BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In The Matter Of The Application Of The 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. 23-301-EL-SSO**

REPLY BRIEF OF THE THE OHIO ENERGY GROUP

The Ohio Energy Group ("OEG") submits this Reply Brief in response to the Initial Briefs of Commission Staff, the Office of the Ohio Consumers Counsel ("OCC"), Northwest Ohio Aggregation Coalition ("NOAC"), Ohio Manufacturers' Association Energy Group ("OMAEG"), Calpine Retail Holdings, LLC ("Calpine"), and One Energy Enterprises Inc. ("One Energy").

I. OEG/OELC's Alternative Recommendation Is Responsive To Staff's Proposals Regarding FirstEnergy's Interruptible Rate Program.

In its Initial Brief, Commission Staff recommends that FirstEnergy's interruptible rate program continue through the Companies' Electric Security Plan ("ESP") with the following modifications: 1) a reduction in the interruptible credit; 2) a gradual expansion of the program; 3) shifting recovery of all interruptible program costs into Rider EDR; and 4) allowing interruptible program participants to bid their interruptible load into PJM rather than relying on FirstEnergy to do so.[1] The alternative structure set forth in OEG's and OELC's initial briefs is largely in line with these recommendations, albeit with some modifications to mitigate rate shock and provide flexibility to the businesses currently participating in the interruptible rate program.[2]

[1] Initial Brief Submitted on behalf of the Staff of the Public Utilities Commission of Ohio ("Staff Brief") at 17-23.
[2] OEG Brief at 20-22; OELC Brief at 42-45.

That alternative structure is outlined below.

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

With respect to an interruptible credit reduction, whereas Staff proposes an immediate reduction from $10/kW to $5/kW,[3] the OEG/OELC alternative takes a more gradual approach, reducing the credit by $1/kW per year until the credit reaches $7/kW and then maintaining the credit at that level for the remainder of the ESP term.[4] This approach prevents rate shock to the

[3] Staff Brief at 17-21.

[4] OEG Brief at 20-22; OELC Brief at 42-45.

businesses currently participating in the interruptible program and appropriately values the reliability and economic development benefits provided by the program while still significantly reducing the costs paid by other customers during the term of the ESP.[5]

With respect to expansion of the interruptible program, Staff proposes a 50 MW expansion each year for five years beginning June 1, 2025, for a total of 250 MW.[6] The OEG/OELC alternative likewise recommends that the interruptible program be expanded gradually, but frontloads the expansion by moving 100 MW into Year One of the new ESP.[7]

With respect to shifting interruptible program cost recovery entirely to Rider EDR, the OEG/OELC alternative adopts Staff's recommendation.

With respect to allowing interruptible program participants to bid their own load into PJM rather than relying on FirstEnergy to do so, the OEG/OELC alternative supports that approach, but *only if* participation in PJM is optional rather than mandatory as proposed by FirstEnergy. As OEG explained in detail in its initial brief, mandating that Rider ELR customers participate in PJM wholesale demand response programs through a curtailment service provider would subject those customers to additional risks and costs, with no benefit to other customers.[8] Allowing FirstEnergy's interruptible customers the option to bid their own load into PJM also helps to mitigate any reduction in the interruptible credit.[9]

To date, Staff has not taken a position on the remaining recommendations within the OEG/OELC alternative. Those recommendations include: 1) retaining the ability of FirstEnergy to call on Rider ELR customers for both distribution and transmission emergencies; 2) removing the current energy charge penalty for non-compliance; 3) retaining annual performance testing

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[5] OEG Brief at 6-11 and 13-15.
[6] Staff Brief at 21-22.
[7] OEG Brief at 20-22; OELC Brief at 42-45.
[8] OEG Brief at 15-18.
[9] OEG Brief at 15-18.

requirements in the Rider ELR tariff; and 4) allowing customers to annually reset their firm service level without increasing the level of their contractual interruptible program subscription.[10] Adopting each of these recommendations will help ensure the reasonableness of the interruptible program terms and conditions. Accordingly, in addition to the items on which Staff opined, these additional recommendations merit the Commission's consideration in this proceeding.

