

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.)	

POST-HEARING REPLY BRIEF OF OHIO ENERGY LEADERSHIP COUNCIL

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I. INTRODUCTION.

The Commission should alter the Application for a fifth Electric Security Plan (“ESP V”) filed by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy”).

First, the Commission should reject FirstEnergy’s proposal to overhaul the Non-Market-Based Services Rider (“Rider NMB”). In their post-hearing briefs, OEG and Staff agree with OELC that the proposed Rider NMB overhaul lacks sufficient bill impact analysis. And the support provided by FirstEnergy, NRG, RESA, and NUCOR in their respective briefs does not quell this deficiency—nor do their arguments provide a sufficient independent basis to mandate discriminatory billing on FirstEnergy’s commercial and industrial customers. The Commission should therefore sustain Rider NMB as-is and save the proposed changes for a later date when proponents supply adequate bill impact analysis, and all commercial and industrial customers would receive equal treatment.

The Commission should also maintain reasonable interruptible program (“Rider ELR”) participation credits. Multiple parties, including Staff and FirstEnergy, recognize and praise the Rider ELR program benefits. Those parties only disagree about the credit value. Staff and FirstEnergy propose reducing the Rider ELR credit. But neither party has provided analysis detailing how their credit reductions would impact program participation—even though, for example, Staff’s proposal would immediately reduce Rider ELR credits by 50% without any effort to abide by the Commission’s long-standing principle of gradualism. Therefore, the Commission should maintain the current Rider ELR program credits or adopt OEG and OELC’s joint proposal that provides a gradual and reasonable Rider ELR credit reduction schedule.

The Commission should also reject FirstEnergy’s Energy Solutions for Business program. Numerous parties in their post-hearing briefs highlight that energy efficiency and peak demand

response are issues best addressed by the competitive marketplace, not monopolistic utilities. Therefore, the Commission should cleave to precedent and reject the proposed Energy Solutions for Business program.

Further, the Commission should not disrupt the established competitive bidding process (“CBP”) by implementing a volumetric risk cap (“VRC”). Only two parties support the volumetric risk cap—FirstEnergy and Constellation. But neither party sufficiently justifies exposing customers to real-time generation prices—a significant risk—to protect against load migration. Because these risks are best borne by sophisticated load suppliers, and not everyday electricity consumers, the Commission should reject the VRC proposal.

Finally, the Commission should reject FirstEnergy’s proposed Enhance Vegetation Management Rider, which rejected is advocated by multiple parties in this case, including OMAEG, Kroger and OCC among others.

II. THE COMMISSION SHOULD NOT AUTHORIZE FIRSTENERGY’S PROPOSED CHANGES TO RIDER NMB.

A. OEG and Staff agree with OELC that the Commission should modify FirstEnergy’s Rider NMB proposal.

In this proceeding, FirstEnergy requests that the Commission authorize mandatory NSPL-based billing for transmission charges from FirstEnergy for commercial and industrial customers that have an interval or advanced meter, through a new rate that FirstEnergy coins the “NMB 2” rate.¹ But OEG, Staff, and OELC each ask the Commission to modify FirstEnergy’s proposal to overhaul its Non-Market-Based Services Rider (“Rider NMB”). OEG supports maintaining FirstEnergy’s Rider NMB as-is with the accompanying Pilot intact.² OEG notes that FirstEnergy’s proposed changes to the Rider NMB rate design would alter which FirstEnergy customers receive

¹ See Companies Ex. 7., Lawless Test., at 7-11; OELC Ex. 32, Brakey Test., at 6.

² See OEG Br. at 22.

beneficial versus detrimental rates.³ Additionally, like OELC,⁴ OEG highlights that “there is not a valid bill impact analysis in the record” to support FirstEnergy’s proposed changes—meaning “no major rate design change should be made with respect to Rider NMB at this time.”⁵ Thus, OEG asks the Commission to adopt Staff’s alternative proposal: reject FirstEnergy’s proposed changes and maintain the current Rider NMB rate design, then address bill impacts and potential NSPL-based billing in a future proceeding grounded in sufficient bill impact analysis.⁶

Staff also proposes multiple modifications to FirstEnergy’s Rider NMB changes. Specific to cost allocation, Staff recommends that FirstEnergy allocate its indirect costs by Company, and then by customer class, using the same cost allocations PJM employs.⁷ Presently the bill impacts of Staff’s recommendations are unknown.⁸ Therefore, Staff recommends ordering FirstEnergy to provide bill impacts and compliance tariffs in this case.⁹

As to FirstEnergy’s proposed Rider NMB Pilot/Rider NMB 2 changes, Staff recommends five modifications.¹⁰ First, Staff asks the Commission to reject FirstEnergy’s uniform rate that would apply to all commercial and industrial customer classes under the proposed Rider NMB 2.¹¹ Because this would create “interclass and intraclass cost shifts[,]” Staff recommends that “separate NMB 2 rates ... be calculated for each Company and each customer class.”¹²

³ See OEG Br. at 22.

⁴ See OELC Br. at 20-22 (discussing how FirstEnergy’s Rider NMB bill impact analysis contains faulty assumptions and does not accurately capture the proposed NSPL-based bill impact on ratepayers).

⁵ OEG Br. at 22.

⁶ See OEG Br. at 22.

⁷ See Staff Br. at 38-39.

⁸ See Staff Br. at 39.

⁹ See Staff Br. at 39.

¹⁰ See Staff Br. at 38-41.

¹¹ See Staff Br. at 39.

¹² Staff Br. at 39.

Second, Staff recommends a Rider NMB 2 opt-in enrollment model for customers in the GS class to avoid undue bill impacts arising from automatic enrollment post-advanced or interval meter installation.¹³ And Staff’s final three recommendations include an annual April Rider NMB 2 opt-in period,¹⁴ collaboration between Staff and FirstEnergy to review bill impacts arising from actual NSPL data,¹⁵ and collaboration between Staff, the Commission, and FirstEnergy to structure mechanics of the new Rider before any annual filing.¹⁶

If the Commission accepts all these modifications, Staff recommends eliminating the Rider NMB Pilot upon Rider NMB 1 and 2 taking effect. However, if the Commission rejects these recommendations, Staff asks the Commission to continue the Rider NMB Pilot program, and not adopt FirstEnergy’s proposed rate design modifications.¹⁷ But even if the Rider NMB Pilot continues, FirstEnergy recommends FirstEnergy’s cost allocations account for the PJM costs assigned by Company and customer class “to mitigate cost shifting.”¹⁸

At heart, both Staff and OEG agree with OELC that significant issues plague FirstEnergy’s Rider NMB proposal. Multiple changes are necessary to ensure customers are not billed dissimilarly based on arbitrary factors—such as meter type. And an accurate bill impact analysis is essential before FirstEnergy can justify the proposed significant billing changes. However, the Commission should not adopt Staff’s recommendation to proceed with the NMB 2 for FirstEnergy customers served at or above primary voltage. An accurate bill impact analysis should be considered and subjected to discovery and an evidentiary hearing, before any decision is made on

¹³ See Staff Br. at 40.

¹⁴ See Staff Br. at 40.

¹⁵ See Staff Br. at 40.

¹⁶ See Staff Br. at 40.

¹⁷ See Staff Br. at 39.

