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FILE

Via Personal Delivery

September 29, 2008

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

In re: Case No. 08-935-EL-SSO

Dear Sir/Madam:

Please find enclosed an original and twenty (20) copies of the DIRECT TESTIMONY OF MARK FRYE in Case No. 08-935-EL-SSO on behalf of the NORTHEAST OHIO PUBLIC ENERGY COUNCIL ("NOPEC") and the NORTHWEST OHIO AGGREGATION COALITION ("NOAC").

Copies have been served on all parties of record in this case. Please place this testimony on file.

Respectfully yours,

Lance Keiffer *per email*
Lance Keiffer, Esq. (EBD)
Lucas County Asst. Prosecutor

Counsel for NOAC

Respectfully yours,

E. Brett Breitschwerdt
Glenn S. Krassen, Esq.
E. Brett Breitschwerdt, Esq.
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Cc: Parties of Record
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Ronda Hartman Fergus
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Cheryl Roberto
Gregory Price, Hearing Examiner
Christine Pirik, Hearing Examiner
Steve Lesser, Esq.

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

IN THE MATTER OF THE APPLICATION)	CASE NO. 08-935-EL-SSO
OF OHIO EDISON COMPANY, THE)	
CLEVELAND ELECTRIC ILLUMINATING)	
COMPANY AND THE TOLEDO EDISON)	
COMPANY FOR AUTHORITY TO)	
ESTABLISH A STANDARD SERVICE OFFER)	
PURSUANT TO SECTION 4929.143,)	
REVISED CODE, IN THE FORM OF AN)	
ELECTRIC SECURITY PLAN.)	

DIRECT TESTIMONY

OF

**MARK FRYE,
PRESIDENT OF PALMER ENERGY**

**ON BEHALF OF
THE NORTHWEST OHIO AGGREGATION COALITION
(NOAC)
AND
THE NORTHEAST OHIO PUBLIC ENERGY COUNCIL
(NOPEC)**

September 29, 2008

1 **DIRECT TESTIMONY OF MARK FRYE**

2

3 **I. INTRODUCTION AND QUALIFICATIONS**

4 **Q. Please state your name and business address.**

5 A. My name is Mark Frye. My business address is 241 N. Superior Street,
6 Toledo, Ohio 43624.

7

8 **Q. What is your occupation?**

9 A. I am an energy consultant and the President of Palmer Energy Company
10 in Toledo, Ohio.

11

12 **Q. Please describe your educational background and work experience.**

13 A. I have worked in the energy field for 22 years and for clients in 18 states. I
14 earned a Bachelors of Science degree in Energy Technology from
15 Pennsylvania State University's Capitol College. I currently consult on
16 energy procurement and utilization matters for a number of industrial,
17 commercial, educational, institutional and governmental clients.

18

19 **Q. On whose behalf are you testifying?**

20 A. I am testifying on behalf of Ohio's two large scale governmental
21 aggregations: the Northwest Ohio Aggregation Coalition ("NOAC") and
22 the Northeast Ohio Public Energy Council ("NOPEC"). Both NOAC and
23 NOPEC are intervenors in this case.

24

25 NOAC is comprised of the communities of Maumee, Northwood, Oregon,
26 Perrysburg, Sylvania, Toledo, Holland, Lake Township in Wood County
27 and the Board of County Commissioners of Lucas County (on behalf of
28 the Unincorporated Townships of Lucas County), and has served in the
29 past or is currently serving approximately 150,000 residential and small

1 commercial electric customers on the Toledo Edison system within Lucas
2 and northern Wood Counties.

3
4 NOPEC is a regional council of governments established under Chapter
5 167 of the Revised Code and comprised of 126 communities in the nine
6 northeast Ohio counties of Ashtabula, Lake, Geauga, Cuyahoga, Summit,
7 Medina, Trumbull and Portage Counties. NOPEC has served or is serving
8 approximately 450,000 electric customers in those counties in the service
9 territories of Ohio Edison and the Cleveland Electric Illuminating
10 Company. NOPEC currently has approximately 600,000 eligible electric
11 customers on the Ohio Edison and the Cleveland Electric Illuminating
12 Company systems.

13
14 **Q. Have you ever testified before the Public Utilities Commission of Ohio?**

15 **A.** Yes. I have previously submitted direct testimony in several cases before
16 the Public Utilities Commission of Ohio ("Commission" or "PUCO"),
17 including FirstEnergy's Rate Stabilization Plan ("RSP") Application [Case
18 No.03-2144-EL-ATA], and American Electric Power's IGCC Application
19 [Case No.05-376-EL-ATA]. I also have provided technical support to
20 NOAC and NOPEC in other proceedings before the PUCO, including
21 their successful opposition to FirstEnergy's Application to reduce
22 Generation Shopping Credits [Case No.03-1461-EL-UNC].

