

FILE

OCC EXHIBIT NO. _____

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**


In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company and The Toledo)
Edison Company for Authority to) Case No. 08-935-EL-SSO
Establish a Standard Service offer)
Pursuant to Section 4928.143, Revised)
Code, in the Form of an Electric Security)
Plan)

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric) Case No. 09-21-EL-ATA
Illuminating Company and The Toledo) Case No. 09-22-EL-AEM
Edison Company for Approval of Rider) Case No. 09-23-EL-AAM
FUEL and Related Accounting Authority)

**PUBLIC VERSION
DIRECT TESTIMONY
of
STACIA J. HARPER**

**ON BEHALF OF THE
OFFICE OF THE OHIO CONSUMERS' COUNSEL
10 West Broad St., Suite 1800
Columbus, OH 43215**

February 23, 2009

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ATTACHMENTS:

Attachment SJH-1	Case No. 08-935-EL-SSO, Brief of Ohio Energy Group (October 31, 2008) (text only) and Direct Testimony of OEG Witness Stephen Baron (September 2008).
Attachment SJH-2	Case No. 08-935-EL-SSO, Brief of the Office of the Ohio Consumers' Counsel (October 31, 2008).
Attachment SJH-3	Confidential
Attachment SJH-4	Confidential
Attachment SJH-5	Confidential
Attachment SJH-6	Forward Retail Price
Attachment SJH-7	Cinergy First Energy Location Adjustment Adder
Attachment SJH-8	Loadshape Adjustment Factor
Attachment SJH-9	Forward Market Results

1 **I. INTRODUCTION**

2 ***Q1. PLEASE STATE YOUR NAME, ADDRESS AND POSITION.***

3 ***A1.*** My name is Stacia Harper. My business address is 10 West Broad Street, Suite
4 1800, Columbus, Ohio, 43215-3485. I am employed by the Office of the Ohio
5 Consumers' Counsel ("OCC") as a Senior Energy Policy Advisor.

6
7 ***Q2. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND***
8 ***PROFESSIONAL EXPERIENCE.***

9 ***A2.*** I have a Bachelor of Arts degree in Political Science and Economics from West
10 Virginia University and a Master of Science degree in Resource and Applied
11 Economics, with a focus on Energy Economics from the University of Alaska
12 Fairbanks. I have also completed all required coursework towards a Ph.D. in
13 Environmental and Resource Economics at West Virginia University. I have been
14 employed in the energy industry since 1998, first with the University of Alaska
15 Fairbanks (Graduate Resource Assistant, 1998-2000), then Science Applications
16 International Corporation ("SAIC") and the U.S. Department of Energy National
17 Energy Technology Center ("DOE / NETL") as an Energy Economist from 2001
18 to 2004. From 2004 to 2006, I was employed by American Electric Power
19 ("AEP") as an Associate in Commercial Operations. Before joining the OCC, I
20 was employed by Direct Energy as a Senior Analyst from 2006 to 2008.

**Q3. PLEASE DESCRIBE YOUR EXPERIENCE DIRECTLY RELATED TO
POWER AND ENERGY MARKETS.**

A3. I have been involved with many aspects of power market operations and energy market analysis since 2001. While at the SAIC, a subcontractor to the DOE/NETL, I provided direct policy and economic analysis support to the Strategic Center for Natural Gas ("SCNG") and the Coal and Environmental Systems programs at DOE/NETL. My areas of specialization included valuation of environmental benefits from new technology system implementation in coal plants, demand and supply estimation for fossil fuel based energy, as well as price forecast for production and delivered product. Many of my responsibilities involved reviewing existing energy models and working with the Energy Information Administration (EIA) on the National Energy Modeling System (NEMS) to assist in reviewing and recommended forecast methodology used in determining forecasted demand, supply, and energy prices for coal, natural gas, and electric power. While at AEP, my position as an Associate was a Rotational Program created to gain in-depth exposure to various activities within Commercial Operations. Through this program, I gained experience trading energy on the real-time desk, worked on enhancing existing real-time and day ahead forecast methodologies used by AEP. In addition I worked on the structured contracts desk where we used various methods of structuring long-term power deals. I also was responsible for the weekly natural gas storage

1 injection forecast. Prior to joining the Ohio Consumers' Counsel ("OCC")
2 I was responsible for managing the natural gas portfolio at Direct Energy
3 and was the in house expert on market price movements for both power
4 and gas.