¹⁸ See Staff Br. at 40.

whether this rate structure should be applied wholesale to all such customers without the option of remaining on a monthly billing demand structure.

Accordingly, the Commission should reject FirstEnergy's proposed changes and maintain the Rider NMB as currently structured, with the continuation of the Rider NMB Pilot.

B. The Commission should reject FirstEnergy's, NRG's, RESA's, and NUCOR's recommendations to change the Rider NMB rate design.

In addition to FirstEnergy, several parties in the proceeding, including NRG, RESA and NUCOR, support the proposed changes to the Rider NMB rate design. NRG asks the Commission to approve the Rider NMB proposal because it promotes cost causation principles.¹⁹ RESA and NUCOR similarly ask the Commission to approve the proposed Rider NMB 2 rate design because it allegedly aligns non-market-based service costs with cost causers.²⁰

However, all three of these parties overlook the fact that only a fraction of the commercial and industrial customers would be eligible for mandatory NSPL-based billing under Rider NMB 2.²¹ In fact, only about a quarter to one-third of FirstEnergy's commercial and industrial customers would qualify for Rider NMB 2 because of the current deployment of advanced and interval meters in FirstEnergy service territory.²² FirstEnergy's own witness on the new NMB 2 rate even admitted that she did not know about this limited deployment when FirstEnergy proposed its modified Rider NMB rate design in its ESP V application.²³ Therefore—even assuming that Rider NMB's NSPL-based billing aligns with PJM cost causation—it would only do so for the limited number of commercial and industrial customers using interval or smart meters. And these cost-causation

¹⁹ See NRG Br. at 16-17.

²⁰ See RESA Br. at 28-29; NUCOR Br. at 31.

²¹ See OELC Ex. 32, Brakey Test., at Ex. MB-3 (PUCO-DR-010 – Supplemented and Revised) (noting that only a third of commercial and industrial customers use advanced or interval meters).

²² See OELC Ex. 32, Brakey Test., at 21, Ex. MB-3 (PUCO-DR-010 – Supplemented and Revised).

²³ See Tr. Vol. VI at 1194-95.

principles would only apply based on an arbitrary factor: whether or not a commercial or industrial customer uses an advanced or interval meter.²⁴ Besides the meter type, FirstEnergy has not sought any justification based on customer type, industry, class, or otherwise. Accordingly, the Commission should reject the parties' cost-causation justifications because, in practice, the NMB 2 rate would be discriminatory and arbitrary, meaning only a small portion of commercial and industrial customers would have transmissions costs aligned more closely with cost-causation principles, while the substantial majority of such customers (those with traditional meters) would not. Thus, the cost-causation benefits of the NMB 2 rate structure would be very limited, while creating an uneven rate landscape throughout the entirety of FirstEnergy's service territory.

NUCOR and RESA also point to the Rider NMB Pilot to argue that the proposed NSPL-based rate design under Rider NMB 2 benefits all customers.²⁵ This is a red herring. Although the Rider NMB Pilot has proven beneficial to its participants, it represents a self-selecting sample of FirstEnergy customers that *chose* to participate in the Pilot program *because* they would benefit from NSPL-based billing.²⁶ The Rider NMB Pilot does not, therefore, account for customers who were excluded from the Rider NMB Pilot—voluntarily or otherwise—who would suffer increased costs under the proposed Rider NMB 2 NSPL-based billing model.²⁷ The Rider NMB Pilot cannot, therefore, justify arbitrarily changing commercial and industrial customers' billing methodology.

Finally, these supporting parties fail to acknowledge that FirstEnergy has not provided an accurate bill impact analysis to support the proposed Rider NMB changes. FirstEnergy did not include a Rider NMB bill impact analysis with its Application;²⁸ it was only offered during

²⁴ See OELC Ex. 32, Brakey Test., at

²⁵ See RESA Br. at 28; *cf.* NUCOR Br. at 30.

²⁶ See OELC Ex. 27 at 10-12.

²⁷ Akron-Summit Cnty. Pub. Hr'g Tr. at 21-23; OELC Ex. 32, Brakey Test., at 31-33, Table MB-4.

²⁸ See *generally* Companies Ex. 7, Lawless Test.

discovery.²⁹ Further, the analysis produced by FirstEnergy and admitted as evidence in this proceeding is highly inaccurate and insufficient to justify the significant Rider NMB billing changes. FirstEnergy’s supplemented bill impact analysis summary is as follows:³⁰

FirstEnergy Rider NMB Proposal Bill Impact Analysis: Inputs & Summary

<u>Typical Bill Inputs</u>						
	4/1/2023	NSPL				
<u>OE</u>	<u>Current</u>	<u>Proposed</u>	<u>Demand</u>	<u>NSPL</u>	<u>% NSPL</u>	<u>Calculated %</u>
Rate GS	\$ 4.1525	\$ 6.1096	22,495,831	15,313,258	100.0%	68.1%
Rate GP	\$ 5.0454	\$ 6.1096	6,489,905	5,423,624	100.0%	83.6%
Rate GSU	\$ 4.2496	\$ 6.1096	2,349,908	1,525,178	100.0%	64.9%
Rate GT	\$ 5.2367	\$ 6.1096	9,868,439	7,070,327	100.0%	71.6%
<u>CEI</u>	<u>Current</u>	<u>Proposed</u>				
Rate GS	\$ 5.4481	\$ 6.1096	19,391,958	16,411,054	100.0%	84.6%
Rate GP	\$ 6.1459	\$ 6.1096	1,179,978	1,236,960	100.0%	104.8%
Rate GSU	\$ 6.2109	\$ 6.1096	7,727,718	7,352,155	100.0%	95.1%
Rate GT	\$ 3.6161	\$ 6.1096	7,145,997	2,293,137	100.0%	32.1%
<u>TE</u>	<u>Current</u>	<u>Proposed</u>				
Rate GS	\$ 4.2101	\$ 6.1096	6,648,318	3,861,748	100.0%	58.1%
Rate GP	\$ 5.0503	\$ 6.1096	2,806,669	3,794,404	100.0%	135.2%
Rate GSU	\$ 4.2882	\$ 6.1096	236,216	138,326	100.0%	58.6%
Rate GT	\$ 5.0356	\$ 6.1096	11,531,724	9,449,731	100.0%	81.9%

Multiple deficiencies arise from FirstEnergy’s analysis. First, as previously discussed, a small minority of FirstEnergy’s commercial and industrial customers deploy interval or advanced meters—meaning that only a subset of FirstEnergy customers would be eligible for the Rider NMB 2 rate.³¹ However, FirstEnergy’s analysis assumes that all of its commercial and industrial customers would receive NSPL-based billing under Rider NMB 2.³² Therefore, FirstEnergy’s bill

²⁹ See OELC Ex. 21, Estimated Bill Impacts.

³⁰ See OELC Ex. 28, PUCO-DR-010 – Attachment 2 Supplemental (“Inputs & Summary” tab).

³¹ See OELC Ex. 32, Brakey Test., at 21, Ex. MB-3 (PUCO-DR-010 – Supplemented and Revised).

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

impact analysis paints an inaccurate picture of the customers that would experience transmission billing under Rider NMB 2.

