BEFORE

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of OhioEdison Company, The Cleveland ElectricIlluminating Company and The ToledoEdison Company for Authority to Providefor a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan | ))))))) | Case No. 14-1297-EL-SSO |

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**SUPPLEMENTAL TESTIMONY OF MATTHEW WHITE**

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On behalf of Interstate Gas Supply, Inc.

**March 2, 2015**

**I. INTRODUCTION AND PURPOSE OF TESTIMONY**

**Q.** **Please introduce yourself.**

A. My name is Matthew White. I am employed by Interstate Gas Supply, Inc. (“IGS” or “IGS Energy”) as General Counsel, Legislative and Regulatory Affairs. My business address is 6100 Emerald Parkway, Dublin, Ohio 43016.

**Q. Are you the same Matthew White that filed testimony on behalf of IGS earlier in this proceeding?**

A. Yes I am.

**Q. What is the purpose of your testimony?**

A. I testify that the Commission should reject the Stipulation and Recommendation filed on December 22, 2014 in this proceeding (“Stipulation”) which recommends approval of FirstEnergy’s deceptively named and unlawful retail rate stability rider (“Rider RRS”) proposal. Rider RRS would require FirstEnergy customers to pay a cost based rate to support nearly 3000 MW of FirstEnergy Solution’s (“FES”) generation. As explained by the previously filed testimony of IGS witness Haugen (as well as numerous other witnesses) the Rider RRS proposal would require FirstEnergy customers to subsidize FES inefficient competitive generation and otherwise would be harmful to FirstEnergy customers. Further, the remaining provisions in the Stipulation directly financially benefit only a small-subset of intervening parties while leaving the vast majority of FirstEnergy customers worse-off. Rider RRS (and the entire Stipulation) would also violate the Federal preemption statutes and Ohio law. Finally, adoption of the Stipulation would move Ohio towards the return of the antiquated vertically integrated utility monopoly model which the Ohio General Assembly and the Commission wisely left behind years ago.

**Q. Does this testimony substantively change the previous direct testimony you filed in this proceeding?**

A. No. I still support my previously filed direct testimony and the recommendations made therein. This testimony is meant to supplement my previously filed direct testimony. Thus, as noted in my previous testimony, I continue to recommend that the Commission should:

* Modify FirstEnergy’s proposed standard service offer (“SSO”) to ensure that it truly is a “comparable and unbundled” retail electric product in the market as required by Ohio law;
* Deny FirstEnergy’s anti-competitive proposal to require competitive retail electric service (“CRES”) providers to use the bill-ready function to bill for only generation charges; rather, the Commission should affirm that CRES providers are able to use the bill-ready function to bill for a more diverse range of products as explained in my testimony. These measures are particularly important because FirstEnergy is currently allowing select third-party companies to bill for non-commodity charges on the EDU bill while excluding all others.
* Direct FirstEnergy to begin taking steps necessary to implement supplier consolidated billing as described in my testimony.
* Reject the RRS and investigate FirstEnergy’s past dealings with FES because it appears that FirstEnergy’s corporate separation plan is not working.

**II. TESTIMONY**

**Q. Are you familiar with the standard of review for a Stipulation filed in a Commission proceeding?**

A. Yes. The standard of review for considering the reasonableness of a Stipulation has been discussed in a number of prior Commission proceedings.[[1]](#footnote-1) The ultimate issue for the Commission’s consideration is whether the Stipulation is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission must consider:

 (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

 (2) Does the settlement, as a package, benefit ratepayers and the public interest?

 (3) Does the settlement package violate any important regulatory principle or practice?

 The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to customers and public utilities.[[2]](#footnote-2)

**Q. Does the Stipulation satisfy any of the prongs that are considered when determining the reasonableness of a stipulation?**

A. No. The Stipulation does not satisfy any of the prongs that are considered under the Commission’s reasonableness test.

**Q. Is the settlement a product of serious bargaining among capable, knowledgeable parties?**

A. No. The Stipulation amounts to an agreement entered into by a minority of parties intervening in this proceeding. A majority of parties to this proceeding do not support the Stipulation or Rider RRS. Further, many of the additional provisions in the Stipulation are direct financial payments to the parties signing the Stipulation. Even the provisions that effect rate design merely shift costs from parties that signed the Stipulation onto all other FirstEnergy customers. Thus, there is nothing in the Stipulation that would make FirstEnergy’s otherwise unreasonable Rider RRS more reasonable. Rather, the Stipulation appears to be largely financial transfers to the few parties signing the Stipulation in exchange for agreement to support Rider RRS.

