OELC Ex. 32, Brakey Testimony, at 21, Ex. MB-3 (PUCO-DR-010 – Supplemented and Revised).

⁶⁶ See OELC Ex. 32, Brakey Testimony, at 6, 21, Ex. MB-3; PUCO-DR-010 – Supplemented and Revised; Companies Ex. 7, Lawless Testimony, at 7-8, 10-11.

FirstEnergy did not include any of this data with its ESP V application or supporting testimony. In fact, FirstEnergy's principal witness on Rider NMB in this proceeding, Juliette Lawless, admitted on cross-examination at the hearing in this proceeding that she "did not know" of "how many commercial customers or industrial customers would be included in Rider NMB2 at the time [she] made [her] testimony[.]"⁶⁷ It was only through discovery conducted in this proceeding that FirstEnergy revealed that the NMB 2 rate would apply to only a minority of nonresidential customers in FirstEnergy service territory. It is also uncertain when the other nonresidential customers will receive an interval or advanced meter, and thus be subject to the proposed NMB 2 rate.

Accordingly, and perhaps for years to come, under FirstEnergy's proposal commercial and industrial customers in FirstEnergy service territory will be subject to disparate rate treatment depending on whether their meter has been upgraded to an interval or advanced meter. This uneven rate landscape created by an NMB 1 vs. NMB 2 rate differential would be unprecedented in the history of PUCO's ratemaking in the context of ESP cases. To OELC's knowledge, the Commission has never approved a rate mechanism or rider that creates dissimilar billing treatment among otherwise similarly-situated customers in the same rate classes, with this distinction based solely on meter type. Under FirstEnergy's proposal, the limited deployment of interval or advanced meters to only a minority of commercial and industrial customers would in essence create a sub-class of customers that will be treated entirely differently for transmission billing purposes based solely on their meter type.

The testimony of Jeffrey Heinen, provided under oath at the September 26, 2023 public hearing held in this proceeding in Akron, Ohio, provides a good illustration of why the NMB 2

⁶⁷ Tr. Vol. VI at 1194-95.

rate will lead to unequal and discriminatory treatment among FirstEnergy's commercial and industrial customers. Founded in 1929, Heinen's has operated for nearly 100 years and expanded to nineteen stores, two warehouses and a manufacturing facility to compete with its large competitors.⁶⁸ All but two of these facilities are in FirstEnergy's service territory.⁶⁹ According to Mr. Heinen, FirstEnergy's Rider NMB 2 proposal "will unfairly increase [Heinen's] utility bills."⁷⁰ "All of [Heinen's] facilities have advanced meters, which means that if [FirstEnergy's Rider NMB 2 proposal] is approved by the Public Utilities Commission ... it would increase our electric bills very significantly."⁷¹ By Heinen's calculations, the proposed Rider NMB 2 rate would result in a \$19,000 per month increase in its monthly utility bills, or a 49% increase in Rider NMB charges, culminating in additional costs of \$228,000 annually and \$1.8 million across FirstEnergy's proposed eight-year ESP V.⁷² Heinen's only recourse would be to pass the additional costs on to its customers, which would further disadvantage the Cleveland-based grocer compared to its larger competitors.⁷³ Although Heinen's strives to maintain its products in safe conditions with refrigeration, and air conditioning, the proposed changes to Rider NMB 2 essentially ask it to "balance[e] higher cost with safety practices."⁷⁴ Moreover, Mr. Heinen testified that "the cost increases also seem a little arbitrary from [its] perspective, because not all of [its] competitors have advanced meter[.]"⁷⁵ In other words, a Heinen's store could be subject to a significant rate increase due solely to the fact that the store happens to have an interval or advanced meter, while a

⁶⁸ See Akron-Summit County Public Hr'g Tr. at 21.

⁶⁹ See Akron-Summit County Public Hr'g Tr. at 21.

⁷⁰ See Akron-Summit County Public Hr'g Tr. at 21.

⁷¹ See Akron-Summit County Public Hr'g Tr. at 22.

⁷² See Akron-Summit County Public Hr'g Tr. at 22.

⁷³ See Akron-Summit County Public Hr'g Tr. at 22-23.

⁷⁴ Akron-Summit County Public Hr'g Tr. at 23.

⁷⁵ Akron-Summit County Public Hr'g Tr. at 23.

competing grocery store down the road may not, immediately creating an uneven and unfair competitive landscape.

Another good illustration arises in the context of the hospital industry. Currently, only 36% of hospitals in FirstEnergy’s service territory have interval or advanced meters.⁷⁶ FirstEnergy would bill these customers under Rider NMB 2.⁷⁷ However, the remaining 64% of hospitals—despite operating in the same industry and in the same area being served by the same electric utilities—would be billed under Rider NMB 1.⁷⁸ Table MB-4 from witness Brakey’s testimony depicts the issue more fully:

FirstEnergy Operating Company	Total Estimated Hospitals (A)	Estimated Hospitals with Interval or Advanced Meters (B)	% of Hospitals that Qualify for Rider NMB 2 Billing (B)/(A)
Ohio Edison Company	513	163	32%
The Cleveland Electric Illuminating Company	220	102	46%
Toledo Edison Company	147	56	38%
Total	880	321	36%

Again, like the example of Heinen’s grocery stores in the Cleveland area, disparate treatment of hospitals for transmission charges based solely on meter type would undoubtedly lead to some customers paying significantly more or less than their competitors, even if their industry, rate class, and general consumption pattern are similar or identical. The Commission should not

⁷⁶ See OELC Ex. 32, Brakey Testimony, at 31-32.

⁷⁷ See OELC Ex. 32, Brakey Testimony, at 31.

⁷⁸ See OELC Ex. 32, Brakey Testimony, at 31-33.

approve a rate structure that creates these potentially anticompetitive distinctions and divisions among FirstEnergy's nonresidential customers.

In addition, the option available for FirstEnergy customers to request (and pay for) the installation of an interval or advanced meter does not resolve this discriminatory treatment.⁷⁹ That is because only nonresidential customers that stand to *benefit* from NSPL-based billing for Rider NMB charges will conceivably elect to receive an interval or advanced meter in order to be billed under the NMB 2 rate. Nothing in the evidentiary record, or FirstEnergy's proposed ESP V or supporting tariffs, provides that nonresidential customers would have the option of *returning* their interval or advanced meter so that they can be billed under the NMB 1 rate. A customer facing a significant rate shock under the NMB 2 rate, solely because the customer happens to have an interval or advanced meter, would not have the option of being billed on the NMB 1 rate. Thus, the optionality to *request* an interval or advanced meter does not resolve the unfair rate landscape that FirstEnergy would create through the proposed NMB 2 rate design.

Aligning charges with transmission cost causation is a laudable goal, but FirstEnergy's service territory is simply not prepared for the NMB 2 rate. At the conclusion of a six-year period for ESP V, or perhaps a longer period if necessary, the installation of interval and advanced meters for nonresidential customers in FirstEnergy service territory may be at a level that could support a transition to NSPL billing. Ideally, *all* commercial and industrial customers should have an interval or advanced meter, and an opportunity to log actual demand on those meters during the 5CPs, before this transition to avoid an uneven and unequal rate landscape.

But at this time, the deployment of interval and advanced meters in FirstEnergy service territory is quite limited, and only a distinct minority of customers would be included in the NMB

⁷⁹ OELC Ex. 32, Brakey Testimony, at 37.

2 rate.⁸⁰ This limited applicability of the NMB 2 rate would also significantly blunt the entire purpose of NSPL billing in helping curb transmission costs, since only a small portion of customers would be subject to NSPL billing for the foreseeable future. Further, FirstEnergy’s proposed NMB 2 rate would increase some nonresidential customers’ rates based only on the presence of an advanced or interval meter. This would not only create significant disparate rate impacts among customers in the same rate class, but also there would be considerable uncertainty at the customer level regarding when they would be transitioned to the NMB 2 rate.

Accordingly, because the NMB 2 rate as proposed by FirstEnergy is inherently discriminatory, FirstEnergy’s NMB 2 proposal should be rejected by the Commission.

2. The NMB 2 rate will result in significant rate shock.

Under FirstEnergy’s proposal, all commercial and industrial customers with interval or advanced meters would immediately move to the NMB 2 rate on April 1, 2025.⁸¹ Further, for those commercial and industrial customers currently without an interval or advanced meter, those customers would be transitioned to the NMB 2 rate the billing cycle immediately following the installation of the interval or advanced meter.⁸² But FirstEnergy’s proposal will lead to significant rate shock for many of those commercial and industrial customers. That is because “[c]ustomers that have an NSPL value that is higher than their average monthly billing demand will see increases in their transmission charges if they are billed the Rider NMB 2 based on their NSPL.”⁸³

More specifically, witness Brakey prepared a detailed analysis of the impact of the transition to NSPL billing under the NMB 2 rate to a sample of one hundred commercial and industrial customers in FirstEnergy service territory with interval or advanced meters, broken into

⁸⁰ See Tr. Vol. VI at 1215-1216.

⁸¹ See Companies Ex. 7, Lawless Testimony, at 11.

⁸² OELC Ex. 32, Brakey Testimony, at 35.

⁸³ See OELC Ex. 32, Brakey Testimony, at 30.

two groups of fifty customers based on whether they would see rate increases or decreases.⁸⁴ For the first group of fifty customers, those facing rate increases, witness Brakey prepared a detailed analysis using those customers' current average monthly measured demand, actual 2023 NSPL values, and current average monthly Rider NMB charges based on monthly billing demand. Applying the estimated Rider NMB 2 rate of \$6.1096 per kW provided by FirstEnergy in the testimony of witness Lawless, witness Brakey calculated anticipated increases in average monthly transmission charges.

Witness Brakey's analysis is summarized in Table MB-2 of his testimony.⁸⁵ In summary, witness Brakey's analysis shows that this sample of fifty commercial and industrial customers, which spans more than twenty (20) different business industries or facility types, would see transmission cost *increases* ranging from **22% to 392%** in monthly transmission charges if their accounts are switched to NSPL-based billing on the proposed Rider NMB 2 rate.⁸⁶ Conversely, witness Brakey prepared a corresponding analysis, summarized in his Table MB-3, which demonstrates that certain other commercial and industrial customers would see *decreases* to their Rider NMB transmission charges ranging from **47% to 87%**.⁸⁷

As one specific example, the University of Akron—a “very large user of energy”⁸⁸—would experience pronounced rate shock from FirstEnergy's Rider NMB proposal as testified to by a university representative during the September 26, 2023 public hearing in this proceeding held in Akron, Ohio. Like all FirstEnergy customers, the University of Akron has seen an increase over the past decade in Rider NMB charges to FirstEnergy customers, and witnessed its primary voltage

⁸⁴ See OELC Ex. 32, Brakey Testimony, at 24-30.

⁸⁵ See OELC Ex. 32, Brakey Testimony, at 25-27.

⁸⁶ See OELC Ex. 32, Brakey Testimony, at 24-25.

⁸⁷ See OELC Ex. 32, Brakey Testimony, at 28-30.

⁸⁸ Akron-Summit County Public Hr'g Tr. at 13.