Second, FirstEnergy assumed that nonresidential customers' NSPL values equal their monthly billing demand. FirstEnergy did not include any customers' actual NSPL data in its analysis even though FirstEnergy enjoys access to this information. And FirstEnergy's own data indicates that customers will experience significant variances between NSPL billing and monthly billing demand—often based on weather-sensitivity.³³ In fact, the table reproduced above from FirstEnergy's bill impact analysis shows that, on an aggregate basis, NSPL values in all three FirstEnergy service territories vary significantly from monthly billing demand, with a range of 31.1% to 135.2%, reflecting the reality that customers' NSPL values will vary widely and significantly from their monthly billing demand in any given month. Thus, FirstEnergy's analysis fails to capture "how customers will actually be impacted by FirstEnergy's proposed changes."³⁴

Each operating-utility's specific analysis shares these deficiencies. For example, take Cleveland Electric Illuminating Company customers receiving transmission level service:

[continued on next page]

³³ See OELC Ex. 32, Brakey Test. at 23.

³⁴ See OELC Ex. 32, Brakey Test. at 23.

FirstEnergy Rider NMB Proposal Bill Impact Analysis: CEI GT³⁵

Typical Bills - Comparison
January 2023 vs. NMB 2

Bill Data								
Line No.	Level of Demand (kVa) (A)	NSPL 100%	Level of Usage (kWH) (B)	Current Bill (\$) (C)	Proposed Bill (\$) (D)	Dollar Change (D)-(C) (E)	Percent Change (E)/(C) (F)	Customer Counts *
General Service Transmission (Rate GT)								
1	100	100	0	\$ 681.71	\$ 931.06	\$ 249.35	36.6%	
2	2,000	2,000	100,000	\$ 12,828.59	\$ 17,815.54	\$ 4,986.95	38.9%	
3	2,000	2,000	200,000	\$ 18,093.64	\$ 23,080.58	\$ 4,986.95	27.6%	
4	2,000	2,000	400,000	\$ 28,623.73	\$ 33,610.68	\$ 4,986.95	17.4%	
5	2,000	2,000	600,000	\$ 39,153.82	\$ 44,140.77	\$ 4,986.95	12.7%	1
6	2,000	2,000	800,000	\$ 49,683.91	\$ 54,670.86	\$ 4,986.95	10.0%	
7	2,000	2,000	1,000,000	\$ 60,056.02	\$ 65,042.97	\$ 4,986.95	8.3%	
8	2,000	2,000	1,200,000	\$ 70,396.92	\$ 75,383.86	\$ 4,986.95	7.1%	1
9	20,000	20,000	1,000,000	\$ 125,163.82	\$ 175,033.28	\$ 49,869.46	39.8%	
10	20,000	20,000	2,000,000	\$ 176,868.29	\$ 226,737.75	\$ 49,869.46	28.2%	2
11	20,000	20,000	4,000,000	\$ 280,277.21	\$ 330,146.67	\$ 49,869.46	17.8%	
12	20,000	20,000	6,000,000	\$ 383,686.14	\$ 433,555.60	\$ 49,869.46	13.0%	
13	20,000	20,000	8,000,000	\$ 487,095.06	\$ 536,964.52	\$ 49,869.46	10.2%	5
14	20,000	20,000	10,000,000	\$ 590,503.99	\$ 640,373.45	\$ 49,869.46	8.4%	5
15	20,000	20,000	12,000,000	\$ 693,912.91	\$ 743,782.37	\$ 49,869.46	7.2%	1

This chart shows that some customers would sustain Rider NMB transmission bill increases of *over 28%* on a total bill basis if FirstEnergy’s NMB 2 were approved, even assuming that this bill impact analysis had any accuracy. Moreover, even though FirstEnergy intends to bill commercial and industrial customers across all three utilities in the same manner, these customers’ bill impacts will differ significantly by service utility.³⁶

FirstEnergy’s own analysis shows that customers in the same customer class with the same level of usage would receive different treatment under FirstEnergy’s proposal based solely on

³⁵ See OELC Ex. 28, PUCO-DR-010 – Attachment 2 Supplemental (“CEI GT” tab).

³⁶ See OELC Ex. 28, PUCO-DR-010 – Attachment 2 Supplemental (“OE GP” tab); OELC Ex. 28, PUCO-DR-010 – Attachment 2 Supplemental (“CEI GP” tab); OELC Ex. 28, PUCO-DR-010 – Attachment 2 Supplemental (“TE GP” tab).

which operating utility serviced that customer. Cleveland Electric Illuminating Company customers could experience a reduction in Rider NMB 2 transmission costs, while Toledo Edison customers with the same level of usage would receive a 9.3% bill increase.³⁷ Thus, even though FirstEnergy’s bill impact analysis does not represent “actual customer data and are not a true representation of what will occur if the NMB 2 rates take effect[,]”³⁸ it exemplifies the disparate impacts the NMB 2 proposal would have on FirstEnergy’s commercial and industrial customers.

FirstEnergy’s proposal lacks reliable and accurate bill impact analysis. Until this data is provided, and all commercial and industrial customers can be billed equally for transmission charges, the Commission should reject FirstEnergy’s proposed Rider NMB overhaul.

C. The Commission should reject Calpine and One Energy’s recommendation to make Rider NMB bypassable.

Two parties—Calpine and One Energy—ask the Commission to look beyond FirstEnergy’s Rider NMB proposal to make Rider NMB bypassable. Calpine and One Energy argue that Rider NMB should be fully bypassable under Ohio Revised Code § 4928.143(B)(2)(g).³⁹ Calpine further argues that Rider NMB must be bypassable consistent with the Exeter Report’s findings.⁴⁰ Neither Calpine nor One Energy provide any case law or Commission orders that support their positions. The Commission should reject both arguments.

As the Commission may recall from FirstEnergy’s ESP IV, FirstEnergy proposed Rider NMB to “lower costs associated with non-market based charges by modifying the existing Rider NMB to have the Companies, rather than SSO suppliers and CRES providers, pay certain non-

³⁷ See *id.*, compare rate impact charts referenced above from FirstEnergy’s Rider NMB bill analysis.

³⁸ Staff Ex. 9, Baas Testimony, at 11.

³⁹ See Calpine Br. at 8-10; One Energy Br. at 2-3.

⁴⁰ See Calpine Br. at 10-13.

market based PJM billing line items.”⁴¹ And the Commission approved ESP IV with inclusion of the Rider NMB rate design.⁴² Neither Calpine nor One Energy has presented any evidence that the nonbypassability has unreasonably increased Rider NMB costs. Without any justification besides a selective reading of the governing statute and Exeter Report, the Commission should reject their arguments.

Additionally, rendering Rider NMB bypassable would disrupt myriad long-term supply agreements. Many commercial and industrial customers enjoy long-term electricity supply contracts with their CRES suppliers. Removing Rider NMB from those contracts and re-allocating them to these CRES suppliers would, therefore, have significant a ripple effect. The modification would undermine one of the assumptions on which those long-term electricity supply contracts were negotiated and executed. And because CRES are not held to the same standards of transparency and regulation as utilities, these CRES could mark up transmission costs.