**Q. Does the settlement as a package benefit ratepayers?**

A. No. The proposed Stipulation would largely approve FirstEnergy’s filed ESP Application. As noted in my previous testimony, and in testimony filed by Mr. Haugen, FirstEnergy’s ESP Application is unreasonable and would be harmful FirstEnergy customers. The proposed provisions in the Stipulation do not provide any additional benefit to the vast majority of FirstEnergy customers.

**Q. Does the settlement package violate any important regulatory principle or practice?**

A. First Energy’s Witness Mikkelson testifies that approval of Rider RRS does not violate and regulatory principals. However, her conclusions are incorrect. The Stipulation violates many important regulatory principals. The Stipulation violates R.C. 4928.02(H) in that it provides anti-competitive subsidies to FirstEnergy Solutions (“FES”) which is a provider of competitive generation. It violates R.C. 4928.17(B)(2) and (3) Ohio’s corporate separation rules in that it would endorse FirstEnergy’s unlawful use of customer funds to subsidize its competitive affiliate FES. It violates the Federal Power Act which delicates to the Federal Energy Regulatory Commission (“FERC”) the authority to regulate wholesale energy transactions. The Third and Fourth Circuit Courts have affirmed that “contract for differences” (which is what the Stipulation would approve) is an encroachment of FERC’s regulatory authority and pre-empted by Federal law. The Stipulation would also violate 4928.143(B)(2)(d) in that it approves a non-bypassable generation related charge. Thus, even if approved the Stipulation is unlikely to hold-up in the courts.

**Q. Given the controversial nature of Rider RRS, will approval of the Stipulation create great uncertainty and legal expense for Ohio customers for years to come?**

A. Yes. As I note above, the Stipulation violates many important legal and regulatory principals. One can only look at the *PPL Energy Plus V. Nazarian* and the *PPL Energy Plus v. Soloman* cases to see significant legal battles faced in the Federal Courts when the states of Maryland and New Jersey tried to approve similar schemes- not to mention the uphill battles Rider RRS will certainly face at the Ohio Supreme Court. This litigation will come at a great cost to Ohio customers and cause uncertainty in Ohio’s wholesale and retail electric markets for many years in the future. Thus the Commission should not subject customers to this future uncertainty for a Stipulation that does not even provide a net benefit to customers.

**Q. Will the Stipulation help stabilize retail rates and protect against increasing market prices and volatility over the longer term?**

A. No. In testimony supporting the Stipulation FirstEnergy’s witness Eileen Mikkelson claims that the approval of the so called Economic Stability Program (aka Rider RRS) will “help stabilize retail rates and protect against increasing market prices and volatility over the longer term.”[[3]](#footnote-3) However,this statement directly contradicts what FirstEnergy’s Executive Vice President, Markets and Chief Legal Officer, Leila Vespoli testified in front of the Ohio House of Representatives. Specifically, Ms. Vespoli testified that “measures that restrict customer shopping or subsidize one electric generator over another are throw-backs to monopoly regulation. Such efforts that pick ‘winners’ and ‘losers’ in the energy market would create obstacles to private investment in generation and increase prices for customers.”[[4]](#footnote-4) Ms. Vespoli also stated:

 We’re also concerned about any effort to subsidize certain generating facilities. Much of the rhetoric around these efforts involves a misguided notion of Ohio’s energy security –that our state could experience outages if it doesn’t generate as much energy as it consumes. This notion simply ignores how the electric grid operates, and how competitive markets always secure generation from the lowest-cost sources – no matter where they are located.[[5]](#footnote-5)

**Q. Has FirstEnergy also criticized other states for attempting to enter into the very type of contracts that the Stipulation now seeks to approve?**

A. Yes. In testimony the Ohio House of Representatives Ms. Vespoli explained how entering into regulated power purchase contracts with competitive generation has significantly harmed customers in Pennsylvania and New Jersey. Specifically Ms. Vespoli testified that:

The real problem with subsidized generation is that regulators would be picking the “winners” and “losers” in the energy market. We’ve been down that road before, and the results weren’t pretty. For example, in the past our utilities in Pennsylvania and New Jersey were required to purchase power from Non Utility Generators, with contracts extending up to two or three decades. In our Pennsylvania service area alone, customers have paid $1.5 billion over market prices for this subsidized generation. At a time when Ohio is exploring every opportunity to create jobs and grow our economy, we simply cannot afford similar missteps that would saddle our customers with higher-than-market prices for electricity.[[6]](#footnote-6)

**Q. Does approval of the Stipulation promote reliability in Ohio?**

A. No. In her testimony Ms. Mikkelson claims that approval of the Rider RRS addresses “reliability challenges” faced by Ohio. However, this testimony directly contradicts recent testimony of Ms. Vespoli explaining how subsidizing generation through long term power purchase contracts would discourage the development of new generation. Specifically Ms. Vespoli stated:

