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Summary of PUCO Order on FirstEnergy Purchase Power Agreement and Electric Security Plan

On March 31, 2016, the Public Utilities PUCO of Ohio (PUCO) issued an Opinion and Order in FirstEnergy's application for an electric security plan (ESP). The PUCO determined that the Stipulation was reasonable and should be adopted, with certain modifications. The information included below summarizes key provisions of the approved ESP IV, as well as modifications adopted by the PUCO. Several of these modifications were argued by OMAEG in their initial and reply briefs to the PUCO.

Rider RRS

- **Approval of a nonbypassable credit or charge.** The PUCO approved the Retail Rate Stability Rider (Rider RRS) as a nonbypassable credit or charge to customers. Through a proposed power purchase agreement between FirstEnergy and its affiliate, FirstEnergy Solutions (FES), FirstEnergy will purchase the capacity, energy and ancillary services output of FES' Plants and FES' OVEC entitlement. FirstEnergy will then sell the output of the Plants and the OVEC entitlement into the wholesale markets operated by PJM and net the revenues received from the PJM markets against the costs to be paid to the generator, crediting or charging the difference to all customers through Rider RRS.

- **Limit of Rider RRS.** The PUCO modified the Stipulation to require FirstEnergy to implement a mechanism to ensure that for the period of June 1, 2016 through May 31, 2017 and June 1, 2017 through May 31, 2018, average customer bills do not increase as compared to the average customer bills for the period of June 1, 2015 through May 31, 2016. The PUCO states that this will ensure that "the average customer bill will see no total bill increase for two years." However, FirstEnergy is permitted to defer expenses for future recovery in an amount equal to the revenue reduction resulting from the period of June 1, 2017 through May 31, 2018. Further, costs recovered for smart grid deployment (presumes cost recovery), costs from renewable energy procurement (presumes cost recovery) and the Alternative Energy Rider (Rider AER), and impacts on riders resulting from credits to customers due to disallowances by the PUCO will be excluded from the mechanism.

- **FirstEnergy must file quarterly true-ups of Rider RRS.** The PUCO modified the Stipulation to require FirstEnergy to file annual forecasted values subject to quarterly true-ups, reflecting actual values, rather than the annual true-ups proposed in the Stipulation. Quarterly adjustments should be filed on or before March 1, June 1, September 1, and December 1 of each year. Notwithstanding the quarterly true-ups, Rider RRS is still subject to adjustment through the annual audit and reconciliation. The audit process will be carried out consistent with past practice.

- **<u>Cost Recovery.</u>** FirstEnergy is precluded from recovering plant retirement costs and capacity performance penalties through Rider RRS or recovering any credits provided to customers through Rider RRS in a future proceeding. The PUCO modified the Stipulation to clarify several points related to what costs could be recovered through Rider RRS. According to the Stipulation, FirstEnergy will provide up to an aggregate $100 million in years five through eight of Rider RRS, in the event the revenues from the generation output do not exceed the costs in each year by a specified minimum credit amount. The Stipulation was modified to exclude the recovery of costs associated with any of these credits in a future PUCO proceeding. Further, the Stipulation was modified to exclude plant retirement costs and Capacity Performance penalties, but Capacity Performance bonuses will be retained by FirstEnergy. Finally, the PUCO reserves the right to prohibit recovery of any costs related to any unit for any period exceeding 90 days for any forced outage during the term of ESP IV (but not mandatory).

- **<u>The severability provision.</u>** The PUCO modified the severability provision to allow the PUCO to reserve the right to reevaluate and modify the Stipulation if there is change to PJM's tariffs or rules which prohibits the plants from being bid into PJM auctions.

- **<u>Term.</u>** The PUCO approved the eight-year term of the Stipulation to begin June 1, 2016 and end May 31, 2024.

- **<u>Distribution Freeze.</u>** The PUCO approved the continuation of the base distribution rate freeze for an eight-year period beginning June 1, 2016 through May 31, 2024 with exceptions.

- **<u>Delivery Capital Rider (Rider DCR).</u>** The PUCO approved continuation and expansion of Rider DCR. FirstEnergy will continue to recover reasonable investments in plant in service associated with distribution, subtransmission, and general and intangible plant through Rider DCR. Further, the revenue caps for Rider DCR will increase annually to $30 million for the period June 1, 2016 through May 31, 2019; to $20 million for the period June 1, 2019 through May 31, 2022; and to $15 million for the period June 1, 2022 through May 31, 2024.