Calpine and One Energy’s proposals present an unnecessary risk for customers who should not be required to compare CRES and PJM transmission charges to flag overages. FirstEnergy’s revenue-neutral Rider NMB ensures transparency for transmission charges, and ensures that competitive suppliers are not adding additional margin to those charges. Additionally, making Rider NMB charges bypassable would likely trigger regulatory-out clauses common in retail energy supply contracts, thereby re-opening the contracts to price escalations and other unintended consequences. Therefore, to ensure customers shoulder transmission charges at-cost, the Commission should keep Rider NMB as a nonbypassable charge.

⁴¹ ESP IV, Opinion and Order (March 31, 2016) at 21, 73.

⁴² See ESP IV, Opinion and Order (March 31, 2016) at 121.

D. The Commission should reject Calpine and OCC's recommendation to eliminate the Rider NMB Pilot.

Calpine and OCC also ask the Commission to eliminate FirstEnergy's Non-Market-Based Transmission Costs Rider entirely. Calpine highlights that the Exeter Audit recommended eliminating the Rider NMB.⁴³ OCC asks the Commission to eliminate FirstEnergy's Rider NMB Pilot altogether because it allegedly shifts \$107.7 million to non-Pilot customers.⁴⁴ However, the Commission should reject these proposals for a number of reasons.

First, the Exeter Report in fact concluded that "the Pilot Program produced aggregate savings on transmission costs that are shared between Pilot and non-Pilot customers of the Companies."⁴⁵ Indeed, Exeter concluded "[b]ased on Exeter's findings, the quantified benefits of the Pilot Benefits outweigh the costs."⁴⁶ Therefore, the alleged \$107.7 million in costs shifted are outweighed by the benefits provided by the Rider NMB pilot program. Further, the Exeter Report found that the Rider NMB Pilot shifted \$107.7 million in costs from Rider NMB Pilot participants from March 2017 through February 2023.⁴⁷ However, the Exeter Report also found that some years culminated in a negative cost shift—"meaning non-pilot participants actually paid *less* those years as a result of the pilot's existence."⁴⁸ And the vast majority of any cost-shifts were borne by commercial and industrial customers; residential customers only absorbed 7.3% of those shifted costs.⁴⁹

More fundamentally, the Exeter Report's cost-shift conclusion appears to be based on a faulty assumption. Specifically, the Exeter Report includes a "No Load Reduction" assumption in

⁴³ Calpine Br. at 6-8.

⁴⁴ See OCC Br. at 46-48.

⁴⁵ OELC Ex. 27, Exeter Rep., at 5.

⁴⁶ OELC Ex. 27, Exeter Rep., at 5.

⁴⁷ See OELC Ex. 32, Brakey Test., at 17-18.

⁴⁸ See OELC Ex. 32, Brakey Test., at 17 (emphasis in original).

⁴⁹ See OELC Ex. 32, Brakey Test. at 17-18.

its counterfactual analysis without explanation.⁵⁰ This assumption could have caused a faulty cost-shift analysis. In fact, Exeter concluded in its report that “it appears Pilot participant load is substantially lower than non-Pilot customer load during all three sets of relevant peak hours” and “it appears that Pilot customers alter their load from normal patterns while non-Pilot customers do not.”⁵¹ Accordingly, Calpine’s and OCC’s reliance on Exeter’s cost-shifting finding is misplaced, and does not recognize the value provided by the Rider NMB Pilot program.

In addition, like rendering Rider NMB bypassable, eliminating Rider NMB outright would severely disrupt many long-term electricity supply agreements.⁵² FirstEnergy admitted that altering the Rider NMB rate to include NSPL-based billing would “impact those CRES contracts” subject to the new billing structure.⁵³ And as OMAEG witness Schussler noted, fully eliminating the Rider NMB Pilot “has the potential to affect CRES supply agreements, since Rider NMB Pilot participants currently contract with a CRES to pay their transmission obligations.”⁵⁴ Thus, eliminating Rider NMB would cause significant ripples for CRES entities and customers in FirstEnergy’s territory as they accommodate the transmission billing modifications. Accordingly, the Commission should reject Calpine and OCC’s proposal to eliminate FirstEnergy’s Rider NMB Pilot outright.

E. The Commission should reject FirstEnergy’s proposed changes to Rider NMB and instead institute NSPL-based billing when all customers have an advanced or interval meter.

FirstEnergy’s proposed Rider NMB changes should be rejected because the NMB 2 rate is arbitrarily discriminatory and lacks valid bill impact analysis to support such fundamental changes

⁵⁰ See OELC Ex. 32, Brakey Test., at 18.

⁵¹ See OELC Ex. 32, Brakey Test., at 18.

⁵² See Tr. Vol. VI at 1267.

⁵³ See Tr. Vol. VI at 1267-68.

⁵⁴ See OMAEG Ex. 2, Schussler Test., at 11-12.

to transmission charges in FirstEnergy's service territory.⁵⁵ The proposal seeks to authorize NSPL-based billing for commercial and industrial customers with advanced or interval meters—which presently comprises only about one quarter to one-third of FirstEnergy's commercial and industrial customers. Therefore, similar commercial and industrial customers will be subject to different Rider NMB rates based only on whether or not FirstEnergy got around to installing their advanced or interval meter. And once that meter is installed, those customers could be subject to significant increases in Rider NMB charges.

FirstEnergy also failed to support its Rider NMB overhaul with accurate bill impact analysis. FirstEnergy assumed that all its commercial and industrial customers would be billed under Rider NMB 2; but only a quarter to one-third of them are eligible for Rider NMB 2. And FirstEnergy assumed that monthly demand equals customers' new NSPL, even though those values could vary drastically. Moreover, even under FirstEnergy's own flawed rate impact analysis, customers would see very significant rate impacts that do not justify the proposed NMB 2 rate.

FirstEnergy admitted during the hearing that it would not be harmed by waiting to deploy the proposed Rider NMB changes until all customers received advanced or interval meters.⁵⁶ This would also allow FirstEnergy time to prepare accurate bill impact analysis to support its proposal. Therefore, the Commission should maintain FirstEnergy's Rider NMB program as-is, and save any changes for a time when all FirstEnergy commercial and industrial customers have advanced or interval meters.

⁵⁵ See OELC Br. at 11-22.

⁵⁶ See Tr. Vol. VI at 1216-1217.

III. THE COMMISSION SHOULD REJECT FIRSTENERGY'S PROPOSED CHANGES TO RIDER ELR.

A. Multiple parties recognize that FirstEnergy's interruptible program provides reliability and economic development benefits.

FirstEnergy's interruptible program—otherwise known as its Economic Load Response program (“Rider ELR”)—has received significant support in this proceeding. NUCOR describes at length how the program has promoted system reliability and promoted economic development since its inception.⁵⁷ NUCOR highlights that the program “is an important reliability resource because [interruptible load] can be curtailed quickly during a system emergency.”⁵⁸ By offering credits to incentivize customers to curtail load during emergencies, the program also lowers participating customers' electricity costs to “help these customers remain competitive.”⁵⁹

OEG similarly details the interruptible program's reliability and economic development benefits.⁶⁰ OEG notes that, during the 2022 Winter Storm Elliot emergency, curtailments by Rider ELR participants “were critical given the very real possibility that demand could have exceeded supply in PJM during the course of that event.”⁶¹ Additionally, OEG emphasizes that FirstEnergy is home to multiple electric arc steel producers that are ideal Rider ELR participants due to their significant load and non-weather-sensitive operations.⁶² And because neighboring states such as Indiana and Kentucky offer similar interruptible programs,⁶³ FirstEnergy's Rider ELR program helps facilitate Ohio's economic development by sustaining credits sufficient to prevent these businesses from migrating operations out of Ohio.