FirstEnergy Solutions is currently reviewing a plan to transform an old limestone mine in Norton, Ohio, into a Compressed Air Energy Storage, or CAES, facility. With the volume of nine Empire State Buildings, the site was identified by a leading developer of natural gas storage facilities as the best among more than 70 potential sites in the nation for supporting CAES technology. It would be scalable – from approximately 270 megawatts all the way up to 2,700 megawatts – and, more important, would support the operation of intermittent renewable sources such as wind by compressing air at night and standing ready to serve load on peak. However, it is highly unlikely that we would consider moving forward with this project if the plant would have to compete against subsidized generation in Ohio.[[7]](#footnote-7)

The entire transcript of Ms. Vespoli’s testimony is attached to my testimony as MW Ex. 1.

**Q. Are fear of plant closures valid reasons to approve the Stipulation?**

A. No. The Stipulation cites the claim that that “3,600 MWs of generation will retire by 2016” as justification to approve Rider RRS.[[8]](#footnote-8) However, in previous testimony of Tony Alexander (the former CEO of FirstEnergy) submitted to the Ohio Senate, Mr. Alexander explained that fear of plant closures should not dictate Ohio’s Energy policy. Specifically, Mr. Alexander stated:

 Rather than relying on regulation and government mandates to meet state energy objectives, FirstEnergy believes that the competitive market will deliver better products and prices and drive innovation and efficiency improvements . . . .

This push to change Ohio law should be driven by facts not fear . . .

* Fear about price increases . . . .
* Fear about lack of new generation construction . . . .
* Fear that competitive markets don’t exist for electricity, which is simply not true.[[9]](#footnote-9)

 However, FirstEnergy is now relying on fear to try to convince the Commission that without Rider RRS, generation plants with close, and Ohio will not have enough electricity to meet the needs of customers. The entire transcript of Mr. Alexander’s testimony is attached to my testimony as MW Ex. 2.

**Q. Should the statements made in the Stipulation regarding promoting reliability and price stability be given any credibility given the previous statements made by FirstEnergy?**

A. By approving Rider RRS, the Commission would have FirstEnergy enter into long term contracts that would require FirstEnergy customers to pay above market prices for competitive generation owned by FES. This is the very type of subsidy of competitive generation that FirstEnergy has previously strongly opposed. As is abundantly clear when comparing the Stipulation with FirstEnergy’s previous statements, FirstEnergy does not support subsidies to competitive generation unless those subsidies are provided to generation owned by its affiliate FirstEnergy Solution. In testimony to the Ohio General Assembly FirstEnergy has articulately explained why subsidizing competitive generation is harmful the customers. For these reasons the Commission should listen to the advice of Tony Alexander and Lela Vespoli and reject subsidies to competitive generation by rejecting the Stipulation.

**Q.**  **Does this conclude you supplemental testimony?**

A. Yes, it does. But I reserve the right to supplement my testimony.

**CERTIFICATE OF SERVICE**

 The undersigned hereby certifies that a copy of the foregoing *Supplemental Testimony of Matthew White* was served this the 2nd day of March 2015 via electronic mail upon the following:

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 ***/s/Joseph Oliker***

Counsel for IGS Energy

1. *See, e.g.*, *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, *et al.*, Opinion and Order (Dec. 30, 1993); *Cleveland Electric Ilumin. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26,1985). [↑](#footnote-ref-1)
2. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm’n*, 68 Ohio St.3d 559, 563 (1994). The Court stated, “stipulations are considered merely as recommendations to the commission and, while entitled to substantial weight, they must be supported by the evidence of record to withstand scrutiny under the standard of review provided in R.C. 4903.13. *Id.*  [↑](#footnote-ref-2)
3. Supplemental Testimony of Eileen Mikkelson at 2 (Dec. 22, 2014). [↑](#footnote-ref-3)
4. MW Ex. 1 at 2 (Testimony of Lela Vespoli, *Competitive Markets Work*, House Public Utilities Committee (Oct. 19, 2011)] (emphasis added). [↑](#footnote-ref-4)
5. *Id.* at 4-5 (Emphasis added). [↑](#footnote-ref-5)
6. MW Ex. 1 at 5 (emphasis added). [↑](#footnote-ref-6)
7. *Id.* at 6 (emphasis added). [↑](#footnote-ref-7)
8. Stipulation at 2. [↑](#footnote-ref-8)
9. MW Ex. 2 at 4 (Testimony for Anthony J. Alexander for Senate Bill 221, Ohio Senate (Oct. 4, 2007)]. [↑](#footnote-ref-9)