23
24 **II. OVERVIEW**

25 **Q. What is the purpose of your testimony in this case?**

26 **A.** My testimony addresses certain aspects of the proposed Electric Security
27 Plan ("ESP") filed by Ohio Edison, The Cleveland Electric Illuminating
28 Company and The Toledo Edison Company (collectively, "the

1 Companies" or "FirstEnergy") which threaten the continued existence of
2 large scale governmental aggregation in Ohio.

3
4 **Q. In Mr. Blank's testimony [page 22, lines 17-18] he states that "the Plan's**
5 **non-avoidable generation charges is (sic.) beneficial to customers served**
6 **by large-scale aggregation groups, just as it is beneficial for all**
7 **customers." Do you see any benefits in FirstEnergy's proposed Electric**
8 **Security Plan for customers served by large scale governmental**
9 **aggregations?**

10 **A. No, I do not. FirstEnergy's Plan creates barriers to competition, is anti-**
11 **competitive, and creates subsidies that would flow from a customer who**
12 **elects to participate in a large scale governmental aggregation to other**
13 **customers who remain with the Companies' SSO and the Companies**
14 **themselves. If approved as filed, the Plan will make large scale**
15 **governmental aggregation uneconomic and likely destroy NOAC's and**
16 **NOPEC's large scale electric aggregation programs. The Plan's problems**
17 **are found in three primary areas.**

18
19 **Q. What do you see as the first primary problem in FirstEnergy's Plan, as it**
20 **relates to large scale governmental aggregation?**

21 **A. First, the Plan provides a barrier to competition by deferring a portion of a**
22 **customer's generation charges through the Generation Phase-In Rider if**
23 **they remain with the Companies' SSO, while collecting it from them in the**
24 **future with interest. Consumers who elect to participate in a large scale**
25 **governmental aggregation are provided no deferral. Worse still, if a**
26 **participating large scale governmental aggregation returns a consumer to**
27 **the SSO after the ESP, that consumer would pay for a generation deferral**
28 **that provided them no benefit. This is a patently unfair subsidy.**

1 Q. What do you see as the second primary problem in FirstEnergy's Plan,
2 as it relates to large scale governmental aggregation?

3 A. Second, the Plan would penalize consumers electing to participate in a
4 governmental aggregation through the application of what FirstEnergy
5 proposes to be a non-bypassable "Minimum Default Service" ("MDS")
6 charge of 1 cent per kWh for costs that do not yet exist, may never exist,
7 and have not been justified or even estimated in the Plan. This is clearly
8 an anti-competitive charge that will ensure large scale governmental
9 aggregation cannot compete.

10
11 Q. What do you see as the third primary problem in FirstEnergy's Plan, as
12 it relates to large scale governmental aggregation?

13 A. Third, Rider NDU provides guaranteed generation receivables for the
14 Companies' affiliated proposed generation supplier, FirstEnergy Solutions
15 ("FES"), without providing a corresponding benefit to any large scale
16 governmental aggregation generation supplier. This clearly provides a
17 subsidy from customers who elect to participate in a large scale
18 governmental aggregation to other customers that do not.

19
20 Q. Does your testimony propose corrections to these three primary
21 problems in FirstEnergy's Plan to allow the continuation of large scale
22 governmental aggregation?

23 A. Yes. Not only does my testimony demonstrate how these issues would
24 eliminate large scale governmental aggregation, it also proposes specific
25 steps or modifications the Commission could order to correct them and
26 affirmatively encourage and promote large scale governmental
27 aggregation as required in Amended Substitute S.B. 221.

1 **III. GENERATION DEFERRAL**

2 **Q. The Companies estimate that the Generation Phase-In (GPI) Rider will**
3 **provide a \$1.3 billion deferral. Do you take a position on the**
4 **Companies offering this deferral?**

5 **A.** No, I do not. I only point out that a deferral simply avoids a cost today in
6 favor of repaying it in the future with interest. The Commission will
7 determine if this deferral accomplishes its objectives. My concern is the
8 method by which the Companies apply this deferral creates a barrier to
9 competition and a subsidy from one group of consumers to another.