⁵⁷ See NUCOR Br. at 7-11.

⁵⁸ NUCOR Br. at 8.

⁵⁹ NUCOR Br. at 10.

⁶⁰ OEG Br. at 3-11.

⁶¹ OEG Br. at 6.

⁶² See OEG Br. at 10.

⁶³ See OEG Br. at 10.

Two parties—OMAEG and Staff—also support the continuation of the Rider ELR program. OMAEG recognizes that FirstEnergy’s interruptible program can improve reliability while also making participants—and Ohio—more economically competitive.⁶⁴ And Staff notes that the Commission has already found that FirstEnergy’s “[interruptible] program and others like it support economic development.”⁶⁵ Additionally, Staff recognizes that the program “is designed to improve reliability[.]” It should be noted that OMAEG advocates for a transmission-facility-overloading type of interruptible program, but which OMAEG has failed to show is workable in practice as it would require coordination with transmission entities that are not parties in this case.⁶⁶

FirstEnergy also supports maintaining the interruptible program and similarly stresses its reliability and economic development benefits.⁶⁷ FirstEnergy notes that “Rider ELR is a longstanding, tariff-based interruptible program designed to support demand response and economic development throughout the Companies’ service territories.”⁶⁸ To that end, its “Rider ELR program has a demonstrated record of providing substantial benefits to customers and the reliability of the Companies’ distribution system.”⁶⁹ In light of these benefits, FirstEnergy asks the Commission to authorize continuation of Rider ELR—albeit with modifications.⁷⁰

Therefore, there is significant consensus among many of the intervenor parties that the Rider ELR program is beneficial and should be continued.

⁶⁴ See OMAEG Br. at 45.

⁶⁵ Staff Br. at 17.

⁶⁶ OMAEG Br. at 46.

⁶⁷ See Staff Br. at 17; Companies Br. at 45-49.

⁶⁸ Staff Br. at 45.

⁶⁹ Companies Br. at 48.

⁷⁰ Companies Br. at 45-49.

B. Multiple parties agree with OELC that any phase-down of Rider ELR credits should be gradual and recognize the benefits of the program.

Multiple parties also align with OELC's position that Rider ELR credits should reflect the benefits provided by the program, and any phase down should be gradual and maintain robust participation in the program. However, the parties diverge as to what exact sum is reasonable. The Parties' positions are as follows:

Year	FE ⁷¹	Staff ⁷²	OEG ⁷³	OELC ⁷⁴	Nucor ⁷⁵	Joint OEG & OELC ⁷⁶
1	\$10	\$5	\$10	\$10	\$10	\$9
2	\$9	\$4	\$9	\$10	\$10	\$8
3	\$8	\$4	\$8	\$10	\$10	\$8
4	\$7	\$4	\$7	\$10	\$10	\$7
5	\$6	\$3	\$7	\$10	\$10	\$7
6	\$5	\$3	\$7	\$10	\$10	\$7
7	\$4	--	--	--	\$10	--
8	\$3	--	--	--	\$10	--

In their post-hearing briefs, OEG and OELC jointly proposed the alternative Rider ELR credit schedule listed above, should the Commission believe that reductions are necessary to balance reliability with reduced credit payments.⁷⁷

FirstEnergy's own proposal is similar because it reduces credits gradually across the ESP V term.⁷⁸ However, it also diverges sharply from fellow intervenor parties NUCOR, OEG, and

⁷¹ See Companies Ex. 3, McMillen Test., at 12-13.

⁷² See Staff Ex. 10, Healey Test., at 24.

⁷³ See OEG Br. at 13.

⁷⁴ See OELC Ex. 32, Brakey Test., at 46.

⁷⁵ See NUCOR Ex. 1, Goins Test., at 11.

⁷⁶ OEG Br. at 21.

⁷⁷ See OEG Br. at 20-22; OELC Br. at 42-45.

⁷⁸ See Companies Ex. 3, McMillen Test., at 12-13.

OELC by reducing the credits to less than a third of their current value by ESP V year eight.⁷⁹ Staff proposes the most significant modification. Staff asks the Commission to slash Rider ELR credits in half in ESP V year one, and then reduce those credits to only \$3.00/kWh month by ESP V year six.⁸⁰ Therefore, although these Parties agree that Rider ELR credits should continue throughout FirstEnergy's ESP V term, the Parties have not agreed on an exact Rider ELR credit value.

The Commission should not unreasonably reduce the Rider ELR credits. The more extreme positions, such as Staff's, lack sufficient justification and violate well-established gradualism principles. Specifically, Staff asks the Commission to immediately cut Rider ELR credits in half (\$5.00/kWh month) in ESP V year one, and then further reduce those credits to \$3.00/kWh month by year five.⁸¹ The Commission should reject Staff's proposed reductions to the Rider ELR Credits because Staff has not sufficiently recognized the economic development and reliability benefits of the program. The Commission has repeatedly found that interruptible programs such as FirstEnergy's Rider ELR promote economic development and grid reliability.⁸² And as recently as 2022, Rider ELR customers safeguarded grid reliability during unanticipated demand spikes during Winter Storm Elliott.⁸³ Additionally, the Commission has found that Rider ELR helps facilitate Ohio's effectiveness in the global economy.⁸⁴ Rider ELR participants are some of the

⁷⁹ See Companies Ex. 3, McMillen Test., at 12-13.

⁸⁰ See Staff Ex. 10, Healey Test., at 24.

⁸¹ See Staff Ex. 10, Healey Test., at 24

⁸² See *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).

⁸³ See OELC Ex. 32, Brakey Test., at 43; NUCOR Ex. 1, Goins Test., at 7.

⁸⁴ 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 10.

largest names in manufacturing and bring “unquantifiable economic impact to the state of Ohio and specifically FirstEnergy’s service territory.”⁸⁵ And participation in the FirstEnergy interruptible program has allowed these companies to remain competitive in the marketplace—both in Ohio and elsewhere.⁸⁶ Accordingly, sustained levels of Rider ELR participation are essential to promote demand response, economic development, and Ohio’s effectiveness in the global economy.

Further, although Staff asks the Commission to immediately cut Rider ELR credits by 50%, Staff does not provide any analysis or study of how such a drastic reduction would diminish Rider ELR program participation.⁸⁷ Moreover, the evidence included in OELC Witness Brakey’s testimony highlights that reductions in Rider ELR program credits could, in fact, reduce the incentives to participate in the program—thereby reducing the peak demand responsiveness and risking grid reliability in the process.⁸⁸ This is especially important here because Staff’s proposal of an immediate 50% reduction would culminate in a lower interruptible credit than those offered in neighboring states. For example, AES Indiana provides a \$6.00/kWh month credit.⁸⁹ And the Louisville Gas & Electric Company offers a similar \$5.90/kWh month credit to interruptible program participants.⁹⁰

The Commission should also reject Staff’s proposed reduction to Rider ELR credits because it does not reflect the balanced gradualism necessary to prevent rate shock. The Commission has entertained similar reductions in the past and rejected them on these grounds. For

⁸⁵ OELC Ex. 32, Brakey Test., at 51.

