BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

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I. INTRODUCTION

In the Initial Post-Hearing Brief of the NRG Retail Companies[1] ("NRG"), NRG encouraged the Commission to direct FirstEnergy to move all SSO customers with an advanced meter to a retail rate design that bills them on-peak and off-peak rates. The Commission can provide this benefit to customers, and promote distribution system reliability, by replacing FirstEnergy's existing default rates in Rider GEN with the Commission-approved Time-of-Day Option rates in Rider GEN.[2] No party opposed this recommendation in the initial round of post-hearing briefing. NRG again encourages the Commission to give it serious consideration. Shifting to time-varying rates as the default would give customers a practical demonstration of the usefulness of advanced meters. And, unlike other demand reduction programs proposed in this proceeding, making the Time-of-Day Option rates the default option for customers with advanced meters would cost customers nothing.

The parties to this proceeding have a wide difference of opinion whether the portfolio of Energy Efficiency and Peak Demand Reduction ("EE/PDR") programs proposed by FirstEnergy would be worth the high cost to customers and the harm to competitive markets. Environmental groups tend to favor these programs, while the customers themselves tend to believe they are too costly. NRG agrees with RESA that the Commission should rely, in the first instance, on the competitive marketplace and reject any EE/PDR programs that are inconsistent with Ohio energy policy set out in R.C. Section 4928.02.[3] Ohio will best be served by market-based approaches to

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

[2] *See* NRG Brief, pp. 6-12. The Commission approved these time-of-day rates in *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of New Tariff Language for a Time-Varying Rate*, Case No. 20-50-EL-ATA, Finding and Order (Jan. 27, 2021).

[3] RESA Brief, pp. 5-21. *See, e.g.*, R.C. 4928.02(C), (D), (G), (H). *See generally In the Matter of the Application of Ohio Edison Co., the Cleveland Elec. Illuminating Co., & the Toledo Edison Co. for Auth.*

EE/PDR, such as those available through PJM and competitive retail electric service providers. Of course, the lowest cost PDR program on the table here is NRG's proposal to encourage PDR through economic signals in the form of an opt-out time-of-use rate for all SSO customers with an advanced meter.

There also is a wide difference of opinion among the parties and Staff regarding FirstEnergy's proposal to shift volumetric risk from SSO suppliers to SSO customers using a volumetric risk cap ("VRC"). Although opinions vary, the record evidence in support of this VRC experiment simply is lacking. In particular, VRC supporters have not shown that the risk shifted onto the backs of retail customers would be offset by corresponding improvements in SSO pricing. VRC supporters also have not explained why SSO suppliers should be treated more favorably than mass-market suppliers when it comes to migration risk. The Commission should reject the VRC.

Lastly, the Commission should reject the proposal advanced by One Energy Enterprises Inc. ("One Energy"), OCC, and Calpine Retail Holdings, LLC ("Calpine") to make transmission bypassable.[4] This proposal puts CRES provider contracts at risk and would likely lead to legal disputes.[5]

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to Establish A Standard Serv. Offer Pursuant to Section 4928.143, Revised Code in the Form of an Elec. Sec. Plan, PUCO Case No. 08-935-EL-SSO, 2008 WL 5411710, Opinion and Order at 12 (Dec. 19, 2008) ("in determining whether the ESP meets the requirements of Section 4928.143, Revised Code, the Commission takes into consideration the policy provisions of Section 4928.02, Revised Code, and we use these policies as a guide in our implementation of Section 4928.143, Revised Code.").

[4] Calpine Brief, pp. 8-14; One Energy Brief, pp. 2-3; OCC Brief, pp. 46-48.

[5] *See* IGS Ex. 1, Direct Testimony of Jim Poprocki ("Poprocki Test."), p. 16.