10
11 **Q. How does Rider GPI create a barrier to competition?**

12 **A.** Rider GPI applies only to consumers who accept Rider GEN from the
13 Companies. To secure savings for a consumer who elects to participate, a
14 large scale governmental aggregation must be able to purchase generation
15 at a price lower than Rider GEN less any GPI credit. Since GPI represents
16 approximately a 10% discount on Rider GEN, this is a significant barrier
17 to competition.

18
19 **Q. When the Companies begin to recover the deferral in 2011, will**
20 **consumers participating in a governmental aggregation get to avoid this**
21 **charge?**

22 **A.** Not necessarily. The Deferred Generation Cost Recovery (DGC) Rider
23 located in the tariffs as part of the Companies Plan states: "[c]ustomers
24 that are part of a Governmental Aggregation Group shall be responsible
25 only for the portion of the DGC charge that was proportionate to the
26 benefit that the electric load centers within the jurisdiction of the
27 Governmental Aggregation as a group receive. In such event, the utility
28 will file a proposed method for determining the proportion of the
29 applicable DGC charge." [Toledo Edison proposed tariff schedule 2011,

1 Volume 2c, Schedule 3c, page 24 of 25]. My reading of Amended
2 Substitute S.B.221 as it relates to this issue found in Section 4928.20(I) is
3 that large scale governmental aggregation customers benefit from their
4 participation by only paying the portion of the DGC that represents the
5 benefits the large scale governmental aggregation participants received.
6 The Companies' proposed provision is open to interpretation by the
7 Companies and a ruling by the Commission. So while it should relieve
8 consumers participating in a governmental aggregation since the
9 inception of the ESP from paying any DGC, it does not say that. This
10 uncertainty creates a disincentive to rely upon this potential future
11 avoidance to justify the operation of a large scale governmental
12 aggregation.

13
14 **Q. Could this provision potentially create tracking issues?**

15 **A.** Yes. Although I have stated my interpretation of the language of
16 Amended Substitute S.B.221, depending upon how the Companies intend
17 to interpret the proposed tariff language, this could create substantial
18 tracking issues and disagreement between the large scale governmental
19 aggregator and the Companies. For example, would the tracking be done
20 by customer or by group? What if the large scale governmental
21 aggregation group is smaller in 2011 than in 2009 and 2010? Does it get an
22 added discount? What if the large scale governmental aggregation
23 group's load is larger in 2011 than in 2009 and 2010? Do participants
24 avoid the entire DGC? Do consumers participating since the beginning
25 get charged from the customers who were added later? What about
26 consumers who are participating in the governmental aggregation and
27 new to the system in 2011? Do they pay the proportionate benefit (e.g.,
28 the DGC), even though they received no actual benefit? If the plain
29 meaning of the language is not applied, there could be numerous ways to

1 look at the proportionate benefit. Once again, this uncertainty is an
2 impediment to large scale governmental aggregation, especially in light of
3 the fact that the Companies' Plan lacks any detail how this statutory
4 requirement will be implemented.

5
6 **Q. Assuming these tracking mechanisms could be worked out, wouldn't**
7 **the proportionate benefit help governmental aggregation participants?**

8 **A.** Presuming a large scale governmental aggregation could actually secure
9 power supplies at a price low enough to offer savings to its consumers
10 and it continued to operate after the onset of the Companies DGC
11 collections, then yes, the participants would benefit. However, the initial
12 barrier constructed by Rider GPI makes it very unlikely that a
13 governmental aggregation could secure power supplies at a low enough
14 price to provide the opportunity for DGC avoidance.

15
16 **Q. You also mentioned that Rider GPI will create subsidies. How would**
17 **such a subsidy occur?**

18 **A.** There are at least a couple of ways I can foresee subsidies occurring from
19 one customer or group of customers to another.

20
21 First, if a governmental aggregation existed during the ESP and then
22 ceased serving customers after 2011, any customers who participated in
23 the governmental aggregation would not garner the benefits of the
24 governmental aggregation proportionate exemption in Rider DGC.

25
26 Second, any customer who obtains third party power but does not
27 participate in a large scale governmental aggregation during 2009 and
28 2010 would not benefit from Rider GPI. Yet, during 2011, these same
29 customers would pay Rider DGC despite the fact they received no
30 benefits.

1 **Q. What solution do you propose to minimize these barriers and subsidies?**

2 A. The Commission should order the Companies to create a "Governmental
3 Aggregation Generation Credit" ("GAGC") available to customers served
4 by a large scale governmental aggregator that is equivalent to the GPI.
5 Consumers who continue to be served by the Companies' Rider GEN
6 would receive the GPI. Consumers who elect to participate with a large
7 scale governmental aggregation would receive an equivalent credit called
8 the GAGC. The generation costs deferred through both the GPI and the
9 GAGC would be included in the Companies' proposed DGC Rider
10 beginning in 2011. Establishing the GAGC at a level equal to the GPI
11 enhances large scale governmental aggregators' opportunity to compete
12 by lowering one barrier to competition.