Rider NMB charges increase from \$4.33/kW to \$5.10/kW in only six years.⁸⁹ In an attempt to address escalating Rider NMB charges, the University of Akron participated in FirstEnergy's Rider NMB Pilot, but found instead that it ended up paying more under the NSPL-based billing system.⁹⁰ Now, because FirstEnergy has proposed mandatory NSPL-based billing for all nonresidential customers with advanced or interval meters, customers like the University of Akron would be required to pay more than their counterparts, based only on the type of meter installed by FirstEnergy.⁹¹ Indeed, the University of Akron estimates that FirstEnergy's Rider NMB 2 proposal would increase its monthly charges from \$60,000/month to \$86,000/month—or roughly 43%—leading to an additional \$312,000 in FirstEnergy charges annually, or \$2.5 million dollars across FirstEnergy's eight-year ESP V.⁹² According to the representative from the University of Akron—an important employer and educational institution in FirstEnergy's service territory—the NMB 2 would result in “a potentially significant rate shock if FirstEnergy's proposal is adopted, and [it is] likely not alone.”⁹³

As testified by witness Brakey, “[t]he bill impacts reveal that if the proposed changes to the Rider NMB are approved, there will be winners and losers.”⁹⁴ Further, “the determination of whether a customer wins or loses will be arbitrarily based on whether FirstEnergy has yet gotten around to installing an interval or advanced meter. This creates a chaotic and uneven rate environment and shifts the competitive business landscape based on arbitrary meter-installation schedules.”⁹⁵ Because the NMB 2 rate would create significant rate increases for many customers

⁸⁹ See Akron-Summit County Public Hr'g Tr. at 14

⁹⁰ See Akron-Summit County Public Hr'g Tr. at 15-16.

⁹¹ See Akron-Summit County Public Hr'g Tr. at 17.

⁹² See Akron-Summit County Public Hr'g Tr. at 17-18.

⁹³ Akron-Summit County Public Hr'g Tr. at 19.

⁹⁴ See OELC Ex. 32, Brakey Testimony, at 32.

⁹⁵ See OELC Ex. 32, Brakey Testimony, at 32.

according to the evidence in the record, with some of those customers unable to feasibly manage their demand during anticipated peak load events due to the nature of their business or operations, the Commission should reject FirstEnergy's proposed NMB 2 rate.

3. FirstEnergy's bill impact analysis is fundamentally flawed.

In discovery in this proceeding, FirstEnergy produced a Rider NMB bill impact analysis in support of its ESP V Application.⁹⁶ However, the testimony and evidence submitted at the hearing established that FirstEnergy's bill impact analysis is highly inaccurate and does not show any actual expected bill impacts of the transition of customers with interval and advanced meters to the NMB 2 rate. FirstEnergy's flawed bill impact analysis is the result of a number of faulty assumptions.

First and foremost, FirstEnergy's bill impact analysis improperly assumes that the nonresidential customers at issue have an NSPL value equal to their monthly billing demand.⁹⁷ FirstEnergy applied this faulty assumption even though it had access to its customers' actual NSPL values and even though its own bill analysis included a summary showing that NSPL values varied from monthly billing demand by significant margins. For most customers their NSPL value will vary by significant degrees from their monthly billing demand, often considerably per FirstEnergy's own data, because of the fact that the NSPL value is derived from a customer's demand during the five hours in the ATSI Zone with the highest system demand for the year. For example, "[c]ustomers with weather-sensitive summer loads often have NSPL values that materially exceed their average monthly billing demand."⁹⁸

⁹⁶ See OELC Ex. 21, Estimated Bill Impacts.

⁹⁷ See OELC Ex. 32, Brakey Testimony, at 23.

⁹⁸ See OELC Ex. 32, Brakey Testimony, at 23.

Again, FirstEnergy's own analysis reflected that it should expect a significant variance between a customer's NSPL and its average monthly billing demand.⁹⁹ According to FirstEnergy's analysis, "the calculated percentage of NSPL to demand varies from 32.1% to 135.2% with the average of these being 78.2%." But instead of using actual NSPL values in its bill impact analysis, FirstEnergy used a 1:1 ratio of monthly billing demand to NSPL that "does not show the variance in how customers will actually be impacted by FirstEnergy's proposed changes."¹⁰⁰ As such, it is highly inappropriate for FirstEnergy's bill impact analysis to assume that NSPL values will equal that customer's monthly billing demand.¹⁰¹ This faulty assumption corrupts the entirety of FirstEnergy's bill impact analysis.

Second, FirstEnergy's bill impact analysis for the NMB 2 rate improperly assumes that *all* of its commercial and industrial customers would be on that rate, an incorrect assumption that FirstEnergy applies even though its own data shows that only 27% to 37% of those customers in the three FirstEnergy utility service territories would be transitioned to the NMB 2 rate. This improper assumption creates a false picture of what the NMB 2 rate and bill impacts would actually be, now that the NMB 1 and NMB 2 rate classes will have distinct sets of customers and associated revenue requirements. While the evidence does not show the degree to which this faulty assumption creates an unreliable bill impact model for Rider NMB, there is no dispute based on the evidentiary record that FirstEnergy's bill impact analysis is not "a true representations of what the bill impacts would be."¹⁰² PUCO Staff arrived at the same conclusion, finding that "[t]he total

⁹⁹ See OELC Ex. 32, Brakey Testimony, at 23.

¹⁰⁰ See OELC Ex. 32, Brakey Testimony, at 23.

¹⁰¹ See Tr. Vol. VI at 1195; Tr. Vol. VI at 1198-99.

¹⁰² Tr. Vol. XIV at 2455-56.

bill impacts are also not actual customer data and are not a true representation of what will occur if the NMB 2 rates take effect.”¹⁰³

Even if FirstEnergy’s bill impact analysis for the proposed NMB 2 rate was accurate, the analysis shows that the expected bill impacts to affected customers would be dramatic. Specifically, “[t]he bill impacts analyzing the NMB 2 rates show a range between a one percent decrease *up to thirty nine percent increase* on a customer’s total bill.”¹⁰⁴ It bears emphasizing that FirstEnergy’s own bill impact analysis shows drastic rate increases on a total bill basis to customers that would be transitioned to the NMB 2 rate. According to PUCO Staff, “[t]he total bill impacts under the Companies’ proposed NMB 2 rates are too severe and do not follow the principle of gradualism.”¹⁰⁵ OELC agrees with Staff’s assessment on this issue, as evidence overwhelmingly shows that FirstEnergy’s NMB 2 rate will lead to significant rate shock for many commercial and industrial customers in FirstEnergy’s service territory.

4. FirstEnergy’s proposed NMB 2 rate transition is unreasonable.

Another unreasonable aspect of FirstEnergy’s proposed NMB 2 rate is its proposal to transition commercial and industrial customers with traditional meters to that NSPL-based rate in the billing month immediately following the month that an interval or advanced meter is installed at the customer’s meter. That is because customers without interval or advanced meters will be assigned NSPL values based on “an artificial and administratively determined load profile – not their actual load during the ATSI 5CPs since monthly-read meters are not sophisticated enough to capture time of use data.”¹⁰⁶ Thus, until the interval or advanced meter is installed for a full summer (June 1 – September 30) in order to capture the customer’s actual load during the ATSI

¹⁰³ See Staff Ex. 9, Baas Testimony, at 11.

¹⁰⁴ See Staff Ex. 9, Baas Testimony, at 10.

¹⁰⁵ See Staff Ex. 9, Baas Testimony, at 11.

¹⁰⁶ See OELC Ex. 32, Brakey Testimony, at 34.

Zone's 5CP hours, that customer's NSPL value will be derived by FirstEnergy based on load profiles.¹⁰⁷ Those values may vary significantly from actual NSPL values.¹⁰⁸ Further, as established by testimony from a FirstEnergy witness at the hearing, customers with traditional meters will have no realistic opportunity to manage their artificially-derived NSPL values.¹⁰⁹ Indeed any "such [load shaving] behaviors will likely not be directly reflected in the customer's NSPL, or PLC values because . . . those will still need to be calculated based on load profiles without the availability of interval data."¹¹⁰

Witness Brakey provided two real-world examples of the billing issues that would be caused by FirstEnergy's proposal to immediately transition customers to the NMB 2 rate.¹¹¹ One Brakey Energy client is a municipal water treatment plant in FirstEnergy service territory that has an assigned 2023 NSPL value of 30.6816 kW, even though the account has an average monthly billing demand of approximately 133.2 kW. For this client, an immediate transition to the NMB 2 rate using an assigned NSPL value, instead of an actual NSPL value following the installation of an interval or advanced meter, would result in a significant reduction of the billing determinant used to calculate Rider NMB charges. Conversely, another Brakey Energy client with commercial office space in FirstEnergy service territory has an assigned 2023 NSPL value of 112.877 kW, while the account has an average monthly billing demand of approximately 88.7 kW. An immediate transition to the NMB 2 rate after an interval or advanced meter installation would result in a pronounced increase for this customer in Rider NMB charges. "In both cases, the use

¹⁰⁷ See OELC Ex. 32, Brakey Testimony, at 34-35; Tr. Vol. VII at 1548-49.

¹⁰⁸ See OELC Ex. 32, Brakey Testimony, at 34-35; Tr. Vol. VII at 1541.

¹⁰⁹ Tr. Vol. VI at 1195, 97.

¹¹⁰ Tr. Vol. VI at 1541.

¹¹¹ See OELC Ex. 32, Brakey Testimony, at 36.

of default NSPL values for the calculation of Rider NMB 2 charges would be arbitrary and produce disparate rate outcomes.”¹¹²

What these examples show is that in practice, FirstEnergy’s proposal would result in customers experiencing significant rate changes from one month to the next as FirstEnergy installs additional interval or advanced meters in its service territory. PUCO Staff provided a similar assessment, testifying that “[t]he Companies’ proposal to immediately switch commercial and industrial customers to NMB 2 rates upon the installation of a new advanced meter could change their bills dramatically with little to no warning.”¹¹³ In addition, those rate changes would be based not on the customer’s actual load during 5CP events, but rather on artificially derived values based on generalized load profiles. Despite these significant issues, FirstEnergy’s position is that it will not consider bill impacts before switching that customer from monthly demand billing under Rider NMB 1 to NSPL-based billing under Rider NMB 2.¹¹⁴ Again, PUCO Staff has opposed FirstEnergy’s unreasonable proposal, recommending instead that “the Commission require the Companies to provide bill impacts with compliance tariffs in this case” and that “[i]f the bill impacts reveal unreasonable increases to customer bills, Staff recommends that the Commission order the Companies to phase in the changes to the allocations over a period of time to implement the changes gradually.”¹¹⁵

¹¹² See OELC Ex. 32, Brakey Testimony, at 36. Transitioning to NSPL-based billing starting in April 2025 could also create an abrupt market response that dislodges typical curtailment activity. Since 2011, the ATSI Zone’s 5CPs have occurred in hours ending in 1:00 p.m. and 6:00 p.m. However, new load peaks have been generated by customers curtailing load during typical peak periods and then resuming standard loads afterwards. Therefore, a sudden and sizable shift of customers to NSPL-based billing could significantly disrupt load predictability. See OELC Ex. 32, Brakey Testimony, at 33-34.

¹¹³ See Staff Ex. 9, Baas Testimony, at 12.