II. Parties Opposing Continuation Of FirstEnergy's Interruptible Program Misconstrue Facts Surrounding The Program.

OCC, NOAC, and OMAEG criticize FirstEnergy's interruptible rate program proposal on multiple grounds, but their arguments largely rely upon incorrect or misleading assumptions. For instance, OCC claims that FirstEnergy has "*never*" called upon Rider ELR customers to interrupt.[11] But the record in this proceeding is clear that FirstEnergy's Rider ELR customers were called to interrupt for long periods of time, and all 24 customers did so, to help stabilize the grid during the emergency conditions occurring during Winter Storm Elliott.[12] Rider ELR customers also curtailed their business operations at FirstEnergy's request to help stabilize the grid during the polar vortex in 2014.[13] OCC is therefore either splitting hairs or ignoring key facts. Further, as OEG explained in its initial brief, while interruptible resources have not historically been called upon on a daily, weekly, or monthly basis, the availability of those resources has been essential during local and regionwide grid emergencies.[14]

It is also likely that state interruptible resources will be called upon more frequently going forward to help maintain the reliability of the grid as dispatchable thermal generation resources

[10] OEG Brief at 18-20.

[11] OCC Brief at 40.

[12] OEG Ex. 3 at 6:18-20; Nucor Ex. 1 at 7:24-8:4; OELC Exs. 32 and 32C at 44:8-16 and 45:19-46:1.

[13] Nucor Ex. 1 at 8:4-6 and 9:8-11.

[14] OEG Brief at 6-7.

are increasingly retired.[15] Major electric industry stakeholders, including FERC, NERC, the U.S. EPA, and the U.S. Department of Energy have all acknowledged pending reliability risks associated with the retirement of dispatchable thermal generation,[16] and a joint hearing on these issues was held between the Ohio and Pennsylvania legislatures as recently as February 1, 2024. State interruptible resources will be a valuable tool in helping reduce these reliability risks.

OCC also attempts to tie FirstEnergy's interruptible rate program to the HB 6 scandal based upon speculation as to the intent of one of several attorneys involved in the 2014 ESP case and vague language contained in a FirstEnergy Deferred Prosecution Agreement that was not admitted into the record.[17] The Commission should disregard this conjecture. As OEG explained in its initial brief, interruptible rates have been offered in FirstEnergy's service territory for decades, including through each ESP plan approved since SB 221 was adopted in 2008.[18] FirstEnergy's interruptible rates far predate HB 6.

NOAC's and OMAEG's insinuations that FirstEnergy's interruptible rate program is duplicative of or unnecessary due to PJM's wholesale demand response program likewise reflect a misunderstanding of the program.[19] As explained in OEG's initial brief, FirstEnergy's interruptible rate program expands the scope of reliability protection beyond that offered by PJM.[20] Not only does FirstEnergy's current interruptible rate program protect against both regional *and* local imbalances, it also requires unlimited curtailments during emergencies as opposed to the limited curtailments that PJM requires.[21] Maintaining such expansive reliability resources at the state level is particularly important in the midst of the current energy transition

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[15] OEG Brief at 7-10.
[16] OEG Brief at 7-10.
[17] OCC at 44-46.
[18] OEG at 18-20
[19] OMAEG Brief at 45-50; NOAC Brief at 8.
[20] OEG Brief at 9-10 and 14-15.
[21] OEG Brief at 9-10 and 14-15.

given that PJM has no authority to order entities to build new generation resources to offset the accelerated loss of thermal generation.[22] Further, FirstEnergy's interruptible rate program facilitates Ohio economic development goals to which PJM is agnostic.[23]

OCC and NOAC express concerns regarding the cost of the interruptible rate program for customers not participating in the program.[24] But OCC/NOAC fail to recognize that this cost is spread across FirstEnergy's large service territory and that, once allocated amongst all three FirstEnergy's operating companies, the average residential customer cost is approximately 25 cents per month.[25] Moreover, the OEG/OELC alternative recommendation outlined above is responsive to this concern, recommending a gradual reduction in the interruptible credit during the term of the ESP at levels that reasonably balance the interests of the parties.

Additionally, OCC and OMAEG argue that FirstEnergy's interruptible rate program is discriminatory since the Rider ELR tariff does not open the program to new enrollment.[26] But as Examiner Price reminded parties at the hearing, if other customers wish to participate in FirstEnergy's interruptible rate program, then they have the option to propose a reasonable arrangement and enter the program that way.[27] Moreover, multiple parties to this case, including OEG, OELC, and Staff, are recommending that the program be expanded to additional MWs of load to participate, providing an opportunity for new interruptible load to enter the program.

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[22] OEG Brief at 7-10.
[23] OEG Brief at 15.
[24] OCC Brief at 39-40.
[25] Tr. Vol. III (November 9, 2023) at 543:23-25.
[26] OCC Brief at 42; OMAEG Brief at 47-50.
[27] Tr. Vol. III (November 9, 2023) at 545:1-13.

III. The Commission Should Maintain Utility Control Over Transmission Billing To Protect Retail Customers And Should Adopt Staff's Position On Rider NMB And The NMB Pilot.