13
14 **Q. Can you provide an example of how this GAGC would work?**

15 A. Yes. For example, if a Rider GPI credit of \$0.0075/kWh were approved
16 for Plan year 2009, by applying an identical credit through the GAGC on a
17 large scale governmental aggregation participant's invoice, a level playing
18 field in relation to this deferral would be assured. The total value of the
19 credits provided to customers receiving the GAGC would be deferred,
20 with carrying charges, and this amount (that is, the benefit received by the
21 aggregation group participants) then would be subject to recovery from
22 customers beginning in 2011.

23
24 **Q. Would participants in a large scale governmental aggregation benefit
25 from the GAGC and also benefit from DGC proportionate benefits
26 clause included in the Companies Plan?**

27 A. No. A large scale governmental aggregation participant only avoids the
28 DGC in proportion to benefits it did not receive. Since the GAGC would
29 be equivalent to GPI, consumers participating in a large scale

1 governmental aggregation would benefit 100% and pay the entire DGC.
2 The creation of the GAGC also eliminates the Companies' tracking
3 challenges, as well as potential subsidies between large scale
4 governmental aggregation participants and SSO customers.
5

6 **IV. MINIMUM DEFAULT SERVICE CHARGE**

7 **Q. Mr. Blank's testimony mentioned non-avoidable generation charges.**
8 **What are the Plan's non-avoidable or non-bypassable generation**
9 **charges?**

10 **A. A large-scale governmental aggregation must offer third party generation**
11 **supply to its participants through a Certified Retail Electric Supplier**
12 **("CRES"). In Amended Substitute S.B.221 the Ohio Legislature**
13 **determined there are a number of non-avoidable or non-bypassable**
14 **charges it considers appropriate for socialization that may include**
15 **generation related charges such as the demand side management and**
16 **energy efficiency rider, delta revenue recovery rider, and the PIPP**
17 **uncollectible rider. Two other non-avoidable or non-bypassable charges**
18 **for large scale governmental aggregation customers that are proposed in**
19 **the Companies' Application are the "Minimum Default Service" charge**
20 **rider ("MDS") and the "Non-Distribution Uncollectible" rider ("NDU").**

21
22 **Q. As proposed in the Companies' Plan, the Minimum Default Service**
23 **charge is a non-avoidable and non-bypassable generation charge.**
24 **Please describe your general understanding and opinion of this charge**
25 **as proposed by the Companies.**

26 **A. The Companies' Plan justifies the Minimum Default Service charge as**
27 **"designed to compensate the Companies for the costs and risks associated**
28 **with committing to obtain adequate generation resources to supply the**
29 **entire retail load of customers in their service territories, a recognition of**

1 the risk and cost of customers switching to retail generation service
2 provided by alternative generation suppliers at any time and in any
3 amounts, consistent with the terms of any then existing ESP or applicable
4 Commission Rules.” [Application page 14, paragraph h]. The Minimum
5 Default Service charge is generally supposed to “recover, among other
6 things, generation related administrative costs and hedging costs
7 associated with the Companies’ obligation to serve the entire load of their
8 retail customers.” [Warvell Testimony, page 10, lines 19 – 21].

9
10 In reviewing the Companies’ Plan and the Companies’ responses to
11 NOAC/NOPEC discovery requests, I cannot find any schedules or
12 worksheets indicating how the Companies estimated or projected the
13 minimum default service charge administrative or hedging costs. Nor
14 does the Companies’ Plan include any worksheet or schedule estimating
15 the revenue the Company expects the Minimum Default Service charge to
16 create. However, what is clear from Mr. Warvell’s testimony [page 11,
17 lines 16 – 23] is that if the Companies’ Plan is approved, all consumers
18 would pay a 1 cent/kilowatt-hour (kWh) Minimum Default Service
19 charge. A consumer accepting generation service from the Companies has
20 this charge imbedded in Rider GEN. A consumer securing supplies from
21 a CRES has the Minimum Default Service charge applied through Rider
22 MDS as a separate non-bypassable charge.