¹¹⁴ See OELC Ex. 32, Brakey Testimony, at 30; Ex. MB-5.

¹¹⁵ See Staff Ex. 9, Baas Testimony, at 6-7.

In many important respects, OELC agrees with PUCO Staff's criticism of and opposition to the proposed NMB 2 rate. However, the better approach is to wait at least one more ESP cycle and revisit a potential transition to NSPL-based billing for Rider NMB charges. While "conceptually transmission billing based on a customer's share of FirstEnergy's 5CPs is an appropriate goal that FirstEnergy should be working towards," with the rollout of interval and advanced meters in FirstEnergy service territory largely incomplete, "such a move will result in chaotic bill swings often resulting in rate shock and arbitrary bill outcomes among competitors putting some at significant market disadvantage."¹¹⁶ FirstEnergy should not transition to NSPL-based billing until FirstEnergy has successfully finished installing advanced or interval meters for all non-residential customers and those meters have recorded a summer of 5CP consumption.¹¹⁷ Accordingly, the Commission should reject FirstEnergy's proposed NMB 2 rate, and a potential transition to NSPL-based billing for Rider NMB charges should be addressed at a later time.

D. The Commission should reject FirstEnergy's proposed NMB 2 rate and continue and expand the current Rider NMB Pilot Program.

For all of these reasons, the Commission should reject FirstEnergy's proposed NMB 2 rate. Because Rider NMB is revenue-neutral, FirstEnergy would not be harmed by waiting to implement the proposed changes until all nonresidential customers receive advanced or interval meters and have an opportunity to have actual NSPL values assigned based on their consumption.¹¹⁸ Rejecting FirstEnergy's proposed NMB 2 rate is necessary to avoid significant rate shocks, disparate billing treatment, and considerable uncertainty that would surround a transition to NSPL-based billing at this juncture.

¹¹⁶ See OELC Ex. 32, Brakey Testimony, at 34.

¹¹⁷ See OELC Ex. 32, Brakey Testimony, at 37-38.

¹¹⁸ See Tr. Vol. VI at 1216-1217.

In the meantime, “it would be most prudent to take a gradual approach to expanding transmission billing based on NSPL by opening up the Rider NMB Pilot Program to more customers that have the operational flexibility and sophistication to manage their load during the ATSI Zone 5CPs on a wholly optional basis.”¹¹⁹ PUCO Staff likewise supports the continuation and expansion of the Rider NMB Pilot Program if Staff’s recommended changes to the NMB 2 proposal are not adopted.¹²⁰

There is also support for the continuation and expansion of the Rider NMB Pilot Program in the audit report prepared by Exeter Associates, Inc. of FirstEnergy’s Rider NMB that was filed on July 17, 2023, in PUCO Case No. 22-391-EL-RDR (the “Exeter Audit”).¹²¹ Specifically, the Exeter Audit calculated that the quantified benefits of the Rider NMB Pilot Program outweighed its costs, with an estimated aggregate savings of over \$230 million in transmission costs for all FirstEnergy customers over the six-year period from March 2017 through February 2023.¹²² According to the Exeter Audit, Rider NMB Pilot Program participants consistently reduced their load during anticipated 5CP events in ATSI Zone.¹²³ By engaging in peak load shaving on a routine basis, the pilot participants “significantly contribut[ed] to lower overall system peaks during 5CP events, which translates into transmission savings for all FirstEnergy customers.”¹²⁴

In sum, the Rider NMB Pilot Program produces a net positive for all FirstEnergy customers, and it should be maintained and expanded until such time as the deployment of interval or advanced meters in FirstEnergy service territory has reached a stage that could potentially allow

¹¹⁹ See OELC Ex. 32, Brakey Testimony, at 38.

¹²⁰ See Staff Ex. 9, Baas Testimony, at 14.

¹²¹ See OELC Ex. 27, Exeter Report.

¹²² See OELC Ex. 27, Exeter Report, at 1-2.

¹²³ See OELC Ex. 27, Exeter Report, at 24.

¹²⁴ See OELC Ex. 32, Brakey Testimony, at 15.

a reasonable and non-arbitrary transition to NSPL-based billing for transmission charges in FirstEnergy's service territory.

VI. THE COMMISSION SHOULD MODIFY FIRSTENERGY'S PROPOSED RIDER ELR PROGRAM FOR ESP V.

A. FirstEnergy's Rider ELR Program has proven reliability benefits.

FirstEnergy's Economic Load Response Program Rider ("Rider ELR") is a tariff-based interruptible program that aims to support demand response and economic development in FirstEnergy's service territory.¹²⁵ Participating customers commit to curtail a specific load in the event of an emergency curtailment event called by FirstEnergy or PJM.¹²⁶ In return, those customers have historically received credits on their monthly bills through two different credit provisions: (1) \$5 per kW of curtailable load per month under Rider ELR, which FirstEnergy then recovers under its Demand Side Management and Energy Efficiency Rider ("Rider DSE1"); and (2) \$5 per kW of curtailable load per month under the Economic Development Rider provision (b) ("Rider EDR(b)"), which is recovered through Rider EDR(e).¹²⁷

Rider ELR was first authorized by the Commission in FirstEnergy's ESP I.¹²⁸ The program has continued with modifications in each FirstEnergy ESP since then.¹²⁹ In that time, Rider ELR has demonstrated time and again that it plays a critical role promoting grid reliability by balancing load supply and demand when the grid is most vulnerable.¹³⁰ This added stability, in turn, benefits other FirstEnergy customers by allowing increased reliance on the grid to power homes and businesses without interruption—particularly when these customers rely on the grid the most.¹³¹

¹²⁵ See Companies Ex. 3, McMillen Testimony, at 11.

¹²⁶ See Companies Ex. 3, McMillen Testimony, at 11.

¹²⁷ See Companies Ex. 3, McMillen Testimony, at 11-12; Tr. Vol. II at 298-299.

¹²⁸ See Companies Ex. 3, McMillen Testimony, at 11.

¹²⁹ See Companies Ex. 3, McMillen Testimony, at 11.

¹³⁰ See OELC Ex. 32, Brakey Testimony, at 41; NUCOR Ex. 1, Goins Testimony, at 7.

¹³¹ See OELC Ex. 32, Brakey Testimony, at 41.

Moreover, the Rider ELR program helps promote economic development and job retention in Ohio.¹³²

The Commission has previously recognized these benefits in FirstEnergy’s earlier SSO rate plans—such as FirstEnergy’s ESP IV application in which the Commission found that Rider ELR provided reliability and economic development benefits to customers and helped promote Ohio’s effectiveness in the global economy.¹³³ Specifically, in the Commission’s decision in FirstEnergy’s ESP IV case, the Commission found that “[w]ith respect to the continuation and expansion of Rider ELR, the evidence in the record demonstrates that interruptible load programs provide reliability, economic and energy efficiency benefits to customers.”¹³⁴ In that same decision, the Commission also found that Rider ELR and other programs “should facilitate the state’s effectiveness in the global economy in accordance with R.C 4928.02(N).”¹³⁵

FirstEnergy has witnessed these benefits on multiple occasions. For example, in December of 2022, FirstEnergy’s service territory faced an intense blizzard that plunged temperatures below zero degrees Fahrenheit overnight.¹³⁶ In response, PJM issued emergency curtailment event directives, and on December 24, 2022, the twenty-four (24) Rider ELR Program participants curtailed their load for a total 236 curtailment hours, or 9.8 hours per customer, in response to

¹³² See NUCOR Ex. 1, Goins Testimony, at 7.

¹³³ See NUCOR Ex. 1, Goins Testimony, at 9-10; See also *In re 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, (Mar. 31, 2016, Op. and Order at 94).

¹³⁴ See ESP IV, Opinion and Order (March 31, 2016) at p. 94, Case No. 14-1297-EL-SSO, citing ESP I, Opinion and Order (Mar. 25, 2009) at p. 10.

¹³⁵ *Id.*

¹³⁶ See OELC Ex. 32, Brakey Testimony, at 43; NUCOR Ex. 1, Goins Testimony, at 7.

FirstEnergy's interruption notification.¹³⁷ Those Rider ELR customers curtailed a minimum of 199.5 MW of load, safeguarded the PJM grid, and ensured FirstEnergy did not incur any penalties from PJM due to underperformance.¹³⁸ FirstEnergy similarly relied on Rider ELR participants to respond to the 2014 Polar Vortex.¹³⁹

FirstEnergy's Rider ELR Program, therefore, has proven critical to managing load during times when demand threatens to exceed the supply of power. Indeed, the Rider ELR Program has no limit on either the frequency or duration of interruptions required for program participants, and FirstEnergy has the discretion to also call interruptions for local distribution emergencies, which provides the utility with an important reliability and stability tool to address localized issues on FirstEnergy's distribution system.

B. FirstEnergy has proposed multiple changes to the Rider ELR Program.

FirstEnergy now proposes changing the Rider ELR program in multiple ways which will undermine these program benefits. First, FirstEnergy proposes reducing the credits available under Rider ELR and Rider EDR(b).¹⁴⁰ FirstEnergy claims to have proposed this reduction to "better align with the market pricing" because FirstEnergy's current Rider ELR credits are higher than PJM market capacity prices.¹⁴¹ The firm load that Rider ELR program participants register with PJM would be used to calculate credits.¹⁴² And while customers previously could increase

¹³⁷ See OELC Ex. 32, Brakey Testimony, at 43-44, Ex. MB-4; Tr. Vol. II at 317. FirstEnergy received approximately \$11.4 million in payments from PJM due to Rider ELR customers' performance during Winter Storm Elliott. See OELC Ex. 32, Brakey Testimony, at 43.

¹³⁸ See OELC Ex. 32, Brakey Testimony, at 44, Ex. MB-4; NUCOR Ex. 1, Goins Testimony, at 7-8.

¹³⁹ See NUCOR Ex. 1, Goins Testimony, at 8.

¹⁴⁰ See Companies Ex. 3, McMillen Testimony, at 12; Companies Ex. 10, Stein Testimony, at 4-5.

¹⁴¹ See Companies Ex. 10, Stein Testimony, at 6-7.

¹⁴² See Tr. Vol. II at 309.

or decrease their firm load,¹⁴³ the firm load registered with PJM as of May 31, 2024 would remain the same throughout the entirety of ESP V.¹⁴⁴ The phase-down in \$/kW credits proposed by FirstEnergy for each year of ESP V is as follows:¹⁴⁵

Rider	June 1, 2024	June 1, 2025	June 1, 2026	June 1, 2027	June 1, 2028	June 1, 2029	June 1, 2030	June 1, 2031
ELR	(\$5.00)	(\$4.50)	(\$4.00)	(\$3.50)	(\$3.00)	(\$2.50)	(\$2.00)	(\$1.50)
EDR(b)	(\$5.00)	(\$4.50)	(\$4.00)	(\$3.50)	(\$3.00)	(\$2.50)	(\$2.00)	(\$1.50)

The proposed Rider ELR credit schedule is in theory designed to “incentivize and promote demand response and economic development in the Companies’ service territories.”¹⁴⁶ However, the reduction also aims to “balance rate impacts to both participating Rider ELR customers who receive the credits and the other customers who pay for the credits.”¹⁴⁷ FirstEnergy argues its proposed Rider ELR credit reduction schedule is reasonable in “(i) providing rate reductions to customers paying for the credits after year one of ESP V; (ii) mitigating rate shock and significant rate increases to participating Rider ELR customers, and (iii) continuing to support economic development and demand response.”¹⁴⁸

Second, FirstEnergy will require Rider ELR program participants to participate in PJM demand response programs through a curtailment service provider (“CSP”).¹⁴⁹ In other words, FirstEnergy will no longer serve as Rider ELR program participants’ CSP.¹⁵⁰ Because agents that

¹⁴³ See Tr. Vol. II at 309.