5
6 ***Q4. WHAT DOCUMENTS HAVE YOU REVIEWED IN THE***
7 ***PREPARATION OF YOUR TESTIMONY?***

8 ***A4.*** I have reviewed the Application filed in this Case No. 09-21-EL-ATA on January
9 9, 2009 by the Ohio Edison Company, Cleveland Electric Illuminating Company
10 and Toledo Edison Company, (collectively, "Companies" or "FE"). I have
11 reviewed other documents such as FirstEnergy's Request for Proposal ("Ohio
12 RFP") available on First Energy Auction website¹ including: Load Data, and
13 OHIO RFP Bid Rules. I reviewed testimony filed in FirstEnergy's Electric
14 Security Plan ("ESP") filed on July 31, 2008, including the testimonies of
15 FirstEnergy ("FE") witnesses Blank, Graves, and Jones. I have also reviewed
16 testimony of OCC witness Yankel, in the FirstEnergy ESP case, filed on
17 September 29, 2008 and other testimony filed by intervening parties. I am aware
18 that FirstEnergy filed the testimony of three witnesses on February 21, 2009,
19 though I have not had sufficient time to review such testimony at this date. I have
20 reviewed the relevant responses by the Companies to OCC discovery and to
21 Citizens Coalition discovery pertaining to auction price determination and results.

¹ <http://www.firstenergy-auction.com/RFP/index.html>

1 I have also reviewed briefs submitted in FirstEnergy's ESP case including Ohio
2 Energy Group ("OEG") and Ohio Coalition for Advanced Energy ("OCEA")².
3

4 **II. PURPOSE OF TESTIMONY**

5 ***Q5. WHAT IS THE PURPOSE OF YOUR TESTIMONY?***

6 A5. On January 14, 2009, the Commission issued an entry in Case No. 09-21-EL-
7 ATA, et al., that required FirstEnergy to provide "information sufficient for the
8 Commission to conduct a prudency review of the costs incurred in purchasing
9 power for customers receiving generation service pursuant to the Companies'
10 power supply agreement..."³ My testimony provides a review and analysis of
11 electric generation market prices and current market trends that would support an
12 informed forecast of market performance resulting in a lower purchased power
13 price than that achieved under the RFP process used by First Energy. On this
14 basis, I dispute the competitive bid price achieved and do not believe it represents
15 a reasonable market price for purchased power. My testimony proposes rejection
16 of the RFP, proposes an alternative method of procuring energy through the day-
17 ahead market, and recommends refunding the difference between the delivered
18 cost of energy established in the RFP and the cleared results in the day-ahead
19 market to consumers. I provide market information that suggests the market price
20 obtained by the Companies during this period is comparatively high, and that

² See Attachment SJH-2.

³ Finding and Order at 7.

another option was available to the Companies that would have yielded lower costs and saved the Companies' customers money.

III. RFP RESULTS

Q6. WHAT WERE THE RESULTS OF THE OHIO RFP?

A6. The FirstEnergy's OHIO RFP was for the procurement of energy and capacity of the Standard Service Offer ("SSO") retail load in their service territories for the delivery period of January 5, 2009 through March 31, 2009. The OHIO RFP was a competitive bid, structured in "tranches" where each tranche was representative of 1% of the hourly energy load. There were a total of one-hundred tranches offered, with a maximum energy load of 100MW. The OHIO RFP resulted in a retail weighted average price, adjusted for distribution losses, of \$69.48/MWh, where accepted bids, adjusted for distribution losses, ranged from a low of

*****BEGIN CONFIDENTIAL [REDACTED] END***

CONFIDENTIAL** (See Figure 1 for the final bids).

*****BEGIN CONFIDENTIAL***

(TABLE)

END CONFIDENTIAL**

Q7. WHAT CONCERNS DO YOU HAVE REGARDING THE OHIO RFP RESULTS?

A7. Based on my analysis, I believe that the retail rate generated from FE's RFP for SSO retail load is unreasonably high based on a review of the information available prior to the RFP results, including forward market prices at the Cinergy Hub, and consideration of recent energy market performance for FE's loadzone⁴, I am also concerned by FE's results due to the current downturn in the economy and the concern of placing any increased and undue burden on residential consumers during these difficult economic times.

Q8. WHY DO YOU BELIEVE THE RESULTS OF THE OHIO RFP TO BE "UNREASONABLY HIGH"?

A8. I have completed an analysis generating a reasonable expected price range within which the competitive bid results should have fallen within. This analysis is based on market fundamentals and forward market clearing prices at the Cinergy Hub using rates for distribution losses, transmission and ancillaries, and capacity charges established in testimony from FirstEnergy's ESP application and recent market performance. Per my calculations I would not expect the retail delivered rate to exceed \$58.87, nor, would I expect to see the results lower than \$53.32. When you compare the weighted average price of \$69.48/MWh from the RFP the

⁴ FirstEnergy Loadzone is within the Midwest Regional ISO ("MISO") footprint. The pricing point is FE.FESR.

1 difference is significant and if accepted by the Commission will result in
2 increased rates to customers which may be unjustified.