⁸⁶ See OELC Br. at 36-38.

⁸⁷ See Tr. Vol. XIII at 2584-85.

⁸⁸ See OELC Ex. 32, Brakey Test., at 47; Tr. Vol. VII at 1463-64.

⁸⁹ See OEG Br. at 10-11.

⁹⁰ See OEG Br. at 11.

example, in 2011 the Commission considered issues arising from providing credits to FirstEnergy's electric residential customers in the form of a residential distribution credit and residential generation credit.⁹¹ Among other things, the Commission had to determine which customers would receive a discount, and the discount amount.⁹² The Commission first agreed with FirstEnergy, OCC, and Staff that discounts should be limited to residential electric heating customers.⁹³

But concerning the discount/credit amount, the Commission diverged from each party's recommendation.⁹⁴ The OCC sought to revert back to prior rate norms and apply a 30-40% discount for electric heating customers relative to standard customers indefinitely.⁹⁵ OCC justified its position with "two regulatory principles, cost of service and gradualism."⁹⁶ Staff proposed a 25% decrease in the appropriate discount until its eventual elimination in year five.⁹⁷ And FirstEnergy similarly proposed a 25% discount, but with a three-year phase-out.⁹⁸

Before rejecting each party's proposal, the Commission highlighted the need to balance "many different important factors, including ... gradualism[.]"⁹⁹ First, concerning OCC's recommendation, the Commission noted "the proposal by the OCC is flawed because it abandons any pretense of gradualism and runs the risk of rate shock in the first year" by "significantly

⁹¹ See *In re Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA (May 25, 2011, Op. and Order, at 3, 7) ("FirstEnergy Residential Heating Rate Case").

⁹² See FirstEnergy Residential Heating Rate Case at 7.

⁹³ See FirstEnergy Residential Heating Rate Case at 7-8.

⁹⁴ See FirstEnergy Residential Heating Rate Case at 18-19.

⁹⁵ See FirstEnergy Residential Heating Rate Case at 18.

⁹⁶ See FirstEnergy Residential Heating Rate Case at 18.

⁹⁷ See FirstEnergy Residential Heating Rate Case at 18.

⁹⁸ See FirstEnergy Residential Heating Rate Case at 18.

⁹⁹ See FirstEnergy Residential Heating Rate Case at 18.

increase[ing] rates for electric heating customers this year.”¹⁰⁰ As to Staff’s and FirstEnergy’s position, the Commission noted that their proposals “fail to provide ... sufficient time to adjust to the gradual elimination of the discount.”¹⁰¹ Additionally, the Commission found that “options should be created for electric heating customers to offset the decline of the discount in a substantive way” and directed FirstEnergy to explore those options in its coming three-year program portfolio plan.¹⁰²

Here, Staff similarly asks the Commission to authorize immediate and steep reductions to ratepayer credits.¹⁰³ Specifically, Staff asks the Commission to authorize cutting the credits in half in ESP V year one, and then reducing those credits by \$1/kWh month every two years thereafter as follows:¹⁰⁴

ESP V Year	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Rider ELR Credits (\$/kWh month)	\$5.00	\$4.00	\$4.00	\$4.00	\$3.00	\$3.00

Like the OCC’s proposal in FirstEnergy’s Residential Heating Rate Case, Staff’s proposal “abandons any pretense of gradualism and runs the risk of rate shock in the first year” of the Rider ELR proposal.¹⁰⁵ Therefore, the Commission should reject the Staff’s proposal because it would likely create significant rate shock for Rider ELR participants due to lack of gradualism.

¹⁰⁰ See FirstEnergy Residential Heating Rate Case at 12.

¹⁰¹ See FirstEnergy Residential Heating Rate Case at 19.

¹⁰² See FirstEnergy Residential Heating Rate Case at 20.

¹⁰³ See OCC Br. at 46-48.

¹⁰⁴ See Staff Ex. 10, Healey Test., at 23-24.

¹⁰⁵ FirstEnergy Residential Heating Rate Case at 18.

C. The Commission should reject OCC's and NOAC's proposals to eliminate the Rider ELR program outright.

On the most extreme end of the spectrum, OCC and NOAC ask the commission to eliminate the Rider ELR program outright.¹⁰⁶ OCC argues that Rider ELR has outlived its purpose because the program “no longer require[s] participating industrial customers to commit their peak demand response capability to FirstEnergy.”¹⁰⁷ OCC notes that this was previously necessary to ensure Ohio electric utilities meet peak demand reduction targets—which is no longer the case as of 2020.¹⁰⁸ However, even absent a regulated peak demand reduction target, FirstEnergy still retains the ability to identify emergencies and demand curtailment from Rider ELR participants to sustain grid reliability.¹⁰⁹ Therefore, even under an altered regulatory landscape, customers benefit from FirstEnergy's ability to demand curtailment to safeguard grid reliability in response to peak demand emergencies.

OCC also criticizes the Rider ELR program as economically wasteful because participants have received roughly \$450 million in Rider ELR credits without FirstEnergy independently initiating an emergency curtailment event during ESP IV.¹¹⁰ But as discussed at length, Rider ELR participants *did* curtail activities during ESP IV in response to the Winter Storm Elliot emergency—a curtailment event initiated by PJM.¹¹¹ And without their support, the grid could have failed.¹¹² So, regardless of which entity specifically initiated the emergency, the Rider ELR has benefited FirstEnergy customers and the grid by promoting grid reliability.

¹⁰⁶ See NOAC Br. at 7; OCC Br. at 37-46.

¹⁰⁷ See OCC Br. at 38.

¹⁰⁸ See OCC Br. at 38.

¹⁰⁹ See Companies Ex. 3, McMillen Testimony, at 11.

¹¹⁰ See OCC Br. at 39.

¹¹¹ See NUCOR Ex. 1, Goins Test., at 7-8; OELC Ex. 32, Brakey Testimony, at 46-47.

¹¹² See OELC Ex. 32, Brakey Testimony, at 47-48.

Finally, OCC quotes portions of the FirstEnergy Deferred Prosecution agreement to speculate that Rider ELR “appears to be an integral part of FirstEnergy’s corrupt H.B. 6 bribery scheme.”¹¹³ However, the Commission already ruled that this document is irrelevant to FirstEnergy’s ESP V application; the document “has no bearing on the ESP versus MRO test nor any bearing on the contents of the Application before us today.”¹¹⁴ Therefore, the Commission should disregard OCC’s speculative and irrelevant arguments that Rider ELR relates to the pending Deferred Prosecution Agreement.

NOAC asks the Commission to eliminate the Rider ELR program outright.¹¹⁵ NOAC argues that the program overall is too expensive for non-participant customers culminating in “a really bad deal for every customer but ELR cos.”¹¹⁶ However, NOAC has focused solely on the costs;¹¹⁷ it did not account for the numerous benefits Rider ELR offers customers. Additionally, “[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 [is] more than worth it.”¹¹⁸ Therefore, the Commission should reject NOAC’s proposal because it does not reflect the many benefits provided to all FirstEnergy’s ratepayers under the Rider ELR program.