¹⁴⁴ See Tr. Vol. II at 309-11.

¹⁴⁵ See Companies Ex. 3, McMillen Testimony, at 12.

¹⁴⁶ See Companies Ex. 3, McMillen Testimony, at 13.

¹⁴⁷ See Companies Ex. 3, McMillen Testimony, at 13.

¹⁴⁸ See Companies Ex. 3, McMillen Testimony, at 13.

¹⁴⁹ See Companies Ex. 3, McMillen Testimony, at 12; Companies Ex. 10, Stein Testimony, at 4-5.

¹⁵⁰ See Companies Ex. 3, McMillen Testimony, at 12; Companies Ex. 10, Stein Testimony, at 4.

are PJM members would serve as Rider ELR participants' CSP, FirstEnergy would no longer play any role in establishing participants' firm load.¹⁵¹ Additionally, FirstEnergy would "no longer be responsible for any activities related to emergency curtailment events requested by PJM, including but not limited to, customer notifications, penalties, or testing requirements."¹⁵² Despite relinquishing CSP responsibilities, however, Rider ELR program participants "could be interrupted by FirstEnergy at its discretion for an emergency curtailment event at any time with no restrictions on the number of the curtailments and no restriction of the duration of the curtailment[.]"¹⁵³ FirstEnergy may call these curtailment emergencies regardless of PJM's input.¹⁵⁴ FirstEnergy has not defined the term "emergency event" for purposes of initiating curtailment activities.¹⁵⁵ Therefore, FirstEnergy would continue to maintain significant discretion to interrupt participating customers' load that is enrolled in the program.¹⁵⁶

Third, although discussed nowhere in the direct testimony from FirstEnergy's witnesses, in redlines to the Rider ELR tariff FirstEnergy proposes removing a lesser penalty tier under which customers can be penalized for failing to curtail load as planned. Under the current tariff, if a Rider ELR program participant registers load in excess of 100%, but less than 110%, of their firm load during an emergency curtailment event, the penalties under the tariff require that the customer pay back one month's worth of Rider ELR credits.¹⁵⁷ FirstEnergy proposes eliminating this lower penalty entirely, such that "if [customers] are above the firm service load or firm load at all, even by 1 kilowatt, then all those penalty provisions in paragraph 3 apply ... [including paying back]

¹⁵¹ See Tr. Vol. II at 309.

¹⁵² See Companies Ex. 10, Stein Testimony, at 5.

¹⁵³ Companies Ex. 10, Stein Testimony, at 6; Tr. Vol. II at 322, 346.

¹⁵⁴ See Tr. Vol. II at 323.

¹⁵⁵ See Tr. Vol. II at 323.

¹⁵⁶ See Tr. Vol. II at 323-24.

¹⁵⁷ See Tr. Vol. II at 342.

all program credits during the current month and the preceding 12 months”¹⁵⁸ and possible removal from the Rider ELR program for 12 months.¹⁵⁹ Moreover, FirstEnergy would have the option “to disconnect the customer” for the duration of the curtailment event at the customer’s expense.¹⁶⁰

Finally, the Rider ELR program will be limited to the current twenty-four participants, although customers could still enter the program through a reasonable rate arrangement approved by the Commission.¹⁶¹

C. FirstEnergy’s proposed modifications to Rider ELR should be rejected.

1. FirstEnergy’s proposed credit phasedown should be rejected.

The Commission should first reject FirstEnergy’s proposal to phase down the Rider ELR Program credits from the current \$10/kw to \$3/kw by the conclusion of ESP V. FirstEnergy has not sufficiently justified reducing Rider ELR credits—particularly because reducing the incentive to participate in the interruptible program jeopardizes overall PJM grid reliability during ESP V. FirstEnergy claims that the proposed reduction in Rider ELR credits will better align the credits with PJM market capacity prices.¹⁶² However, history demonstrates that capacity prices are volatile and could rise significantly in the coming years. In the 2012/2013 service year, the final net zonal capacity price for the ATSI Zone was \$20.46/MW-Day.¹⁶³ Just three years later,

¹⁵⁸ FirstEnergy’s current penalty charge (a.k.a. “Emergency Curtailment Event (ECE) Charge”) is “300% times the PJM Locational Marginal Price as defined and specified by PJM at the appropriate pricing node during the applicable hour(s) of the emergency event, scaled by a Loss Adjustment Factor and Commercial Activity Tax rate.” OELC Ex. 32, Brakey Testimony, at 40.

¹⁵⁹ See Tr. Vol. II at 342-343 (emphasis added).

¹⁶⁰ See Tr. Vol. II at 336.

¹⁶¹ See Companies Ex. 10, Stein Testimony, at 7; Tr. Vol. III at 505, 545; Tr. Vol. II at 441; Tr. Vol III at 545.

¹⁶² See Companies Ex. 10, Stein Testimony, at 6-7. Notably, one of FirstEnergy’s two witnesses on the Rider ELR modifications admitted on cross examination that he did not, in fact, review PJM capacity prices when preparing his testimony. See Tr. Vol. II at 304. And that witness could not indicate whether his colleague reviewed PJM capacity prices in preparing his own direct testimony. *Id.*

¹⁶³ See OELC Ex. 32, Brakey Testimony, at 49.

however, capacity prices rose as high as \$293/MW-Day,¹⁶⁴ after multiple coal plant closures and depressed capacity prices from auctions held during the Great Recession.¹⁶⁵

FirstEnergy is facing similar conditions arising from a post-global pandemic energy market.¹⁶⁶ Stagflation is applying upward price pressure.¹⁶⁷ And as in the 2015/2016 time period, the PJM region is continuing to migrate generation away from legacy sources.¹⁶⁸ Indeed, if anything, the current migration of generation resources is particularly concerning because legacy sources are being replaced by largely non-dispatchable generation sources.¹⁶⁹ Specifically, PJM's generation resources continue to shift towards non-dispatchable resources such as wind and solar. Therefore, it is "short sighted over an eight-year ESP V to drastically reduce the Rider ELR program credits based on the current, likely transient, dip in capacity prices in current years."¹⁷⁰ Because of "PJM's projected increase in intermittent and limited-duration generation resources, projected load growth in the PJM footprint due to the expansion of data centers, and planned retirements of existing generation units, now is not the time to reduce incentives and access to such incentives for sizeable capacity resources to provide stability to the PJM and ATSI Zone electric grids during grid emergencies."¹⁷¹

The fact is that FirstEnergy's interruptible program will play an increasingly critical role in safeguarding PJM grid reliability generally, and reliability for FirstEnergy's customers in particular, during the term of ESP V.¹⁷² Winter Storm Elliott provides a very recent example of

¹⁶⁴ See OELC Ex. 32, Brakey Testimony, at 49.

¹⁶⁵ See OELC Ex. 32, Brakey Testimony, at 50.

¹⁶⁶ See OELC Ex. 32, Brakey Testimony, at 50.

¹⁶⁷ See OELC Ex. 32, Brakey Testimony, at 51.

¹⁶⁸ See OELC Ex. 32, Brakey Testimony, at 51; NUCOR Ex. 1, Goins Testimony, at 8.

¹⁶⁹ See OELC Ex. 32, Brakey Testimony, at 51.

¹⁷⁰ See OELC Ex. 32, Brakey Testimony, at 51.

¹⁷¹ OELC Ex. 32, Brakey Testimony, at 47.

¹⁷² See OELC Ex. 32, Brakey Testimony, at 46-47.

how critical interruptible resources are to grid stability and the maintenance of power for the grid during times of extreme weather or demand. During that winter storm, accompanied by a historic plunge in temperature, real-time electricity pricing across PJM reached a peak price of \$3,700 per megawatt hour on December 23, 2022.¹⁷³

Without the curtailed load of Rider ELR program participants, the PJM grid may not have sustained the intense load demands placed by customers during Winter Storm Elliott.¹⁷⁴ In fact, 100% of FirstEnergy's Rider ELR participants performed the mandated load curtailments to below their firm service levels on December 24, 2022, in the middle of Winter Storm Elliott, thus helping ensure grid stability and continued power for millions of customers in FirstEnergy's service territory.¹⁷⁵ Now is not the time to undermine the critical role that FirstEnergy's Rider ELR Program plays in responding to load supply and demand imbalances in the future. This is especially true because overall inflation trends have lessened the overall bill and competitiveness benefits of Rider ELR credits.¹⁷⁶ Reducing Rider ELR credits at this time only serves to undermine the incentives that ensure that Rider ELR participants remain in FirstEnergy's interruptible program and available to reduce load during times of peak consumption on the grid or for other grid emergencies.¹⁷⁷

To the contrary, the evidence in the record shows that "the Rider ELR interruptible rate program provides robust demand reductions year-round during times when PJM or FirstEnergy issue interruption notices to the customers in that program, and, in particular, when the electric

¹⁷³ See OELC Ex. 32, Brakey Testimony, at 43.

¹⁷⁴ See OELC Ex. 32, Brakey Testimony, at 47-48.

¹⁷⁵ See OELC Ex. 32, Brakey Testimony, at 47-48.

¹⁷⁶ See OELC Ex. 32, Brakey Testimony, at 46.

¹⁷⁷ See OELC Ex. 32, Brakey Testimony, at 47; Tr. Vol. VII at 1463-64.

grid is in a state of emergency.”¹⁷⁸ Undermining the Rider ELR Program by indiscriminately phasing down the available credits will only serve to threaten system reliability in the longer term. While those reliability benefits are difficult to quantify, FirstEnergy itself places a significant valuation on grid reliability through the testimony of Shawn Standish sponsored by FirstEnergy in support of its proposed vegetation management program.¹⁷⁹ Specifically, FirstEnergy estimates cost savings of **\$963 million** on a nominal basis over ten years from reliability improvements using the United States Department of Energy’s Interruption Cost Estimator (“ICE”) tool.¹⁸⁰ According to witness Brakey, “[e]ven if Rider ELR produces a fraction of the reliability improvements that FirstEnergy calculates will le[a]d to nearly \$1 billion in nominal cost savings to customers, FirstEnergy’s investment in the Rider ELR program are more than worth it.”¹⁸¹

FirstEnergy’s proposed Rider ELR credit phasedown also fails to take into account the economic development benefits provided by the program. As noted above, the Commission has previously found that the Rider ELR Program provides economic and energy efficiency benefits to customers and in this way “should facilitate the state’s effectiveness in the global economy in accordance with R.C 4928.02(N).”¹⁸² The list of Rider ELR program participants includes “some of the biggest names in manufacturing that have brought an unquantifiable economic impact to the state of Ohio and specifically FirstEnergy’s service territory.”¹⁸³ Three current Rider ELR Program participants submitted comments on the docket in this ESP V proceeding discussing the

¹⁷⁸ See OELC Ex. 32, Brakey Testimony, at 42.