- **<u>Government Directives Rider (Rider GDR).</u>** The PUCO approved the Government Directives Rider (Rider GDR), which will initially be set at zero. FirstEnergy is permitted to recover unforeseen expenses related to government mandates imposed during the term of ESP IV through Rider GDR. The rider will be set initially at zero and FirstEnergy must file an application in a separate proceeding to recover any specific costs. The PUCO adopted the following <u>modifications</u> to Rider GDR: Rider GDR is limited to federal and state government mandates enacted after the filing date of the application, and generation or transmission related expenses may not be recovered under Rider GDR.

Other Provisions.

- **Shareholder Funding.** The PUCO approved shareholder funding to be provided by FirstEnergy to promote job retention, economic development, and low-income funding. FirstEnergy will provide $3 million per year in shareholder funding to promote job retention and economic development in the region. Specifically, FirstEnergy will provide $24 million in economic development funding, $19.1 million in low-income funding to the Citizens Coalition and OPAE, and $8 million in funding to the Customer Advisory Agency funding.

- **Automaker credit.** The PUCO approved continuation of the automaker credit. FirstEnergy will continue the automaker credit beginning June 1, 2016 through May 31, 2024.

- **Rider ELR and the Interruptible Credit Provisions.** The PUCO approved continuation and expansion of the Economic Load Response Program (Rider ELR) and the Interruptible Credit Provisions. FirstEnergy will continue to recover costs through Rider ELR for the eight-year term of the ESP. Further, Rider ELR will be expanded to include an additional 136,250 kW of curtailable load for customers who have been eligible to take credit under Rider ELR but have historically been unable to do so. Moreover, ELR customers will be permitted to shop during the term of ESP IV and FirstEnergy will be limited to curtail these customers for emergency situations only. Participating customers receive an interruptible credit of $10 per kW per month per unit of curtailable load in exchange for participation in the program and subjecting their load to interruption.

- **Commercial High Load Factor Experimental Time-of-Use Rate.** The PUCO approved adoption of a Commercial High Load Factor Experimental Time-of-Use Rate proposal. FirstEnergy will deploy a Commercial High Load Factor (HLF) Experimental Time-of-Use rate proposal for commercial customers with headquarters located in Ohio having at least 30 facilities in the FirstEnergy combined service territory with each facility consuming at least 1.5 GWh annually and having refrigeration as a major portion of the load through the eight-year term of the ESP.

- **Rider NMB Pilot.** The PUCO approved the Non-Market Based Services Rider (Rider NMB) pilot program. FirstEnergy will implement a pilot program for large customers to obtain and pay for services otherwise provided by or through Rider NMB. The pilot program will include Industrial Energy Users-Ohio (IEU) member customers, Ohio Energy Group (OEG) member-customers, Nucor Steel Marion, Inc. (Nucor) member-customers, and Material Sciences member-customers, as well as up to five additional Rate GT customers.

- **EE/PDR.** The PUCO approved FirstEnergy's reactivation of all programs suspended in their EE/PDR Portfolio Plan and a customer engagement pilot program with EnerNoc. FirstEnergy will reactivate in 2017 all programs suspended in their EE/PDR Portfolio Plan and will expand offerings through the term of the ESP. These offerings will strive to achieve over 800,000 MWH of energy savings annually. Additionally, FirstEnergy will include in their next EE/PDR Portfolio Plan filing a 3-year, customer engagement pilot program to be implemented with EnerNoc to engage small/medium commercial and industrial customers through a software platform customized for FirstEnergy and empower customers to make smart energy choices through customized, timely, and targeted content and actions specific to their businesses. Costs for such programs will be recovered through Rider DSE. The PUCO adopted the following modifications related to energy efficiency and renewable resources:

- Related to the procurement of additional renewable resources in Ohio, the Companies must demonstrate that bilateral contracting opportunities were explored and a competitive process was utilized to source projects.
- The PUCO will eliminate the requirement that the procurement of additional renewable resources must be related to the enactment of new Federal or state environmental laws or regulations.
- The Companies must file a report detailing its strategy to promote fuel diversification and carbon reduction every four years, rather than every five year.

- **EE/PDR Funding.** The PUCO approved FirstEnergy's energy efficiency funding to independent colleges and universities, small businesses, and funding for energy efficiency audits. FirstEnergy will contribute a total of $540,000 to the Council for Small Enterprises (COSE) Ohio Energy Efficiency Resources Program in unrestricted payments over the eight-year term of the ESP, with amounts recovered through Rider DSE from June 1, 2016 through May 31, 2019. FirstEnergy will also contribute a total of $400,000 to the Association of Independent Colleges and Universities of Ohio (AICUO) Efficiency Resources Program in unrestricted payments over the eight-year term of the ESP, with amounts recovered through Rider DSE from June 1, 2016 through May 31, 2019. FirstEnergy may seek approval to recover costs for the period of June 1, 2019 to May 31, 2024 and such approval may not be unreasonably withheld. Finally, FirstEnergy will perform ASHRAE Level II Energy Efficiency Audits (58 in 2016, 100 per year in 2017 through 2013, and 42 in 2014), with all costs recovered through Rider DSE.