D. The Commission should adopt OELC and OEG’s joint proposal on the Rider ELR credits and program terms for ESP V.

The Commission should ensure that the Rider ELR program continues to promote and support grid reliability and economic development across FirstEnergy’s service territory during

¹¹³ See OCC Br. at 44.

¹¹⁴ See Tr. Vol. II at 234-236; *see also* Tr. Vol. XI at 2048 (Attorney Examiner stating “haven’t we already decided this [deferred prosecution agreement] was not relevant to this proceeding?”).

¹¹⁵ See NOAC Br. at 7.

¹¹⁶ See NOAC Br. at 7.

¹¹⁷ See *generally* NOAC Br. at 7-8.

¹¹⁸ OELC Ex. 32, Brakey Test., at 53.

the term of ESP V. For this reason, the Commission should adopt OEG and OELC's joint proposal on the Rider ELR program credits and terms consistent with the following table.¹¹⁹

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	<i>No Expansion</i> <small>120</small>	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

¹¹⁹ See OEG Br. at 23.

¹²⁰ OELC erroneously indicated a 50 MW expansion in its Initial Brief. See OELC Br. at 44. However, to confirm, OELC does not propose any new customer expansion of Rider ELR in ESP V year five.

OEG and OELC, representing many of the current Rider ELR program participants, submit that this proposal would best sustain Rider ELR program participation, promote grid reliability and economic development, and reduce non-participating FirstEnergy ratepayers' costs during the term of ESP V.¹²¹ This joint proposal would ensure maximum continued participation in the Rider ELR program, as FirstEnergy and other utilities in PJM continue to grapple with the migration of generation away from legacy energy sources and reliability implications of such migration.¹²² Now is not the time to erode programs that support reliability that benefits all customers when power is needed the most.

IV. THE COMMISSION SHOULD REJECT FIRSTENERGY'S ENERGY SOLUTIONS FOR BUSINESS PROGRAM.

A. Numerous parties agree with OELC that the Energy Solutions for Business program is wasteful and inappropriate.

FirstEnergy proposes enacting the Energy Solutions for Business program as part of its Energy Efficiency and Peak Demand Response plan ("EE/PDR plan").¹²³ But numerous intervenor parties agree that the Commission should reject FirstEnergy's Energy Solutions for Business program outright. Kroger, NOAC, NRG, OCC, OMAEG, and OPAE each ask the Commission to only approve the low-income portion of FirstEnergy's EE/PDR plan (or a portion of that low-income portion)—inherently asking the Commission to reject the Energy Solutions for Business program which targets commercial and industrial customers.¹²⁴ IGS, NRG, OMAEG, and RESA

¹²¹ See OEG Br. at 20-22; OELC Br. at 42-45. The proposed expansion of the Rider ELR program also addresses OMAEG's main criticism that the current program is discriminatory. See OAMEG Br. at 46.

¹²² OELC Br. at 44, 51. Notably, Staff acknowledges that this proposal avoids sudden changes/promotes gradual changes to the Rider ELR credit. Tr. Vol. XIII at 2585-86.

¹²³ See *generally*, Companies Ex. 5, Miller Test., at 22.

¹²⁴ See Kroger Br. at 17-19; NOAC Br. at 8-10; NRG Br. at 13-14; OCC Br. at 48-52; OMAEG Br. at 41-42; OPAE Br. at 2-5.

also ask the Commission to eliminate FirstEnergy’s energy efficiency program entirely—including both the residential and commercial/industrial portions.¹²⁵ Finally, Staff asks the Commission to approve only the low-income, residential energy education, and demand response programs.¹²⁶

These intervenor parties’ briefs echo OELC’s arguments favoring elimination of the Energy Solutions for Business program—generally, by highlighting that competitive markets are best suited to handle energy efficiency programs for non-low-income customers.¹²⁷ Thus, there is no dispute among each of these parties—the Commission should at the very least eliminate the Energy Solutions for Business program.

B. No party has sufficiently justified the Energy Solutions for Business program.

FirstEnergy asks the Commission to authorize a sweeping energy efficiency and peak demand response plan that provides rebates and energy efficiency audits for FirstEnergy’s residential and nonresidential customer base.¹²⁸ CUB, ELPC, and OEC ask the Commission to approve FirstEnergy’s entire EE/PDR plan.¹²⁹ CUB simply states that “utilities are currently in the best position to provide the scalable programs that result in [energy efficiency] incentives and rebates[.]”¹³⁰ OEC similarly claims that the EE/PDR plan is essential to safeguard grid reliability—private markets are an insufficient solution.¹³¹ ELPC states that the EE/PDR plan would reduce energy usage and “costly investments in generation capacity and the grid.”¹³² However, the

¹²⁵ See IGS Br. at 14-18; NRG Br. at 12-14; OMAEG Br. at 37-42; RESA Br. at 5-12.

¹²⁶ See Staff Br. at 23-25.

¹²⁷ See generally IGS Br. at 14-18; Kroger Br. at 17-19; NOAC Br. at 8-10; OCC Br. at 48-52; OMAEG Br. at 37-42; OPAE Br. at 2-5; NRG Br. at 12-14; RESA Br. at 5-12.

¹²⁸ See generally Companies Ex. 5, Miller Test.

¹²⁹ CUB, ELPC, and OEC ask the Commission to approve FirstEnergy’s entire EE/PDR plan. See CUB Ohio Br. at 6-7; ELPC Br. at 3-11; OEC Br. at 9-11.

¹³⁰ See CUB Ohio Br. at 6 7.

¹³¹ See OEC Br. at 9.

¹³² See ELPC Br. at 4.

Commission should reject these arguments as insufficiently supported and contrary to Commission precedent.

The Commission has recently and repeatedly found that competitive markets—not monopolistic utilities—should spearhead energy efficiency efforts in Ohio.¹³³ Indeed, in AEP Ohio’s latest rate case the Commission refused to incorporate a proposed 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.”¹³⁴ Indeed, the Commission has highlighted that “Ohio is a retail choice state with a competitive market, and it should therefore be the market, not the Commission that drives these [energy efficiency and demand response] innovations.”¹³⁵ Therefore, even if the EE/PDR plan could reduce energy usage and costs from electricity generation, Ohio’s competitive markets—not FirstEnergy as a monopolistic utility—should promote energy efficiency efforts. Accordingly, the Commission should eliminate the Energy Solutions for Business program from FirstEnergy’s proposed EE/PDR plan.

C. The Commission should reject the Energy Solutions for Business program, reducing the EE/PDR plan costs by at least \$154.3 million.

Time and again, the Commission has lauded competitive markets—not monopolistic utilities—as the proper means to promote energy efficiency and peak demand response efforts in

¹³³ See *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) (noting 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.”); see also RESA/IGS Ex. 1, White Testimony, at 12.

¹³⁴ *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)

¹³⁵ *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).

Ohio. The Commission should treat FirstEnergy's ESP V no different than prior cases. The Commission should therefore at the very least eliminate the Energy Solutions for Business program—reducing the cost of FirstEnergy's EE/PDR plan by \$154.3 million¹³⁶—and allow commercial and industrial customers to rely on the competitive markets to pursue their energy efficiency goals in Ohio.