¹⁷⁹ See Companies Ex. 8, Standish Testimony, at 15-16.

¹⁸⁰ See Companies Ex. 8, Standish Testimony, at 15-16.

¹⁸¹ See OELC Ex. 32, Brakey Testimony, at 53.

¹⁸² See ESP IV, Opinion and Order (March 31, 2016) at p. 94, Case No. 14-1297-EL-SSO, citing ESP I, Opinion and Order (Mar. 25, 2009) at p. 10.

¹⁸³ See OELC Ex. 32, Brakey Testimony, at 51.

important economic development benefits of the interruptible program and urging that the Commission refrain from reducing the program credits.¹⁸⁴

Specifically, Roger Koeberle, President of Viking Forge, LLC, located in FirstEnergy's service territory in Streetsboro, Ohio, describes in a comment letter that his company has participated in the Rider ELR program since 2009, and remains a current participant.¹⁸⁵ Mr. Koeberle describes how Viking Forge, which started operations in 1988, has grown to become "one of the premier closed die forging companies in the United States" and "an industry leader in the manufacturing of forged steel products."¹⁸⁶ In terms of the impact to Ohio's economy, according to Mr. Koeberle, "[a]t our facility in Streetsboro, we employ approximately 175 full-time employees, making us one of the largest employers in Portage County, Ohio."¹⁸⁷

Mr. Koeberle then goes on to describe the importance of the Rider ELR program credits to Viking Forge's business:

In return for the commitments Viking Forge has made to disrupt our operations for the good of FirstEnergy's system, other FirstEnergy customers, and the PJM regional grid as a whole, the credits we have received in return for that commitment have enabled Viking Forge to remain competitive in our industry and increase the positive economic impact we in turn have for the city of Streetsboro and the state of Ohio. We have successfully competed against companies overseas and have actually been able to reshore parts that had gone overseas. This is a 'Made In The USA' company with nearly 100% of the steel that we process coming from the United States (the balance comes from Canada). Together, with the help of our local and state governments and FirstEnergy, we have been able to create a success story.¹⁸⁸

¹⁸⁴ The Commission has the discretion to consider public comments in making decisions in its cases. *See, e.g., In the Matter of the 2018 Long-Term Forecast Report of Ohio Power Company and Related Matters*, Case No. 18-501-EL-FOR (Nov. 21, 2019, Op. and Order ¶¶ 45-46); *In the Matter of the Implementation of H.B. 218 Concerning Alternative Regulation of Basic Local Exchange Service of Incumbent Local Exchange Telephone Companies*, Case No. 05-1305-TP-ORD (Mar. 7, 2006, Op. and Order).

¹⁸⁵ December 4, 2023 Comment Letter from Roger Koeberle, Docketed December 5, 2023.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

Mr. Koeberle closes his comment letter by urging the Commission to continue the Rider ELR program, “without reducing the program credits in a way that will result in a significant rate shock to our electric bills and our business operations.”¹⁸⁹ His comment letter describes how a “significant and abrupt decrease in ELR program credits may have unwelcome downstream consequences for our operations, employees, and customers alike” including not just Viking Forge’s 175 employees but their families as well.¹⁹⁰ If there was any doubt about the importance of the Rider ELR Program to supporting businesses that drive economic development in the State of Ohio, Mr. Koeberle’s comment letter dispels that doubt and demonstrates in very real terms how important the program is to participating companies that support the livelihood of Ohioans throughout FirstEnergy’s service territory.

Similar comment letters were submitted by two other Rider ELR Program participants, including Falcon Foundry Company and ClarkDietrich.¹⁹¹ Writing on behalf of Falcon Foundry, its Executive Vice President, Skip Slaven, describes how FirstEnergy’s “proposal to significantly reduce the program’s credits over the term of ESP V would have shocking impacts on our business.”¹⁹² Mr. Slaven further describes how “the credits we obtained through the ELR program have significantly contributed to our competitiveness and the economic impact we’ve made to the state of Ohio.”¹⁹³ His comment letter goes on to describe how Falcon Foundry joined the Rider ELR program more than a decade ago, which provided the company with an economic boost, and that “[e]very year that the credits are proposed to decrease, we will have the difficult task of

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ December 4, 2023 Comment Letter from Skip Slaven, Docketed December 5, 2023; December 4, 2023 Comment Letter from Nathan S. Jacobs, Docket December 7, 2023.

¹⁹² December 4, 2023 Comment Letter from Skip Slaven, Docketed December 5, 2023.

¹⁹³ *Id.*

determining whether or not we can remain competitive by volunteering to interrupt our load during emergency events that we expect to become more commonplace than they ever have before.”¹⁹⁴ Likewise, the comment letter submitted by Nathan S. Jacobs, Director of Operations for ClarkDietrich, urges the Commission to carefully examine the effect of FirstEnergy’s proposed credit phasedown, writing that “increased cost of our electricity supply will impact the cost of our goods, a vital building component, for development and construction in Ohio” and that “[a]s a manufacturer with a nationwide footprint cost impacts such as these greatly influence our decisions on future expansion and product launch in the State of Ohio.”¹⁹⁵

Accordingly, the evidence and record demonstrate that FirstEnergy’s proposed phasedown of the Rider ELR Program credits would undermine the reliability and economic development benefits of the program. The Rider ELR program has proven to be an important component of grid reliability while also fostering economic development, and as such the Commission should carefully assess those benefits and reject FirstEnergy’s proposed phasedown of the Rider ELR credits.

2. FirstEnergy should remain the CSP in Year 1 and, thereafter, participation in PJM’s DR programs should be optional.

Another program change proposed by FirstEnergy is that it will no longer serve as the curtailment service provider (“CSP”) for Rider ELR participants. Instead, as stated in the testimony of Edward Stein sponsored by FirstEnergy, “the Companies will require Rider ELR customers to provide proof of registration to participate in PJM load management programs from an active PJM CSP.”¹⁹⁶ However, FirstEnergy has not provided a realistic timeframe to permit Rider ELR participants to enroll their curtailable load with a third-party CSP for the June 1, 2024

¹⁹⁴ *Id.*

¹⁹⁵ December 4, 2023 Comment Letter from Nathan S. Jacobs, Docket December 7, 2023.

¹⁹⁶ Companies Ex. 10, Stein Testimony, at 4-5.

through May 31, 2025 delivery year, particularly when there is uncertainty regarding when a decision in this case will be made by the Commission.¹⁹⁷ Based on PJM’s prior demand response program calendars, there is generally a deadline in the month of January preceding the June-May delivery year on which CSPs need to have their registrations in a “Confirmed” status in order to be considered for forthcoming incremental auctions.¹⁹⁸ This means that, with a decision in this ESP V case unlikely for at least several more months, “Rider ELR customers with hundreds of MW of capacity may find themselves unable to partner with a CSP that has not already fully subscribed the capacity they bid into the incremental auction for the 2024/2025 DY.”¹⁹⁹ Thus, FirstEnergy should continue to serve as the CSP through at least May 31, 2025, in order to give Rider ELR customers necessary time to retain a third-party CSP and have their load registered in sufficient time to participate in the PJM capacity auctions.

Further, there is an additional significant problem with FirstEnergy’s exit from the CSP role, and specifically FirstEnergy’s proposal to require that Rider ELR participants register their interruptible load with PJM. Many FirstEnergy customers aggressively manage their 5CP load contributions for both capacity and transmission cost purposes.²⁰⁰ This peak load management can produce very low Peak Load Contributions (PLC) values for the customer, which in turn renders emergency demand response participation uneconomic.²⁰¹ That is because “[b]ased on PJM guidelines, a curtailment service provider will enroll a customer in PJM’s capacity demand response program based on the delta between the customer’s PLC and the customer’s firm service

¹⁹⁷ See OELC Ex. 32, Brakey Testimony, at 54-55.

¹⁹⁸ See OELC Ex. 32, Brakey Testimony, at 55.

¹⁹⁹ See OELC Ex. 32, Brakey Testimony, at 55.

²⁰⁰ See OELC Ex. 32, Brakey Testimony, at 48-49.

²⁰¹ See OELC Ex. 32, Brakey Testimony, at 48-49.

level that is scaled by a line loss factor.”²⁰² Thus, a customer’s curtailment performance during a summer emergency event “will be measured by the delta between its operating load over the duration of the event and its PLC value” for the given delivery year.²⁰³

FirstEnergy has proposed for the ESP V that a customer’s curtailable load for the Rider ELR Program be equal to the value determined for PJM’s demand response program.²⁰⁴ However, in practice what would occur is that Rider ELR participants that manage their 5CP load contributions could have a very small (or even negative) interruptible load amount registered with PJM due to the customer’s low PLC value. This would effectively exclude that customer from the Rider ELR Program, which is not a result FirstEnergy appears to have wanted, but would be the outcome if program participants must register in a PJM demand response program to remain eligible.

Accordingly, participation in PJM’s demand response program should be optional for Rider ELR Program participations, identical to what AEP Ohio does for its IRP-E program customers, in order to avoid removing interruptible load and customers from the program due to their management of peak loads, which could have the effect to producing low PLC values. There will be minimal, if any, additional burden on FirstEnergy with this structure, because under any scenario FirstEnergy needs to maintain its own interruption communication system with Rider ELR participants in order to issue interruption notices for localized or distribution system emergencies that may occur separate and apart from any PJM notices. In this way, FirstEnergy could exit the CSP role in Year 2 of ESP V as requested by FirstEnergy, but the amount of interruptible load and firm service level in the program would continue to be set directly by

²⁰² See OELC Ex. 32, Brakey Testimony, at 49.

²⁰³ See OELC Ex. 32, Brakey Testimony, at 49.

²⁰⁴ See Tr. Vol. VII at 1388.

contract between FirstEnergy and the participating customer, with that customer able to also separately enroll in PJM's demand response program if desired.

3. The Commission should reject the increased penalties proposed by FirstEnergy because it has failed to explain why they are required.

Finally, as described above, FirstEnergy has included redlined Rider ELR tariffs (without any corresponding supporting testimony) that would delete a lower penalty tier if a Rider ELR participant is within 10% of the required firm service level during an interruptible event. FirstEnergy provides no evidence or testimony regarding why that change was proposed for ESP V, nor does FirstEnergy explain why it would be necessary given the fact that (i) FirstEnergy is actually proposing to reduce the program's credits, and (ii) there is not a single instance of a Rider ELR participant failing to curtail their interruptible load when requested by FirstEnergy. Indeed, the potential penalties for non-compliance available through the current tariff language are already exceedingly stringent.²⁰⁵ Accordingly, since FirstEnergy bears the burden of proof in this ESP V case, and since it has failed to meet that burden with respect to this requested program modification which could have significant consequences for participants, the Commission should reject FirstEnergy's proposed language deleting the lesser penalty tier for non-compliance by Rider ELR Program participants.