- **Increased shared savings cap.** The PUCO approved increased shared savings caps for FirstEnergy. FirstEnergy will increase the caps on shared savings as a result of FirstEnergy exceeding its statutory mandates of energy efficiency from $10 million to $25 million and will continue to be recovered through Rider DSE.

- **Grid modernization business plan.** FirstEnergy filed a grid modernization business plan on February 29, 2016. In a separate proceeding, FirstEnergy will bear the burden of demonstrating that the application is just and reasonable and interested parties may raise any issues regarding the business case.

- **CPA Provision.** The PUCO will disregard the signature of the Consumer Protection Association (CPA) as a signatory party to the Stipulation and require FirstEnergy to file proper audit reports to ensure funding is used for its proper purpose. In its brief, OMAEG raised the issue that one of the signatory parties to the Stipulation, the CPA, no longer exists and ceases to operate. The PUCO modified the Stipulation to require FirstEnergy to file compliance reports (annually at a minimum) regarding the funding provided to both Citizens' Coalition and Ohio Partners for Affordable Energy (OPAE).

Additional Modifications. The PUCO adopted the following additional modifications to the Stipulation:

- The PUCO rejected FirstEnergy's request to include MTEP legacy costs against their legacy RTEP non-collection commitment of $360 million.
- FirstEnergy is required to file an application in a separate proceeding to modify the Generation Cost Reconciliation Rider (Rider GCR) from bypassable to non-bypassable.
- If FirstEnergy moves its corporate headquarters from Akron, Ohio during the term of Rider RRS, the PUCO may terminate Rider RRS.
- The PUCO removed the provision in FirstEnergy's Stipulation that limited refunds for amounts collected through the Alternative Energy Resource Rider (Rider AER) in years prior to the audit year.
- The PUCO rejected FirstEnergy's proposal to eliminate the ability of CRES providers to request non-summary, customer usage data.
- The PUCO rejected FirstEnergy's proposed change to add the term "generation" in the supplier tariff provisions regarding consolidated billing. As part of the application, FirstEnergy presented revisions to each of the Supplier Coordination Tariffs, including the addition of the word "generation" in order to limit CRES charges on the consolidated bill for demand response or energy efficiency offerings.
- The PUCO rejected FirstEnergy's proposed change to the supplier tariff related to unaccounted-for energy, which would have removed FirstEnergy responsibility for unaccounted-for energy and placed all responsibility on CRES providers.
- The PUCO adopted the recommendation to establish a zero-based rider to unbundle the costs FirstEnergy incurs from distribution rates that are required to support SSO service and reflect those costs in the SSO price.
- The PUCO required the Companies to collaborate with Staff to develop a phase-in-plan for non-residential customers who are projected to experience more significant rate increase, to be implemented during the term of ESP IV.

ESP v. MRO Test

- OMAEG and other opponents argued that the projected costs of Rider RRS and other provisions of FirstEnergy's Stipulation demonstrated that a Market Rate offer (MRO) MRO was more favorable in the aggregate than the ESP.
- The PUCO, however, found that the Stipulation contained multiple benefits not found in an MRO (e.g., rate stability, modernization of the grid, and promotion of competition). Further, the PUCO found that the Stipulation is more favorable than an MRO by $307.1 million, representing the sum of a predicted $256 million in net revenue from Rider RRS and $51.1 million in committed shareholder funding over the eight-year term of the ESP.

<u>FERC Matters.</u>

- The PUCO declined to address arguments that the settlement violated corporate separation requirements and is preempted by federal law and determined that Rider RRS is authorized under state law.
- While the PUCO recognized that FirstEnergy could enter into a contract with an affiliate in order to give the affiliate a competitive advantage, the PUCO noted adequate safeguards, such as annual prudency review, were in place to safeguard against any anticompetitive behavior by FirstEnergy.
- OMAEG and others contended that the PUCO was preempted from authorizing cost recovery under Rider RRS because it would interfere with FERC's exclusive power to oversee the wholesale markets.
- The PUCO explained that they do not have authority to declare a statute unconstitutional.

<u>Concurring Opinions of Commissioner Haque and Commissioner Trombold.</u>

Commissioners Haque and Trombold issued concurring opinions in the Opinion and Order in this proceeding. Both Commissioner Haque and Commissioner Trombold emphasized that the Opinion and Order is based on an expectation that the Rider RRS will result in a credit to ratepayers over the eight-year term of the ESP.