3

4 **IV. METHODOLOGY**

5 ***Q9. WHAT METHODOLOGY DID YOU USE TO CALCULATE AN EXPECTED***
6 ***RANGE FOR THE RFP RESULTS DURING THE STATED DELIVERY***
7 ***PERIOD?***

8 ***A9.*** In order to provide a retail price comparison with the OHIO RFP result, I
9 referenced the methodology outlined by Company Witness, Scott Jones's in
10 testimony filed in the ESP case where Dr. Jones uses the forward market price to
11 provide an expected retail price that would have resulted from a competitive bid
12 process, adjusted for a delivered, full-requirements product⁵.

13

14 As described by Witness Jones, a delivered, full-requirements product includes
15 generation, transmission and ancillary services, capacity, and distribution losses.

16 The forward market price is the current market expectation of the price for
17 delivery at certain period of time. Because forward prices incorporate both
18 capacity and margin/risk adjustments, they were not added to arrive at the retail
19 price⁶. To arrive at that price (i.e., retail), only locational adjustments,
20 transmission and ancillary services, distribution losses, load shape adjustments
21 were taken into consideration. Therefore, I have not included capacity costs in

⁵ Case No. 08-935-EL-SSO, Testimony of Scott Jones, p. 26.

⁶ Direct Testimony of A. Yankel on behalf of the Office of the Ohio Consumers' Counsel, Case No.08-935-EL-SS), September 29, 2008 at 12:00P.M.

1 the expected retail rate I have calculated based on energy forwards. In addition,
2 there exists a locational difference between the Cinergy Hub and FirstEnergy
3 loadzone, thus I have used a locational adjustment factor based on recent
4 performance in the Day Ahead Locational Marginal Price ("DA LMP") markets
5 for the months of November and December, 2008⁷.

6
7 In order to estimate an appropriate range of market prices, for the energy
8 component of the market price proxy, I used the Cinergy Hub On-Peak forward
9 power prices as the upper bound, and, for the lower bound, I used the load
10 adjusted weighted average of On-Peak and Off-Peak Cinergy Hub forwards.
11 I have not included a load adjustment factor for the upper bound due to the fact
12 that only the on-peak prices have been used. The load adjustment factor that has
13 been used in the lower bound calculation is based on the percent difference
14 between actual load weighted average in January, 2009 and the simple average of
15 DA LMP for January, 2009⁸. After adding transmission and ancillaries,
16 distribution losses, and load shape adjustment factor, I arrived at an expected
17 range between \$53.32 and \$58.87, with the lower expectation bound being non-
18 binding⁹. Table 2 provides a breakout of the assumptions and resulting
19 calculations of my retail proxy range. As you can see, the resulting retail rate of
20 \$69.48 produced from FE's RFP is outside of this range. This leads me to

⁷ Refer to Attachment 7.

⁸ Refer to Attachment 8.

⁹ Refer to Attachment 6 for an itemized cost calculation.

1 conclude that the competitive bid process established in the RFP was not in the
2 best interest of the rate paying consumers.

Table 2

<i>Upper Bound</i>	\$/MWh	Factor (%)
Forward On-Peak Clearing Price Jan-Mar	48.00	
Loadshape Adjustment	N/A	
Distribution Losses	2.05	4.28%
Transmission and ancillary services	7.50	
Locational Adjustment	0.53	3.83%
Total	58.09	
<i>Lower Bound</i>		
Forward ATC Clearing Price Jan-Mar	43.00	
Loadshape Adjustment	1.65	3.83%
Distribution Losses	1.84	4.28%
Transmission and ancillary services	7.50	
Locational Adjustment	0.53	
Total	54.52	

3
4 As you can see, the resulting retail rate of \$69.48 produced from FE's RFP is
5 noticeably above this range. This leads me to conclude that the RFP generated a
6 higher than necessary retail rate that will ultimately place an undue burden on the
7 retail customer. In fact, the retail customer would have been ahead if FE simply
8 were required to purchase power on the DA market for the delivery period,
9 January 5 – March 31, 2009.

10

11 **V. PERFORMANCE REVIEW AND RECOMMENDATIONS**

12 ***Q10. DO YOU BELIEVE THE FORWARD MARKET IS A GOOD INDICATION***
13 ***OF HOW ENERGY PRICES WILL PERFORM?***

14 ***A10.*** Yes. The forward energy markets can be good predictors of how the DA LMP
15 markets will perform. I answer this question using the qualifying statement, "can
16 be" because the predictability of forward prices to actual energy market

1 performance is also correlated to the existing market fundamentals. The energy
2 market has gone through a recent period of adjustment shedding imbedded risk
3 from energy production disruption events due to weather phenomena and
4 international conflict, as well as responding to the downturn in the general macro
5 economy.