²⁰⁵ For example, in addition to returning program credits and being subject to removal from the program, if a Rider ELR participant does not meet its obligations, they must pay an Emergency Curtailment Event (ECE) Charge assessed on the portion of the customer's actual measured load that exceeds its agreed Firm Load for any hours during the emergency dispatch. *See* OELC Ex. 32, Brakey Testimony, at 40. That ECE Charge rate is **300% times** the PJM Locational Marginal Price during the applicable hour(s) of the emergency event. *Id.* *See also* Tr. Vol. II at 333-336 (witness McMillen testifying that the ECE Energy Penalty is not capped, not tied to the actual amount of program credits, and could result in significant penalties depending on LMP energy prices, with one hypothetical showing penalties could reach up to \$550,000 per hour or more).

D. The Commission should instead adopt a joint alternative proposal from OELC and OEG for Rider ELR.

While OELC's position in this ESP V case is that the Rider ELR program credits should remain at a total of \$10/kw per month, OELC together with Ohio Energy Group ("OEG") respectfully submits that for the reasons described above the Commission should consider the alternative proposal set forth in the table below.

Under this alternative proposal, which balances many competing interests while supporting the program's benefits, the credits would be phased down beginning in Year 1 of ESP V, which is a full year ahead of when FirstEnergy proposes to commence its credit phasedown. However, the credit phasedown will be more gradual over a six-year ESP term, resulting in a \$7/kw per month Rider ELR credit by the conclusion of ESP V (assuming PUCO Staff's proposed six-year length for the ESP is adopted). This credit level is more appropriate than FirstEnergy's position given the extensive reliability and economic development benefits brought about by the Rider ELR Program, and the fact that program participants would have no limit on the frequency or duration of potential interruptions and must be available for both regional and local interruptions by either PJM or FirstEnergy.

Further, the joint alternative proposal resolves the problems created by FirstEnergy's position that it should exit its CSP immediately at the start of ESP V by delaying that exit by one year, and it also resolves the problems discussed above related to PLC values resulting in excessively small (or even non-existent) interruptible load should program participants be required to enroll in a PJM demand response program as a condition of remaining in the Rider ELR program. Instead, under this proposal the program would follow exactly the model employed by AEP Ohio for its IRP-E interruptible rate program, but making participation in PJM demand response programs optional for the participant. This modification also permits

FirstEnergy to work with Rider ELR customers to annually nominate their firm service level, as noted below, which is important to accommodate potential changes to operations or load growth over the course of the ESP V term. Annual testing would continue to be required to ensure that program participants are prepared to interrupt down to their firm level with appropriate notice.

In addition, the joint alternative proposal addresses issues parties have raised in this case regarding opening up access to the Rider ELR Program to other customers, which would be accomplished through a phased expansion of the program culminating in an addition of 250 MW of interruptible load in the program. This level of expansion is also consistent with PUCO's recommendation of a 250 MW expansion of the program.²⁰⁶ Moreover, consistent with Staff's recommendation, all program costs would be recovered through a single rider, EDR.²⁰⁷

Finally, the below joint proposal affirms that program participants would be subject to unlimited interruptions, both in terms of frequency and duration, and it removes the ECE Energy Penalty which the record shows can become needlessly excessive during times of high LMP energy prices which form the basis for the ECE Energy Penalty.²⁰⁸

[continued on next page]

²⁰⁶ See Staff Ex. 10, Healey Testimony, at 26.

²⁰⁷ See Staff Ex. 10, Healey Testimony, at 19.

²⁰⁸ See OEG Ex. 3, Murray Testimony, at 19. See also Tr. Vol. II at 333-336 (witness McMillen testimony on ECE Energy Penalty calculations).

OEG/OELC Alternative ELR Position						
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Interruptible Credit	\$9/kW-month	\$8/kW-month	\$8/kW-month	\$7/kW-month	\$7/kW-month	\$7/kW-month
Mandatory or Optional PJM Demand Response	FE Remains CSP Only In Year One (Except 100% Of PJM DR Revenue Credited To Customers)	Customers Have The Option To Participate In PJM DR (AEP IRP-E Structure)	Customers Have The Option To Participate In PJM DR (AEP IRP-E Structure)	Customers Have The Option To Participate In PJM DR (AEP IRP-E Structure)	Customers Have The Option To Participate In PJM DR (AEP IRP-E Structure)	Customers Have The Option To Participate In PJM DR (AEP IRP-E Structure)
New Customer Expansion	100 MW	50 MW	50 MW	50 MW	50 MW	No Expansion
Unlimited Interruptions For Both Transmission And Distribution Emergencies	Yes. Maximum Reliability Protection	Yes. Maximum Reliability Protection	Yes. Maximum Reliability Protection	Yes. Maximum Reliability Protection	Yes. Maximum Reliability Protection	Yes. Maximum Reliability Protection
Penalty For Non Compliance	Current Structure But No ECE Energy Penalty	Current Structure But No ECE Energy Penalty	Current Structure But No ECE Energy Penalty	Current Structure But No ECE Energy Penalty	Current Structure But No ECE Energy Penalty	Current Structure But No ECE Energy Penalty
Firm Baseline	Annual Nomination	Annual Nomination	Annual Nomination	Annual Nomination	Annual Nomination	Annual Nomination
Annual Performance Testing	Yes	Yes	Yes	Yes	Yes	Yes
Cost Recovery Mechanism	EDR	EDR	EDR	EDR	EDR	EDR

This joint alternative proposal, acceptable to both OELC and OEG and their commercial and industrial members, would gradually reduce the Rider ELR program credits over time that

would lessen the cost of the program while ensuring the important reliability and economic development benefits provided by the program are maintained in the future for the benefit of all of FirstEnergy's customers. OELC respectfully submits that this alternative proposal would balance competing interests effectively and reasonably, and should be considered by the Commission for FirstEnergy's ESP V.

VII. THE COMMISSION SHOULD NOT AUTHORIZE FIRSTENERGY'S PROPOSED ENERGY EFFICIENCY PROGRAM FOR NONRESIDENTIAL CUSTOMERS—THE ENERGY SOLUTIONS FOR BUSINESS PROGRAM.

A. Overview of the Energy Solutions for Business program.

FirstEnergy included in its ESP V application a proposed four-year Energy Efficiency and Peak Demand Reduction plan ("EE/PDR") to be implemented in the first four years of its proposed eight-year ESP V.²⁰⁹ The energy efficiency plan comprises five programs: four of which cater to residential customers, and one of which focuses on commercial and industrial (a.k.a. nonresidential) customers.²¹⁰ The lone nonresidential program is further broken up into three components: (1) a "prescriptive equipment" rebates component; (2) a "custom equipment and projects" rebates component; and (3) a "energy audits" components.²¹¹

The first two components will incentivize nonresidential customers to install energy efficiency equipment through rebates. FirstEnergy's "prescriptive equipment" rebates component "will provide downstream rebates to customers through various approaches" and "may also provide midstream or upstream incentives or buydowns and support to manufacturers, distributors, contractors, and retailers that sell energy efficient equipment to business customers."²¹² This component, therefore, incentivizes commercial and industrial customers to purchase and install

²⁰⁹ Companies Ex. 5, Miller Testimony, at 2, 5.

²¹⁰ Companies Ex. 5, Miller Testimony, at 5.

²¹¹ Companies Ex. 5, Miller Testimony, at 22.

²¹² Companies Ex. 5, Miller Testimony, at 22-23.

common energy efficient equipment that has more standardized energy savings.²¹³ To guide its projections for the “prescriptive equipment” component, FirstEnergy included a list of equipment that would qualify for rebates.²¹⁴ The list was selected based on FirstEnergy’s experience with energy efficiency programs in other states that similarly provide prescriptive equipment rebates.²¹⁵ And within that breakdown, FirstEnergy included a line item for “emerging/other” for prescriptive equipment that only becomes available during the four-year Energy Solutions for Business program.²¹⁶

The “custom equipment and projects” rebates component is specifically geared to equipment or projects “where the energy savings are variable for the equipment or project on an application or case-by-case basis.”²¹⁷ Additionally, the “custom component will encourage customers to retrofit or install specialized equipment, processes, and applications ... to reduce both customer energy usage and demand.”²¹⁸ FirstEnergy designed both of the rebate programs with “the overall goal of installing more efficient equipment, improving the energy efficiency of the buildings and providing business customers with energy usage information that will help them to implement ongoing energy management strategies.”²¹⁹

FirstEnergy claims the “the benefits and commitment to providing energy efficiency programs is widely echoed across the industry and government.”²²⁰ In this way, FirstEnergy intends to use on ENERGY STAR ratings—a third party, “government backed symbol for energy

²¹³ See Tr. Vol. III at 658, 660.

²¹⁴ See generally Companies Ex. 5, Miller Testimony, at Attachment ECM-3: Ohio ESP V – Measure Assumptions.

²¹⁵ See Tr. Vol. III at 663.

²¹⁶ See Tr. Vol. III at 664.

²¹⁷ Companies Ex. 5, Miller Testimony, at 23.

²¹⁸ Companies Ex. 5, Miller Testimony, at 23.

²¹⁹ Companies Ex. 5, Miller Testimony, at 23.

²²⁰ Companies Ex. 5, Miller Testimony, at 6.

efficiency”²²¹—to guide its incentives for promoting energy efficient equipment for all its customers.²²² FirstEnergy also claims that the energy efficiency equipment promoted in its EE/PDR plan can especially help “residential and small and medium sized business customers.”²²³ But FirstEnergy also recognizes that its larger customers that qualify for the Energy Solutions for Business Program—defined here as customers served at the GP, GSU, or GT rate schedules, accounts using 700,000 or more kWh annually, or entities with 35 or more accounts in FirstEnergy’s combined service territory—already have multiple options available to undertake energy efficiency or demand reduction initiatives.²²⁴

The third component—the “energy audits” component—shares “the overall goal of installing more efficient equipment, improving the energy efficiency of the buildings and providing business customers with energy usage information that will help them to implement ongoing energy management strategies.”²²⁵ It would “provide customers with an incentive for completing a detailed energy management audit and other analyses that focus on the energy use of the business[.]”²²⁶

To administer, promote, and offer the Energy Solutions for Business program, FirstEnergy proposes contracting with an implementation vendor.²²⁷ The implementation vendor would handle program administration, marketing, outreach, service fulfillment, application processing and handling, and incentives/rebate processing and handling.²²⁸ The implementation vendor would

²²¹ Companies Ex. 5, Miller Testimony, at 6.

²²² Companies Ex. 5, Miller Testimony, at 6; Tr. Vol. V at 1014.

²²³ See Companies Ex. 5, Miller Testimony, at 8.

²²⁴ Companies Ex. 5, Miller Testimony, at 7-8; Tr. Vol. IV at 823-824.

²²⁵ Companies Ex. 5, Miller Testimony, at 23.

²²⁶ Companies Ex. 5, Miller Testimony, at 23.

²²⁷ See Companies Ex. 5, Miller Testimony, at 23-24.