23
24 **Q. Would the Minimum Default Service Charge have an effect on large**
25 **scale governmental aggregation?**

26 **A.** Yes, it would have a serious and materially adverse effect. Any consumer
27 who chooses to participate in a large scale governmental aggregation is
28 directly subsidizing the Companies. Mr. Blank’s testimony states as much
29 when he says “The non-avoidable generation provisions, such as the
30 default service charge, help provide the risk mitigation arrangements that

are essential for the Companies to have the financial capacity to propose the Plan in its present form for the benefit of all customers. Without such arrangements to provide *financial resources* [emphasis added] and mitigate the risk associated with the Plan, the Companies could not make available the pricing and other beneficial provisions of the Plan,..." [Blank Testimony, page 22, lines 19 - 24]. Providing financial resources is another way of saying this is a charge on consumers who choose third party generation supply without any corresponding or, at least, comparable benefits. A non-bypassable minimum default service charge would greatly impede, and likely destroy, large scale governmental aggregation. It is a direct barrier to competitive markets without any proven justification of cost or need.

Q. You stated that the Companies do not calculate or estimate the revenue they expect to collect from the Minimum Default Service charge in their Plan. Can this revenue be estimated?

A. Yes. Since the 1 cent/kWh charge is non-bypassable and applied to all consumers, the revenue would simply be the Companies' total estimated kWh distributed multiplied by the 1 cent/kWh for each year of the Plan. Page 1 of attachment 1 from Mr. Blank's testimony shows the sales in MWH for the years 2009 through 2011. The projected revenue is included in the table below.

Year	MWH Sales (Blank Attachment 1)	kWh Sales (MWH * 1000)	MDS charge (\$/kWh)	Est. Revenue (millions)
2009	57,202,000	57,202,000,000	\$0.01	\$572.02
2010	57,705,000	57,705,000,000	\$0.01	\$577.05
2011	58,211,000	58,211,000,000	\$0.01	\$582.11
Total	173,118,000	173,118,000,000	\$0.01	\$1,731.18

1 Q. The Minimum Default Service charge revenue of \$1.7 billion is a large
2 sum of money; yet you also quoted the Companies that the Minimum
3 Default Service charge was supposed to "recover, among other things,
4 generation related administrative costs and hedging costs associated
5 with the Companies' obligation to serve the entire load of their retail
6 customers." [Warvell Testimony, page 10, lines 19 - 21]. Were there
7 details provided in the Companies' Plan regarding these hedges or other
8 costs?

9 A. No. Neither the Plan nor the Companies' discovery responses provide
10 any details on how the Companies arrived at the Minimum Default
11 Service charge price. However, Mr. Warvell does elaborate on two risks
12 perceived by the Companies related to Minimum Default Service charge.

13
14 Q. What is the first risk identified by Mr. Warvell relating to the Minimum
15 Default Service charge?

16 A. First, he discusses the Companies' responsibility to secure generation
17 supply for its entire retail load, creating the risk of procuring generation
18 and then having "more customers shop than anticipated." [Warvell
19 Testimony, page 11, line 6]. Mr. Warvell states there are costs, but no costs
20 have been shown by the Companies. The Companies have not provided
21 any evidence that they have secured hedges to serve any, let alone, all
22 retail customers' load. They have not provided any evidence that they
23 have purchased any calls or puts. There appears to be no evidence that
24 the Companies have even priced such options to ameliorate the perceived
25 risk of serving more or less customers than initially anticipated.

26
27 Nonetheless, the Companies' Plan obligates consumers to pay \$1.7 billion
28 in Minimum Default Service charges as though the Companies have
29 already contracted for their ESP supply. In fact, the ESP has not been
30 approved and the Companies are still operating under the RSP. My

1 review of the Plan shows no information that the Companies have, in fact,
2 already contracted with FES for 100% of its retail load.

3
4 If no agreement has been executed between the Companies and FES, no
5 financial burden would be incurred by the Companies if a large scale
6 governmental aggregation notified the Companies that it had a number of
7 customers participating, provided the participants do not materially and
8 negatively impact the load shape. Load shape and its impact on pricing
9 are described in Mr. Jones testimony. [Jones Testimony, Section III.A.3,
10 pages 8 - 10]. In fact, the load shape ratio of residential and commercial
11 consumers is higher (e.g. worse) than the Companies' overall aggregate
12 load shape. [Jones Testimony, Exhibit 3]. Since a large scale governmental
13 aggregation will be comprised of non-mercantile consumers (e.g.
14 residential and small commercial), the migration of any large scale
15 governmental aggregation to a third party generation supplier would, in
16 fact, enhance the Companies' load shape ratio by withdrawing consumers
17 from the Companies SSO supply with a worse load shape. This should
18 provide the Companies an opportunity to secure lower costs from FES for
19 the remaining consumers, all other things being relatively equal.