II. ARGUMENT

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

NRG's Initial Brief recommended that the Commission make a time-varying rate the *default* (*i.e.*, an *opt-out*), rather than an *opt-in* option, for all SSO customers with an advanced meter. Making the Time-of-Day Option rates in Rider GEN the default option will empower and incentivize non-shopping customers to control their energy usage and better utilize FirstEnergy's advanced metering infrastructure.[6] The Commission can provide this benefit to customers and the distribution grid without imposing additional costs on customers.

Although none of the parties addressed NRG's proposal directly, Staff is encouraging the Commission to engage with stakeholders to find ways to improve FirstEnergy's time-varying rate offerings so that more customers realize their benefits.[7] NRG's proposal is the most straightforward way to accomplish this objective. Similarly, FirstEnergy is promoting the benefits to customers and the distribution system of demand response programs.[8] FirstEnergy posits that reducing customer usage during peak events will directly improve reliability on the Companies' distribution system.[9] The Ohio Environmental Council agrees that FirstEnergy's distribution grid needs demand response initiatives to face grid reliability challenges.[10] In contrast to FirstEnergy's proposed programs, however, NRG's proposal can achieve demand response benefits without imposing any additional costs on customers.

[6] NRG Ex. 1, Direct Testimony of Travis Kavulla ("Kavulla Test."), p. 10.
[7] Staff Brief, pp. 43-44.
[8] FirstEnergy Brief, pp. 45-55.
[9] *Id.*, p. 53.
[10] OEC Brief, pp. 102.

If the Commission is concerned about future resource adequacy in PJM,[11] the Commission can follow the lead of other states (and one Canadian province), by adopting time-varying rates on an opt-out basis for FirstEnergy's customers as one approach to demand reduction. Successful examples include: Ontario and California, which implemented opt-out time-of-use rates as the default product for residential and small commercial customers; Colorado and Michigan time-of-use rates approved on a default basis; Ameren Missouri's opt-out time-of-use rates implemented in tandem with the installation of smart meters; and, most recently, Hawaii's adoption of an opt-out time-of-use rate.[12]

Given the benefits of time-varying rates, the Commission should direct FirstEnergy to replace its existing default rates with the Commission-approved Time-of-Day Option rates in Rider GEN.

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

FirstEnergy's proposed renewal of its EE/PDR portfolio plan at an annual cost to customers of $72.1 million is opposed by OELC, OMAEG, Kroger, NRG, IGS, and RESA,[13] and in all respects except for low-income residential programs by OCC, NOAC, and OPAE.[14] Staff supports some of the proposed EE/PDR programs, but only over three years and at a reduced annual budget of $15.6 million.[15] NRG agrees with RESA and the bulk of customer groups[16] that the Commission should reject FirstEnergy's EE/PDR portfolio plan.

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[11] *See* PJM, *Energy Transition in PJM: Resource Retirements, Replacements & Risks* (Feb. 24, 2023).
[12] Kavulla Test., Exh. B, pp. 9-10.
[13] OELC Brief, pp. 45-54 (opposing Energy Solutions for Business program); OMAEG Brief, pp. 37-42; Kroger Brief, pp. 17-19; NRG Brief, pp. 12-14; IGS Brief, pp. 14-18; RESA Brief, pp. 5-21.
[14] OCC Brief, pp. 48-52; NOAC Brief, pp. 8-10; OPAE Brief, pp. 2-5.
[15] Staff Brief, pp. 23-25.
[16] CUB Ohio is the only purported representative of customers that supports FirstEnergy's proposal. CUB Ohio Brief, pp. 7-12.

NRG agrees with OMAEG that the Commission "should rely on market-based approaches because [R.C. 4928.02(H)] provides that it is the state's policy to prohibit anticompetitive subsidies."[17] OCC makes a similar point – that non-low-income EE/PDR programs should be provided through the competitive market.[18] And RESA drives this point home by explaining, in detail, how FirstEnergy's proposal violates corporate separation mandates because it results in uneven data access and lack of a level playing field.[19] Although the ESP statute permits inclusion of energy efficiency programs in an ESP,[20] any such programs must be consistent with Ohio policy and not harm competitive markets. Because FirstEnergy's proposed EE/PDR programs lean heavily on traditional monopoly-provider concepts instead of incorporating market-based approaches, the Commission should reject FirstEnergy's EE/PDR portfolio plan.