²²⁸ See Companies Ex. 5, Miller Testimony, at 23-24.

provide an online application portal for nonresidential customers to seek rebates and energy efficiency equipment, and also develop the rebate application forms for nonresidential customers that cover eligibility guidelines, program requirements, terms and conditions, and more.²²⁹ Adjacent to this role, the implementation vendor would also provide technical support to customers concerning eligible energy efficiency measures.²³⁰ Finally, the implementation vendor would help retailers and distributors identify and promote eligibility of energy efficiency equipment to customers.²³¹

FirstEnergy proposes offering an opt-out process for nonresidential customers to voluntarily forgo the proposed benefits of the Energy Solutions for Business program.²³² Those that opt out would no longer pay the energy efficiency program surcharge, but could no longer participate in the rebate programs offered under the EE/PDR plan.²³³ However, once a customer obtains a rebate from the EE/PDR plan, the customers may no longer opt out.²³⁴ To justify the opt-out model, FirstEnergy claims that this opt-out process “will entice greater efficiency gains and better advance the state policy objectives.”²³⁵

FirstEnergy anticipates that the Energy Solutions for Business Program will cost \$154.3 million—or an average of \$38.6 million dollars annually during the four-year program term.²³⁶ Proportionally, the Energy Solutions for Business program comprises ~53% of the total EE/PDR

²²⁹ See Companies Ex. 5, Miller Testimony, at 24.

²³⁰ See Companies Ex. 5, Miller Testimony, at 24.

²³¹ See Companies Ex. 5, Miller Testimony, at 24.

²³² See Companies Ex. 5, Miller Testimony, at 25.

²³³ See Companies Ex. 5, Miller Testimony, at 25.

²³⁴ See Companies Ex. 5, Miller Testimony, at 25.

²³⁵ Companies Ex. 5, Miller Testimony, at 25.

²³⁶ See Miller Test at Attachment ECM-2, Workpaper2: Ohio ESP V Total Budgets by Cost Category.

plan budget.²³⁷ But FirstEnergy's cost estimates are incomplete, and do not capture the potential cost of the Energy Solutions for Business program. For example, FirstEnergy acknowledges that the measure assumptions do not include all of the different equipment subject to rebates under the Energy Solutions for Business Program.²³⁸ Similarly, FirstEnergy acknowledges that its measure assumptions also do not include every custom project or piece of equipment that nonresidential customers may use during the four-year program term.²³⁹ And although the implementation vendor can identify additional eligible energy efficiency equipment for rebates,²⁴⁰ FirstEnergy does not know whether this equipment would increase the costs of the Energy Solutions for Business program.²⁴¹ Additionally, FirstEnergy included a line item for prescriptive equipment that focuses on new prescriptive equipment that becomes available on the market during the four-year Energy Solutions for Business program term.²⁴² However, because new products are unknown, FirstEnergy cannot quantify any energy savings or costs attached to these new products.²⁴³

When asked where these additional costs could be identified, FirstEnergy stated only that its modeling "relies on these assumptions in this workpaper, or this attachment."²⁴⁴ Therefore, additional costs are unaccounted-for because FirstEnergy's measure assumptions did not document all of the rebate-able energy efficient equipment.

²³⁷ See Miller Test at 5; Attachment ECM-2, Workpaper2: Ohio ESP V Total Budgets by Cost Category.

²³⁸ See Tr. Vol. III at 662.

²³⁹ See Tr. Vol. III at 675.

²⁴⁰ See Tr. Vol. III at 680.

²⁴¹ See Tr. Vol. III at 680-81.

²⁴² See Tr. Vol. III at 664.

²⁴³ See Tr. Vol. III at 664; Companies Ex. 5, Miller Testimony, at Attachment ECM-3: Ohio ESP V – Measure Assumptions.

²⁴⁴ Tr. Vol. III at 663.

B. FirstEnergy has not justified the proposed opt-out process and confirms that this process would charge customers for services that they do not use.

FirstEnergy's proposed opt-out process is also unjustified and unreasonable. FirstEnergy proposes an opt-out process for two reasons: (1) "customers may be unaware of the opt-in period and miss the opportunity to participate in programs[;]" and (2) the "proposed opt-out process will entice greater efficiency gains and better advance state policy objectives[.]"²⁴⁵ Both justifications falter.

First, FirstEnergy admits that customers may be equally as unaware of an opt-*out* time period, as they would an opt-*in* period.²⁴⁶ Therefore, there is no reason to favor an opt-out model as opposed to an opt-in model. Second, FirstEnergy did not conduct any comparative analysis justifying an opt-out process, as opposed to an opt-in process. FirstEnergy based its opt-out model analysis solely on its "experience ... with implementation of the Mercantile Customer Self-Direction program."²⁴⁷ However, FirstEnergy admitted that it has not projected how many customers would remain opted-in to the program/choose not to opt-out.²⁴⁸ And FirstEnergy also admitted that it did not conduct any studies to ascertain whether an opt-out model would, in fact, serve as a better option than an opt-in process.²⁴⁹

Third, the proposed opt-out process would transfer the costs of the Energy Solutions for Business program onto customers who may not participate in the three components. FirstEnergy represented that it "would love nothing more than for all customers to participate in the [Energy Solutions for Business] programs."²⁵⁰ However, FirstEnergy admits that its "program budget

²⁴⁵ Companies Ex. 5, Miller Testimony, at 25.

²⁴⁶ See Tr. Vol. V at 991.

²⁴⁷ Tr. Vol. IV at 825.

²⁴⁸ Tr. Vol. IV at 810.

²⁴⁹ See Tr. Vol. IV at 831.

²⁵⁰ Tr. Vol. IV at 836.

would not support that level of participation.”²⁵¹ Instead FirstEnergy has designed the program such that some customers will be subject to the Energy Solutions for Business costs, but will not obtain a “prescriptive equipment” rebate, “custom equipment or project” rebate, or an energy audit.²⁵² In FirstEnergy’s eyes, “[i]f a customer doesn’t opt out prior to the surcharge being implemented, they will be charged a surcharge until such time that they choose to opt out.”²⁵³ Nonresidential customers that do not opt out, therefore, would be subsidizing the rebates and audits obtained by other nonresidential customers. FirstEnergy’s opt-out model, therefore, exploits nonresidential customers who fail to opt-out of the program.

C. FirstEnergy already had the opportunity to promote nonresidential customers’ energy efficiency during ESP IV.

Additionally, FirstEnergy failed to capitalize on an opportunity to promote energy efficiency for its nonresidential customers. During ESP IV, FirstEnergy implemented a program focused on energy efficiency and energy conservation.²⁵⁴ Among other things, the program “promote[d] the purchase and installation of energy efficient lighting equipment by commercial and industrial customers[.]”²⁵⁵ To pay for the program, FirstEnergy agreed to spend \$3 million dollars in shareholder funds annually, totaling \$24 million dollars across eight years.²⁵⁶

Roughly \$20 million dollars of FirstEnergy’s \$24-million-dollar commitment remained unspent at the time of the hearing in this proceeding²⁵⁷—even though FirstEnergy claims that it intends to spend the full “\$24 million by the end of ESP IV.”²⁵⁸ Proportionally, that means that

²⁵¹ Tr. Vol. IV at 838.

²⁵² Tr. Vol. IV at 836.

²⁵³ Tr. Vol. V at 992.

²⁵⁴ Tr. Vol. IV at 844.

²⁵⁵ Tr. Vol. IV at 845.

²⁵⁶ See Tr. Vol. IV at 844.

²⁵⁷ See Tr. Vol. IV at 851-52; OELC Ex. 8 at 5-8; Tr. Vol. V at 977-78.

²⁵⁸ Tr. Vol. V at 984-85.

FirstEnergy has not used more than 80% of the budgeted funds dedicated for its ESP IV energy efficiency program. FirstEnergy acknowledges that its ESP V Energy Solutions for Business program, if anything, expands on this prior program.²⁵⁹ However, this time FirstEnergy is asking that Commission authorize the use of customer money—as opposed to shareholder funds—to administer a nonresidential energy efficiency program that mirrors in part the prior ESP IV program funded by shareholder dollars. Questions exist regarding whether FirstEnergy has effectively and timely deployed shareholder funds meant for energy efficiency programs for nonresidential customers during the term of ESP IV. Accordingly, for this additional reason the Commission should reject the proposed Energy Solutions for Business program.

D. The Commission should not authorize the Energy Solutions for Business program because it encroaches into the competitive markets.

The Commission also should not authorize FirstEnergy’s Energy Solutions for Business program because it allows FirstEnergy to insert itself in a space that should be reserved for competitive entities, not monopolistic utilities. The Commission has repeatedly highlighted the importance of reserving energy efficiency issues for the competitive markets. Just last year, in Columbia Gas’ gas rate case, the Commission stated that “[i]t is time to look to competitive markets to play a more significant role in the provision of energy efficiency in this state.”²⁶⁰ In Dominion Energy’s application for an alternative rate plan to continue and expand its energy efficiency program, the Commission directed Dominion to explore engaging with competitive retail natural gas suppliers to assist in the widespread distribution of smart thermostats to choice

²⁵⁹ See Tr. Vol. IV at 845-46.

²⁶⁰ *In re Application of Columbia Gas of Ohio, Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Services and Related Matters*, Case No. 21 637-GA-AIR, et al. (Jan. 26, 2023, Op. and Order); see also RESA/IGS Ex. 1, White Testimony, at 12.

eligible customers.²⁶¹ And in AEP Ohio’s latest rate case the Commission refused to incorporate a DSM program and stated that “the future of energy efficiency programs in this state, in light of Am. Sub. H.B. 6, will be best served by reliance on market-based approaches such as those available through PJM and CRES providers.”²⁶²

Moreover, in reviewing whether to adopt the demand response standards provided in the infrastructure Investment and Jobs Act’s amendments to the Public Utility Regulatory Policies Act, the Commission emphasized that “Ohio is a retail choice state with a competitive market, and it should therefore be the market, not the Commission that drives these innovations” concerning energy efficiency and demand response.²⁶³ The Commission acknowledged that O.R.C. § 4928.02 provides guidance addressing “promoting cost-effective and efficient access to electric service.”²⁶⁴ However, the Commission ultimately “maintain[ed] that in this state, the market should drive innovation and determine how such concepts as demand-response will ultimately surface and be implemented, consistent with prior decisions, guided by R.C 4928.02.”²⁶⁵

Here, FirstEnergy’s Energy Solutions for Business Plan wanders far from “distribution” service into a space dedicated to “competitive retail electric service,” or a “nonelectric product or service” as defined by O.R.C § 4928.17.²⁶⁶ Therefore, allowing FirstEnergy to provide these

²⁶¹ *In re Application of the East Ohio Gas Company DBA Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Continue and to Expand its Demand-Side Management and Energy Efficiency Programs*, Cas No. 21-1109-GA-ALT (Oct. 4 2023, Op. and Order); *see also* RESA/IGS Ex. 1, White Testimony, at 13-14.

²⁶² *In re Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, et al. (Op. and Order Nov. 17, 2021); *see also* RESA/IGS Ex. 1, White Testimony, at 14.

²⁶³ *In re Commission’s Investigation into the Implementation of the Federal Infrastructure Investment and Jobs Act’s Demand Response PURPA Standard*, Case No. 22-1024-AU-COI (Nov. 1, 2023, Finding and Order ¶ 28).