20
21 In the event the Companies have executed an agreement with FES, there
22 still could be no financial burden if the Companies were notified by a
23 large scale governmental aggregation of a specific number of consumers'
24 intent to take third party supply before the ESP went into effect.

25 Amended Substitute S.B.221 clearly requires the ESP to be more favorable
26 in the aggregate than a Market Rate Offer ("MRO") pricing structure.
27 [ORC 4928.143(C)(1)]. Until the Commission rules, the ESP's viability
28 depends upon its favorability as against the MRO. While I express no
29 opinion regarding the favorability of the ESP compared to the MRO, the

1 Companies clearly state that "the Electric Security Plan is more favorable
2 than the expected results of the Companies' section 4928.142 Market Rate
3 Option filing." [Blank Testimony, page 5, lines 15 - 16]. Since a large
4 governmental aggregation is comprised of customers with an inferior load
5 shape than the aggregate, it is likely to see higher price offers than any
6 MRO. Thus, the Companies' liability of "returning" power to FES cannot
7 create any financial harm since FES should be able to resell it at a higher
8 price.

9
10 **Q. What is the second risk identified by Mr. Warvell relating to the**
11 **Minimum Default Service charge?**

12 **A.** Mr. Warvell provides an example where "the Companies are left with
13 higher priced generation for a load they no longer serve and then must
14 sell that generation at a loss in an environment where market prices are
15 falling." [Warvell Testimony, page 11, lines 9 - 11]. Once again, the
16 Companies have provided no evidence of any loss, any statistical
17 probability of this occurrence, or a true up mechanism if this theoretical
18 loss does not occur. However, the application of Rider MDS as a non-
19 bypassable charge does create a substantial and certain impediment to the
20 success of large scale governmental aggregation without any evidence it is
21 necessary.

22
23 **Q. If the Minimum Default Service charge was bypassable, under what**
24 **scenario could a situation such as described by Mr. Warvell actually**
25 **occur?**

26 **A.** A CRES supplier would have to sell generation below 6.75 cents/kWh in
27 2009 to overcome the competitive barriers of the Generation Phase-In
28 Rider of approximately 0.75 cents/kWh. [Rider GEN 7.5 cents, less 0.75
29 cents for Gen. Phase In]. Mr. Blank's table calculates the Companies'
30 experts average 2009 generation price was \$82.57 per MWh or, by my

1 calculation, 8.257 cents/kWh. [Blank Testimony, page 18, lines 15-16].
2 This average generation price is 22% above the price at which a large scale
3 governmental aggregation would begin to create savings for a customer if
4 Rider MDS were bypassable. To sell to a customer below 6.75 cents/kWh,
5 a CRES would also have to overcome the loss of the economy of scale
6 associated with the purchase of a smaller load, the risk of customer
7 default when the Companies have provided its supplier with no risk of
8 default, its administrative and marketing costs to enter the market, and,
9 finally, provide for its profit margin. In my opinion these anti-competitive
10 charges and burdens are still too great for a CRES to enter the market. If
11 the Commission creates the GAGC as discussed earlier in my testimony,
12 the 22% would fall to 10%, but all other factors would still apply.

13
14 **Q. Still, in the event that a large scale governmental aggregation could**
15 **overcome these barriers and subsidies and initiate service for a**
16 **customer during the term of the ESP, couldn't there be some theoretical**
17 **loss?**

18 **A. Yes. Theoretically under this circumstance, the Companies could have a**
19 **loss. However, such a loss should not be collectible by the Companies**
20 **unless a number of other conditions are met.**

21
22 First, the Companies should be required to show that these customer(s)
23 choosing third party supply create a material impact on the total
24 purchases from FES. Any power supply agreement of this magnitude
25 should include variations for weather, load growth, or load reductions.
26 Customers are always starting or shutting down operations. Natural
27 consumption variations will occur. Even thousands of residential and
28 small commercial customers initiating participation in a governmental
29 aggregation would create insignificant load variation when compared to a
30 warmer or cooler summer or winter.

1
2 Second, the Companies should be required to account for the consumer(s)
3 load shape when determining any loss. If a customer has an inferior load
4 shape, it may not have as significant a loss when compared to the
5 aggregate load shape.

6
7 Third, the customer should not be required to pay the Companies unless
8 the Companies have either accepted that risk in its agreement with FES or
9 is required to pay FES for that loss.

10
11 Fourth, the mechanism or calculation of the impact should not be
12 arbitrary. It should be a straight forward calculation that is quickly and
13 easily obtainable if there is going to be an obligation to repay any loss to
14 the Companies.