V. THE COMMISSION SHOULD MAINTAIN AN SSO COMPETITIVE BIDDING PROCESS WITHOUT A VOLUMETRIC RISK CAP.

FirstEnergy and Constellation both ask the Commission to deploy a Volumetric Risk Cap (“VRC”) during ESP V. FirstEnergy asks the Commission to approve a 20MW volumetric risk cap.¹³⁷ Constellation takes the proposal even further, and asks the Commission to tighten the Volumetric Risk Cap from 20MW to only 5MW.¹³⁸

The Commission should reject both proposals. Under the VRC, customers pay market prices for any load that exceeds the VRC. And market prices are volatile—at some points over 100 times the fixed SSO load price.¹³⁹ That alone increases FirstEnergy customers' risk.¹⁴⁰ Constellation's proposal to further tighten the VRC, therefore, exposes customers to even greater risk because it lowers the threshold to trigger real-time market prices for SSO load generation.¹⁴¹ Indeed, as noted in Constellation Witness Indukuri's testimony, if FirstEnergy had imposed a 5MW VRC during ESP IV, customers would have sustained real-time market prices as early as

¹³⁶ See Miller Test at Attachment ECM-2, Workpaper2: Ohio ESP V Total Budgets by Cost Category.

¹³⁷ See App. at 6; Companies Ex. 6, Lee Test., at 6-8; Companies Br. at 33-35.

¹³⁸ See Constellation Br. at 19-28.

¹³⁹ Tr. Vol. IV at 728-730.

¹⁴⁰ Tr. Vol. IV at 710.

¹⁴¹ See Tr. Vol. XI at 1917-18.

September of 2022.¹⁴² Therefore, the Commission should reject the VRC because it would increase customers' risk exposure to volatile real-time market prices.

In addition to OELC, multiple parties oppose the proposed VRC for SSO load auctions. IGS (an SSO load supplier), NRG, and Staff each ask that the Commission reject the proposed VRC outright.¹⁴³ Echoing OELC's position in its initial brief,¹⁴⁴ these parties all agree that customers would suffer increased risk from paying real-time market prices in the event of load migration.¹⁴⁵ Because the VRC proposal exposes FirstEnergy customers to added risk, the Commission should reject it.

The Commission should also exercise restraint and refuse to approve competitive bidding process ("CBP") changes that FirstEnergy did not seek in its application. Constellation asks the Commission to reach beyond FirstEnergy's ESP V Application and implement class-based SSO auctions for FirstEnergy's ESP V.¹⁴⁶ And although OCC does not ask the Commission to authorize class-based auctions outright, it argues that FirstEnergy's application is unjust and unreasonable for failing to provide consumer class-based auctions.¹⁴⁷ The Commission should reject these proposals for two reasons.

First, FirstEnergy never sought class-based auctions. FirstEnergy considered "conducting separate solicitations by customer class" when it filed its ESP V application.¹⁴⁸ However, FirstEnergy recognized that class-based auctions could mean that "some products or customer classes may garner limited or no bidder interest, and some tranches may go unserved in the

¹⁴² Constellation Ex. 11, Indukuri Test., at 23.

¹⁴³ See IGS Br. at 7-10; NRG Br. at 14-16; Staff Br. at 26-29.

¹⁴⁴ See OELC Br. at 55-56.

¹⁴⁵ See NRG Br. at 14; IGS Br. at 9; Staff Br. at 27.

¹⁴⁶ See Constellation Br. at 28-34.

¹⁴⁷ See OCC Br. at 8-11.

¹⁴⁸ See Companies Ex. 6, Lee Test., at 36.

auction.”¹⁴⁹ Accordingly, FirstEnergy did not include class-based auctions in its proposal.¹⁵⁰ The Commission should align with FirstEnergy and eschew Constellation’s proposal to authorize class-based auctions during ESP V.

Second, the Commission should reject Constellation’s class-based auction proposal because the current descending-price clock auction format has demonstrated its ability to promote competition and reduce costs for ratepayers. As IGS—a current FirstEnergy SSO load supplier—has highlighted, the current auction process allows bidders to price their bids according to their relative risk appetite and the insight or expertise from their risk management teams.¹⁵¹ This means that the bidders squeeze as much risk premium as they possibly can from their auction bids—and the winners have the lowest cost inputs and highest risk tolerance.¹⁵² Constellation’s proposed class-based auctions, however, do not guarantee lower prices.¹⁵³ Even if the Commission solicited bids by customer class, a residential class with a more variable load shape could produce higher SSO pricing.¹⁵⁴ Therefore, the Commission should disregard Constellation’s proposed class-based auction format because it does not guarantee increased cost efficiency, unlike the current descending price auction format.

The Commission should adhere to the descending clock competitive bidding process that has reliably provided SSO service to FirstEnergy’s customers. As FirstEnergy acknowledged, the descending-price clock auction “provides an effective price discovery process” that allows “bidders’ bids [to] reflect their best bids in competition with other bidders.”¹⁵⁵ Indeed, the current

¹⁴⁹ Companies Ex. 6, Lee Test., at 36.

¹⁵⁰ *See generally* Companies Ex. 6, Lee Test.

¹⁵¹ *See* IGS Br. at 5.

¹⁵² *See* IGS Br. at 5.

¹⁵³ Staff Ex. 6, Benedict Test., at 9.

¹⁵⁴ *See* IGS Br. at 10; OCC Ex. 2, Wilson Test., at 14.

¹⁵⁵ Companies Ex. 6, Lee Test., at 33.

auction structure “has been adopted by each of the Commission’s regulated EDUs and has proven over time to be an effective mechanism to leverage competitive forces and allow wholesale market conditions to determine the rate for default service.”¹⁵⁶ Therefore, the Commission should approve FirstEnergy’s proposed SSO auction process, but without a VRC or separate class-based auctions.

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

Finally, multiple intervenor parties have joined OELC in opposing FirstEnergy’s proposed vegetation management rider in their post-hearing briefs, including OMAEG, Kroger, and OCC among others. Despite generally exceeding its reliability metrics with a few exceptions, FirstEnergy now seeks to nearly double its vegetation management expenses to address alleged increases in increased tree-caused outages.¹⁵⁷ This proposal is too expensive, too speculative, and insufficiently supported by demonstrable benefits from such an expensive program. FirstEnergy may seek to include such expenses, if FirstEnergy believes them necessary, in its forthcoming base rate case that should be filed by May 2024. But in the meantime, the Commission should reject the proposed Enhance Vegetation Management Rider.

VII. CONCLUSION

Multiple modifications are necessary to render FirstEnergy’s ESP V application reasonable and more favorable in the aggregate than an MRO. Therefore, the Commission should:

- (i) Reject the proposed Rider NMB 2 rate as discriminatory and unreasonable;
- (ii) Maintain appropriate Rider ELR credits and program terms, such as those jointly proposed by OEG and OELC;
- (iii) Reject the Energy Solutions for Business program;

¹⁵⁶ Staff Ex. 6, Benedict Test., at 2.

¹⁵⁷ See Companies Ex. 8, Standish Testimony, at 6.

- (iv) Reject the proposed volumetric risk cap and class-based auctions; and
- (v) Reject the proposed Enhanced Vegetation Management Rider.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify on this 9th day of February, 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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