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ O.R.C. § 4928.17; RESA/IGS Ex. 1, White Testimony, at 11.

programs is inconsistent with O.R.C § 4928.02—which indicates that utilities should operate as “wires only” companies that provide noncompetitive distribution services, whereas competitive services should be provided through the competitive market.²⁶⁷ Instead, the Energy Solutions for Business program would allow “[s]tatutes and regulations intended to ensure just, reasonable, and competitively neutral standard service offerings [to be] exploited to subsidize FirstEnergy’s entry into competitive services.”²⁶⁸

“As the Commission has recognized, there are countless avenues for FirstEnergy’s customers to purchase energy efficiency products that reduce overall energy consumption as well as the amount of energy consumed during times of peaks on the electrical grid.”²⁶⁹ FirstEnergy acknowledged as much during the ESP V hearing.²⁷⁰ To allow FirstEnergy to leverage its status as a monopoly utility to then offer competitive products in the market would “push other energy efficiency and demand response products out of the market, unnecessarily harming competition to the detriment of customers.”²⁷¹ Indeed, the Ohio legislature has already recognized the harm of utility monopolies participating in competitive offerings—and accordingly prohibited this practice.²⁷² Therefore the Commission should not authorize the Energy Solutions for Business program because it encroaches on a space reserved for competitive markets, not monopolistic utilities.

²⁶⁷ See RESA/IGS Ex. 1, White Testimony, at 11; *see generally* O.R.C. § 4928.02.

²⁶⁸ RESA/IGS Ex. 1, White Testimony, at 11.

²⁶⁹ RESA/IGS Ex. 1, White Testimony, at 14.

²⁷⁰ See Tr. Vol. V at 1044.

²⁷¹ RESA/IGS Ex. 1, White Testimony, at 15.

²⁷² See RESA/IGS Ex. 1, White Testimony, at 15; *see generally* O.R.C. § 4928.17.

VIII. THE COMMISSION SHOULD NOT AUTHORIZE FIRSTENERGY'S PROPOSED VOLUMETRIC RISK CAP FOR SSO LOAD AUCTIONS.

FirstEnergy proposes implementing a volumetric risk cap during FirstEnergy's competitive bidding process ("CBP") that aims to "encourage supplier participation and mitigate risk for customers."²⁷³ Each SSO tranche would receive an initial benchmark level equal to the peak load contribution ("PLC") on the first day of the delivery period—with multi-year contracts subject to annual scaling.²⁷⁴ FirstEnergy would then cap load volume exposure at 20MW above the benchmark for that tranche, and SSO suppliers would be responsible for supplying load for up to the benchmark plus 20MW—the "exposure limit."²⁷⁵ FirstEnergy would then supply all load above the exposure limit at real-time market prices.²⁷⁶ Ultimately, FirstEnergy claims that the cap aims to insulate suppliers from market risk for SSO obligations above the 20MW cap²⁷⁷ by limiting SSO suppliers' exposure in situations with significant migration back to the SSO.²⁷⁸

However, FirstEnergy's volumetric risk cap unnecessarily exposes customers to volatile, real-time market prices. Since the 2022-2023 delivery year, FirstEnergy acknowledges that "the risk premiums ... in recent auctions are higher than they were in the past."²⁷⁹ But under FirstEnergy's proposal, customers' SSO rates could change without warning based only on unanticipated load increase—a material change from FirstEnergy's current SSO offering.²⁸⁰ And

²⁷³ Companies Ex. 6, Lee Testimony, at 6.

²⁷⁴ Companies Ex. 6, Lee Testimony, at 6.

²⁷⁵ Companies Ex. 6, Lee Testimony, at 6-7.

²⁷⁶ Companies Ex. 6, Lee Testimony, at 7.

²⁷⁷ Companies Ex. 6, Lee Testimony, at 7.

²⁷⁸ Companies Ex. 6, Lee Testimony, at 8.

²⁷⁹ Tr. Vol. IV at 710.

²⁸⁰ Tr. Vol. IV at 710.

FirstEnergy would collect the cost for serving this excess load from all its SSO customers—not just the customers served by the distinct operating utility serving the tranche’s excess load.²⁸¹

This would subject FirstEnergy customers to prices that could be significantly higher than anticipated. For example, during the December 22-24, 2022, winter storm event, market prices rose to nearly \$4.00/kWh—roughly 100 times the fixed SSO load price.²⁸² If FirstEnergy’s volumetric risk cap was in-place during the December 2022 event, FirstEnergy customers would have been on the hook for roughly \$250,000 dollars in excess load migration costs.²⁸³ Additionally, FirstEnergy has not sufficiently analyzed the impacts of its volumetric risk cap. FirstEnergy has not conducted any analysis as to how FirstEnergy will pass-on excess load costs to customers in its territory, nor has FirstEnergy proposed a tariff mechanism that would effectuate the proposal.²⁸⁴ Accordingly, the Commission should reject the volumetric risk cap.

IX. THE COMMISSION SHOULD NOT AUTHORIZE FIRSTENERGY’S PROPOSED VEGETATION MANAGEMENT RIDER.

FirstEnergy has developed a vegetation management plan for performing vegetation management within its distribution clearing zones on a four-year maintenance cycle.²⁸⁵ The distribution clearing zone comprises fifteen (15) feet on either side of distribution lines, and fifteen (15) feet above the highest conductor attached to a distribution pole or structure.²⁸⁶ FirstEnergy currently spends roughly \$45 million dollars each year on vegetation management by removing

²⁸¹ Tr. Vol. IV at 706; 743, 744 (Q: “if ... FirstEnergy did buy power, there would be some calculation from FirstEnergy to spread that real time market power over all SSO customers, correct?” A: “Correct.”).

²⁸² Tr. Vol. IV at 728-730.

²⁸³ Tr. Vol. IV at 728-732.

²⁸⁴ Tr. Vol. IV at 711.

²⁸⁵ See Companies Ex. 8, Standish Testimony, at 3.

²⁸⁶ See Companies Ex. 8, Standish Testimony, at 3.

incompatible trees, defective overhanging limbs, and off-corridor “priority trees” that could fall into the distribution clearing zone.²⁸⁷

To guide vegetation management activities, FirstEnergy adheres to the American National Standards Institute’s vegetation management standards and amendments, and Best Management Practices (“BMPs”).²⁸⁸ The standards outline accepted arboricultural operations and utility vegetation management standards.²⁸⁹ Since 2014, FirstEnergy has noted an increased tree-caused outages.²⁹⁰ To curb these outages, FirstEnergy asks the Commission to authorize increased vegetation management costs.²⁹¹ The proposal would increase vegetation management costs ostensibly to improve reliability—with costs broken down as follows:²⁹²

\$M	Minimum Regulatory Requirements	Additional Reliability Improvements
Year 1	\$51.7	\$46.8
Year 2	\$53.3	\$47.8
Year 3	\$54.9	\$48.9
Year 4	\$56.5	\$50.0
Year 5	\$58.2	\$26.0
Year 6	\$60.0	\$26.4
Year 7	\$61.8	\$26.8
Year 8	\$63.6	\$27.3
Total	\$460.0	\$299.8

Overall, FirstEnergy has proposed increasing vegetation management costs by \$299.8 million dollars across ESP V.²⁹³ This would increase the total vegetation management spending by approximately 65%, totaling \$759.8 million dollars over the proposed eight-year ESP V

²⁸⁷ Companies Ex. 8, Standish Testimony, at 3-4.

²⁸⁸ See Companies Ex. 8, Standish Testimony, at 3.

²⁸⁹ See Companies Ex. 8, Standish Testimony, at 4.

²⁹⁰ See Companies Ex. 8, Standish Testimony, at 6.

²⁹¹ See Companies Ex. 8, Standish Testimony, at 8-10.

²⁹² Companies Ex. 8, Standish Testimony, at 12, Table 3.

²⁹³ See Companies Ex. 8, Standish Testimony, at 11-12.

term.²⁹⁴ These costs would be allocated to all rate schedules according to base distribution revenue.²⁹⁵ FirstEnergy would then true-up its cost recovery to reflect the actual O&M costs from vegetation management.²⁹⁶

The Commission should reject FirstEnergy’s Enhance Vegetation Management Rider proposal because it seeks excessive reliability improvements at ratepayers’ expense. Since 2010, FirstEnergy has calculated its reliability performance using the System Average Interruption Frequency Index (SAIFI) and Customer Average Interruption Duration Index (CAIDI).²⁹⁷ Against these metrics, FirstEnergy “has mostly outperformed (i.e. been lower than) their reliability standards from 2016 through 2022” with only one exception—Ohio Edison in 2019.²⁹⁸ And although FirstEnergy claims that meeting the reliability standards does not necessarily equate to meeting customers reliability expectations, FirstEnergy’s “reliability performance aligns with customer expectations.”²⁹⁹ Specifically, FirstEnergy’s “SAIFI standards and performance thereunder exceed (i.e. are lower than) customer expectations.”³⁰⁰ And FirstEnergy’s “CAIDI standards and performance thereunder are also well within the range of customer expectations[.]”³⁰¹

Despite exceeding reliability metrics, FirstEnergy now seeks to nearly double its vegetation management expenses to address alleged increases in increased tree-caused outages.³⁰² Such an investment would be excessive. FirstEnergy acknowledges that, despite increases in tree-caused

²⁹⁴ See Companies Ex. 8, Standish Testimony, at 11-12.

²⁹⁵ See Tr. Vol. II at 405.

²⁹⁶ See Companies Ex. 8, Standish Testimony, at 8.

²⁹⁷ See Companies Ex. 9, Richardson Testimony, at 3-4.

²⁹⁸ Companies Ex. 9, Richardson Testimony, at 4-5.

²⁹⁹ Richardson Test at 5-6.

³⁰⁰ Companies Ex. 9, Richardson Testimony, at 6.

³⁰¹ Companies Ex. 9, Richardson Testimony, at 7.

³⁰² See Companies Ex. 8, Standish Testimony, at 6.

outages, “[w]ith some limited exceptions, [FirstEnergy] in recent years ha[s]met [its] reliability standards.”³⁰³ And the proposed costs may not even improve reliability as FirstEnergy intends. FirstEnergy admitted during the hearing that these costs do not guarantee the 6-7% improvement in CAIDI or SAIFI scores sought by FirstEnergy.³⁰⁴

Therefore, the Commission should reject FirstEnergy’s proposed increase in vegetation management expenses in this ESP V. FirstEnergy may again propose such a rider in its forthcoming base rate case, which is the more appropriate context to consider this rider in relation to the overall costs of reliable and adequate service to FirstEnergy’s customers.

X. CONCLUSION

In summary, before approving FirstEnergy’s ESP V application the Commission should (i) only approve ESP V for six years, (ii) reject the discriminatory and unreasonable NMB 2 rate proposed by FirstEnergy, (iii) modify FirstEnergy’s Rider ELR proposal consistent with this post-hearing brief, (iv) reject the costly and unnecessary Energy Solutions for Business program, (v) reject FirstEnergy’s proposed volumetric risk cap, and (vi) reject the proposed Vegetation Management Rider. Without the requested modifications, FirstEnergy’s application fails the statutory ESP vs. MRO test that the Commission uses to evaluate proposed electric security plans under Ohio law.

³⁰³ Tr. Vol. I at 178.

³⁰⁴ Tr. Vol. III at 471.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify on this 19th day of January, 2024, that the foregoing document was filed using the Commission's Docketing Information System and was served by electronic mail on the following:

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