15
16 Fifth, the Companies should receive no benefit if the retail customer(s) is
17 switching to FES. The projected MDS liability should not exceed the
18 difference between the Rider GEN cost and the generation portion of the
19 FES sales price to the customer multiplied by the projected customer
20 consumption. Such a prohibition eliminates the potential of FirstEnergy
21 Corporation as a whole profiting from FES selling directly to retail
22 consumers while disrupting its wholesale supplies flowing to the
23 Companies.

24
25 **Q. The Companies' Plan also indicates the MDS charge would be used to**
26 **recover generation related administrative costs. Would the Companies**
27 **have administrative costs?**

28 **A.** The Companies will have administrative costs to secure supplies for
29 Rider GEN consumers. A CRES for a large scale governmental
30 aggregation, likewise, will have similar costs. I have seen no evidence the
31 Companies will encounter any added administrative cost in the event

1 more or less consumers choose to participate in a large scale governmental
2 aggregation rather than accept supplies through Rider GEN before or
3 during the ESP. If the Companies were to succeed in making Rider MDS
4 non-bypassable, any consumer participating in a large scale governmental
5 aggregation would pay generation related administrative costs twice --
6 once to its CRES and a second time through Rider MDS to the Companies.

7
8 **Q. Are there any details in the Plan that support the Companies' claim that**
9 **large scale governmental aggregation consumers would receive benefits**
10 **from the Minimum Default Service charge?**

11 **A.** No. I cannot find any benefits associated with or from the Minimum
12 Default Service charge to consumers served by a large scale governmental
13 aggregation. The Minimum Default Service charge would greatly impede,
14 and likely destroy, large scale governmental aggregation. It is anti-
15 competitive and without any justification of cost or need.

16
17 **Q. What do you propose for the Minimum Default Service charge?**

18 **A.** Rider MDS should be eliminated. If the Companies want to take the
19 position that Rider GEN includes a Minimum Default Service charge, that
20 is fine, but any customer served by a large scale governmental
21 aggregation's third party supplier should not be subject to any minimum
22 default service charge.

23
24 **Q. In the event the Commission chooses not to eliminate the MDS or make**
25 **it bypassable, what modifications could the Commission order that**
26 **would reduce its burden to consumers who choose to participate in a**
27 **large scale governmental aggregation?**

28 **A.** In this event, there are a number of different modifications the
29 Commission should order to reduce the burden of Minimum Default
30 Service charge on third party supplies.

1
2 The Commission should create a window of opportunity of 150 days
3 between its final order approving the ESP and initiating any potential
4 liability under Rider MDS. If a large scale governmental aggregator
5 provides written notice to the Companies that it will supply its customers
6 with third party generation supply and commences enrollment of such
7 customers within 150 days of the PUCO's final order approving the ESP,
8 such large scale governmental aggregator's customers would not be
9 subject to the Rider MDS. This notice period would help prevent the
10 Companies from having to sell power back to FES at a loss, while
11 providing a large scale governmental aggregation the opportunity to
12 secure its participants supplies in a reasonable fashion. It also would
13 dramatically reduce the hedging liability, if any exists, the Companies
14 would otherwise possibly encounter.

15
16 To accommodate for the minor fluctuations experienced by governmental
17 aggregations as customers move and refresh mailings occur, the
18 Commission should also permit large scale governmental aggregators to
19 establish a customer supply tolerance of ten percent (+/- ten percent) that
20 would be based upon the consumption of the initial number of customers
21 participating in the aggregation.
22

23 V. NON-DISTRIBUTION UNCOLLECTIBLE RIDER

24 Q. What is your understanding of the Companies' Plan regarding Rider
25 NDU?

26 A. According to Mr. Hussing's testimony, the rules of the Commission
27 "require substantial notice periods and seasonal shutoff moratoria."
28 [Hussing Testimony, page 12, line 18]. These requirements force

1 FirstEnergy to incur costs for generation services that are, ultimately, not
2 recoverable from the individual who consumed the power.

3
4 **Q. How is FirstEnergy proposing to calculate and ultimately collect this**
5 **rider?**

6 A. The level of the NDU rider is estimated by Mr. Hussing on Schedule 5f.
7 More generally, the Companies propose to charge a unit cost per kWh that
8 would be non-bypassable for consumers choosing to participate in a large
9 scale governmental aggregation.