Calpine argues that FirstEnergy Rider NMB should be eliminated or, at minimum, Rider NMB should be bypassable.[28] One Energy likewise argues that Rider NMB should be bypassable.[29] These proposed modifications should be rejected. It is not reasonable to shift transmission billing away from FirstEnergy. Maintaining utility involvement in transmission billing protects retail customers by providing price transparency and ensuring that such billing remains *"at cost"* and does not include risk premiums or mark-ups that suppliers would necessarily build into their transmission pricing.[30] Moreover, to the extent that Calpine and One Energy cite Ohio Adm. Code 4901:1-36-04(B) in arguing that utility transmission riders must be bypassable, the Commission can and has waived that rule in prior cases.[31]

FirstEnergy currently passes its FERC-approved transmission costs through to customers *"at cost."* While those FERC-approved transmission costs fluctuate from year-to-year pursuant to cost-of-service formula ratemaking, FirstEnergy does not add a risk premium or mark up to its transmission rates. The Commission's audit and reconciliation process assures that transmission rates to Ohio customers are least-cost.[32]

For multi-year, fixed price competitive retail electric service ("CRES") provider offerings, transmission rates over the contract period cannot be known with certainty since, unlike forward-looking capacity or energy prices which can be hedged, transmission rates fluctuate on

[28] Calpine Brief at 8-14.

[29] One Energy Brief at 2.

[30] OEG Ex. 1 at 8:21-9:5.

[31] Third Entry on Rehearing, Case No. 08-1094-EL-SSO (Dec 14, 2016) at 8-9 ("IEU-Ohio argues the Commission violated its rules, including Ohio Adm. Code 4901:1-36-04(B), which requires transmission riders to be fully bypassable. However, Ohio Adm.Code 4901:1-36-02(B) expressly provides that the Commission may, upon an application or a motion filed by a party, waive any requirement of the chapter, other than a requirement mandated by statute, for good cause shown. Regarding the TCRR-N, such a motion was made by DP&L and granted by the Commission. *ESP II; In re The Dayton Power and Light Co. for Waiver of Certain Commission Rules*, Case No. 12-429-EL-WVR.").

[32] OEG Ex. 1 at 9:6-11.

a year-to-year basis and cannot be hedged. Consequently, CRES providers would need to build the risks of transmission rate changes into their fixed price offers. Therefore, while suppliers *could* flow-through FERC-approved transmission rates to customers without markup or added risk premium, it is unlikely that they would do so, particularly for smaller to medium-sized customers with less bargaining power.

Shifting supplier transmission billing into Ohio's Standard Service Offer ("SSO") auction process could be even more problematic. Not only would SSO suppliers need to address year-to-year transmission rate fluctuations in their offers, but they would also have to address the heightened volumetric risks of customer migration due to shopping. Shifting transmission billing to suppliers might only increase the already significant risk premiums seen in current SSO pricing.[33] Additionally, by maintaining FirstEnergy as the billing entity for transmission charges, retail customers can easily switch between shopping for their generation and returning to the SSO without any impact on Rider NMB.

Transmission is a cost-based service, just like distribution. CRES providers do not undertake distribution billing, nor should they undertake transmission billing. Consistent with long-standing practice, the focus of CRES providers should remain competitive generation. Maintaining utility involvement in transmission is the best method to ensure that customers pay for transmission service at cost.[34]

Many parties to this case generally support the current Rider NMB and NMB Pilot billing approach, with much of the debate largely confined to how quickly the Pilot billing approach should be expanded to other customers.[35] But as OEG explained in its Initial Brief, the current record does not contain sufficient bill impact data to justify a stark departure from the status

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33 OEG Ex. 1 at 10:1-6.

34 OEG Ex. 1 at 10:7-11.

35 Staff Brief at 37-41; OEG Brief at 22-25; OELC Brief at 25-27; FirstEnergy Brief at 40-45; Nucor Brief at 29-34; IGS Brief at 11-14; RESA Brief at 27-32. Staff also recommends changes to Rider NMB allocations to align FirstEnergy's billing with PJM.

quo. Moreover, Calpine and One Energy have failed to provide any evidence quantifying what would happen to customer rates if their minority position on Rider NMB were adopted. Accordingly, the most reasonable approach is to adopt Staff's alternative recommendations with respect to Rider NMB - maintain the status quo, including the current NMB Pilot, and address whether NSPL billing should be expanded in a future proceeding in which a reliable bill impact analysis is provided.[36]

Respectfully submitted,

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[36] OEG Brief at 24-25.

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 9th day of February, 2024 to the following:

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