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

NRG agrees with OELC that the Commission should reject the VRC because it would "exposes customers to volatile, real-time market prices."[21] As NRG explained in its initial brief and as OELC concurs, the record lacks any probative evidence that the alleged benefits of a VRC will outweigh the additional risk shifted to customers.[22] The Commission should not approve the VRC based only the hope that it could produce net benefits for customers.

Constellation devotes several pages of its initial brief to complaints that the current SSO auction structure includes risk for SSO suppliers, which may be reflected in SSO bids.[23] This is, of course, why the Commission has approved a declining-clock auction design for all of

[17] OMAEG Brief, p. 41.
[18] OCC Brief, pp. 50-51.
[19] RESA Brief, pp. 16-21.
[20] R.C. 4928.143(B)(2)(i).
[21] OELC Brief, p. 55.
[22] NRG Brief, pp. 15-16; OELC Brief, p. 56.
[23] Constellation Brief, pp. 8-16.

FirstEnergy's SSO auctions. This auction design forces SSO suppliers to manage market and migration risks, and Constellation agrees that lower SSO clearing prices result from SSO suppliers managing these risks.[24] Although Constellation complains about "unprecedented volatility" experienced in 2022-2023, the Commission surely is aware that similar volatility in the 2000s was the impetus for the auction design that FirstEnergy has successfully used in all of its ESPs.[25] Although Constellation complaints that "recent events have further increased the risks," the truth is that those risks have always existed but, perhaps, have recently become more apparent to some SSO bidders.

Regardless of Constellation's concerns about risk premiums, it fails to offer proof that the VRC, either as proposed by FirstEnergy or as modified by Constellation, would produce net benefits for customers. Indeed, Constellation's proposed VRC that is triggered at 2-5 MWs only creates greater risk that customers will pay market prices during periods of high price volatility. Because no VRC supporter offered evidence that customers will be better off with a VRC in place, the Commission should reject both FirstEnergy's and Constellation's VRC proposals.

D. The Commission Should Reject OneEnergy, OCC, and Calpine's Proposal for Bypassable Transmission Cost Recovery.

As noted above, the recommendation of One Energy, OCC, and Calpine that Rider NMB should be eliminated and transmission should be made bypassable ignores the harm this would cause to existing CRES supplier/customer relationships. Existing CRES contracts typically do not include transmission costs because those costs are recovered through Rider NMB.[26] IGS witness

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[24] Constellation Brief, p. 9.
[25] *See In the Matter of the Application of Ohio Edison Co., the Cleveland Elec. Illuminating Co., & the Toledo Edison Co. for Auth. to Establish A Standard Serv. Offer Pursuant to Section 4928.143, Revised Code in the Form of an Elec. Sec. Plan*, PUCO No. 08-935-EL-SSO, Second Opinion and Order, pp. 8, 20-21 (Mar. 25, 2009).
[26] Poprocki Test., p. 16.

Poprocki testified that eliminating Rider NMB and making transmission costs bypassable "would cause chaos in the retail market" and "likely cause legal disputes" until such time as existing CRES contracts either expire or can be renegotiated.[27] As such, although transmission cost bypassability could have some merit under different circumstances, NRG recommends that the Commission reject One Energy's, OCC's, and Calpine's proposal.

III. CONCLUSION

For the foregoing reasons and the reasons set forth in NRG's initial brief, the Commission should approve NRG's proposals for implementation in FirstEnergy's ESP V.

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[27] *Id.*

CERTIFICATE OF SERVICE

On February 9, 2024, the foregoing document was filed on the Public Utilities Commission of Ohio's Docketing Information System. The PUCO's e-filing system will electronically serve notice of the filing of this document on all parties of record in this proceeding.

/s/ James F. Lang
One of the Attorneys for the NRG Retail Companies

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