10
11 **Q. What justification does FirstEnergy provide to make a customer**
12 **securing third party supplies also pay Rider NDU?**

13 A. "The Companies' uncollectible costs, in contrast, are the result of
14 implementation of state policy. In many ways, the Companies'
15 uncollectible costs are very similar to PIPP costs, which are allocated to all
16 customers. Treating the Companies' uncollectible costs in the same way,
17 full recovery, and recovery from all customers as an unavoidable rider is
18 the fairest way to deal with this implementation of state policy." [Hussing
19 Testimony, page 13, lines 9-14].

20
21 **Q. What issues are created by making the NDU rider non-byassable?**

22 A. A non-bypassable Rider NDU creates an unfair competitive subsidy for
23 the Companies. Since, to the best of my knowledge, the Companies are
24 not proposing to buy CRES receivables when it bills through the
25 Companies, that supplier must include uncollectible risk and cost in its
26 prices. In fact, Mr. Hussing recognizes this in his testimony when he
27 states "CRES suppliers can establish their own credit rules to minimize
28 uncollectible accounts." [Hussing Testimony, page 13, lines 5-6]. Later in
29 his testimony Mr. Hussing testifies that "[t]he result is that as a whole,
30 CRES suppliers have a much better opportunity to manage their costs."

1 [Hussing Testimony, page 13, lines 7-9]. A CRES supplier may create
2 rules that minimize uncollectible accounts, but it does not eliminate the
3 risks or costs of default. Thus, any consumer electing to participate in a
4 large scale governmental aggregation would be paying twice for
5 uncollectible risks and costs.

6
7 **Q. What solution do you propose to eliminate the subsidy?**

8 **A.** The Commission should eliminate the subsidy by requiring the
9 Companies to purchase 100% of the receivables from any CRES billing
10 through the Companies. This would align the risks of generation supply
11 regardless of a consumers' source of power supplies.

12
13 **Q. In Mr. Blank's testimony, he stated that the proposed non-avoidable or**
14 **non-bypassable charges benefit all consumers. In the absence of the**
15 **Commission ordering the Companies to purchase CRES receivables, do**
16 **you see any benefit derived from Rider NDU for consumers served by a**
17 **large scale governmental aggregation?**

18 **A.** No. In the absence of a modification requiring FirstEnergy to purchase
19 100% of the receivables from any CRES supplying power to large scale
20 governmental aggregation customers billed through the Companies, the
21 Rider NDU offers no benefits to a consumer served by a large scale
22 governmental aggregation and it should, therefore, be bypassable.

23
24 **VI. FPL LETTER OF INTENT**

25 **Q. Recently, NOPEC announced that it had signed a Letter of Intent**
26 **("LOI") with FPL Energy Power Marketing ("FPL"). Are you familiar**
27 **with the LOI?**

28 **A.** Yes. I reviewed the LOI prior to execution by NOPEC.

1 **Q. Could you generally describe the LOI?**

2 A. The LOI provides for FPL Energy Power Marketing to sell power supplies
3 to NOPEC's participating consumers directly as a CRES at prices that are
4 indicatively lower than the FirstEnergy ESP proposed base generation
5 charges and estimated capacity costs adjustment rider subject to a few
6 conditions precedent.

7
8 **Q. What are the two key conditions precedent in the LOI to proceed with a**
9 **definitive full requirements power supply agreement?**

10 A. The two key conditions are that any PUCO order in this case provides
11 NOPEC consumers the opportunity to receive the full amount of the
12 generation phase-in credit rider and that the MDS is fully bypassable by
13 large scale governmental aggregation customers.

14
15 **Q. Are there other conditions in the LOI?**

16 A. Yes. There are a number of other conditions in the LOI, but the three
17 others that are most significant are that FPL must be certified by the
18 PUCO as a CRES, must be able to obtain supply and capacity sufficient to
19 serve NOPEC's expected customer requirements, and the price for these
20 supplies do not increase during the interim period such that the FPL
21 pricing structure no longer provides NOPEC customers savings.

22
23 **Q. If these conditions are met, what level of savings could NOPEC**
24 **participating customers expect from FPL supply?**

25 A. There is no way to determine actual savings until the execution of a
26 definite supply agreement. There are NOPEC customers moving in and
27 out of the NOPEC communities and we do not know the actual cost
28 savings that would be available. However, the LOI specifically states that
29 NOPEC strongly prefers savings in excess of 5%. A 5% savings off the
30 Companies' proposed ESP Rider GEN multiplied by the consumption

1 represented by NOPEC's potential 600,000+ households and small
2 businesses would create savings in excess of \$30 million annually.

3

4

VII. CONCLUSION

5

6 Q. Does this conclude your testimony?

7 A. Yes.