6
7 ***Q11. HAVE YOU PERFORMED AN ANALYSIS TO SUPPORT THE USE OF***
8 ***THE FORWARD MARKET AS A PREDICTOR FOR DA LMP?***

9 ***A11.*** Yes. I have used cleared DA LMP prices between January 1, 2009 and February
10 20, 2009 to compare with the expected retail rate range I have previously
11 established using the forward market prices. The cleared DA LMP weighted
12 average for the month of January, 2009, adjusted for ancillaries and transmission,
13 capacity, and distribution losses is \$55.33 for FE.FESR¹⁰. The cleared DA LMP
14 for the month of February (i.e. through February 20, 2009), applying the loadshape
15 adjustment factor experienced in January, 2009, is \$53.10/MWh¹¹. The DA LMP
16 market results for January and February are within my calculated expected range
17 based on Cinergy forwards as illustrated in Table 3 which contains the
18 calculations and assumptions supporting the above determination.

¹⁰ Load for the FirstEnergy Service area was available through January 21, 2009 posted on the company auction website. This load was used in calculating the weighted average.

¹¹ The loadshape adjustment factor is achieved by taking the weighted average DA LMP at FE.FESR for the month of January, 2009 and dividing by the simple average of the DA LMP at FE.FESR for the same month, yielding 3.08%. This factor is then applied to the simple average of available DA LMP prices for the month of February, 2009.

Table 3

DA LMP Retail Proxy	January (\$/MWh)	February (\$/MWh)
Ancillaries	7.50	7.50
Capacity	5.89	5.89
Distribution Loss	1.72	1.72
Weighted Ave DA LMP	40.22	N/A
Simple Average DA LMP	N/A	36.59
Loadshape Adj Factor	N/A	1.40
Total	55.33	53.10

**Q12. IN YOUR OPINION, WERE THERE ANY OTHER VIABLE OPTIONS TO
SUPPLY POWER TO THE COMPANIES' SSO LOAD DURING THE
DELIVERY PERIOD OF JANUARY 5, 2009, THROUGH MARCH 13, 2009?**

A12. Yes. I believe that the purchase of power in the day-ahead ("DA") market would have been a viable alternative for the stated delivery period. I am aware that the day-ahead market may pose greater price risk to the end-use consumer than a structured contract; however, I believe the existing market fundamentals, including energy markets, seasonality, and the overall economic performance of the economy would have yielded a lower cost rate of energy and capacity to consumers than the rate of \$69.48 achieved through the RFP. In this case, I would have been comfortable using the forward prices as an indication of the day-ahead market for FE.FESR and expected the DA LMP to clear below the levels indicated by the forwards prices. With the data available, we are able to see that this was in fact the case, and lower DA LMP prices was a rational expectation based on available information back in December 2008.

**Q13. ARE YOU AWARE OF ANY OTHER BEFORE-THE-PERIOD
STATEMENTS REFLECTING COMFORT WITH USING DAY-AHEAD
MARKETS TO PRICE ELECTRICITY FOR CUSTOMERS OVER THE
JANUARY THROUGH MARCH, 2009 PERIOD?**

A13. Yes. The Commission asked parties to brief the subject of how pricing might be accomplished on a shorter term than that provided by FirstEnergy's Application in the ESP case. Both OCEA and the Ohio Energy Group ("OEG") stated comfort with using DA markets to price wholesale electricity for use in ultimate retail prices for their customer clients. I attach the briefs submitted by OCEA (Attachment SJH-2) and OEG (Attachment SJH-1) that show such statements¹². The OEG brief cites the testimony of its witness in the ESP case, which is also attached to my testimony. These statements by consumer representatives show that consumer representatives expected superior results from this means of obtaining wholesale electricity supplies before the period of procurement began.

¹² OCEA Brief, pgs. 8-10; OEG Brief (without attachments), pgs. 3-4 (citing testimony by OEG Witness Baron at pages 11-15). The testimony of OEG Witness Baron, upon which OEG partially relies, is also included in SJH-1).

1 **Q14. IN THE EVENT THAT THE COMMISSION WERE TO EXTEND THE**
2 **AUCTION RATE THROUGH APRIL AND MAY 2009 AS CONTEMPLATED**
3 **BY THE ESP STIPULATION IN THESE CASES FILED ON FEBRUARY 19,**
4 **2009, DOES THE ARGUMENTS IN YOUR TESTIMONY ALSO APPLY TO**
5 **THE ADDITIONAL TWO MONTHS?**

6 **A14.** Yes. My observations apply to any continuation of the retail rate established by
7 the OHIO RFP through March, April and May 2009. Additionally, it is common
8 industry knowledge that April and May are shoulder months. Shoulder months
9 see lower demand and associated lower prices than winter and summer months.
10 This would allow one to infer that prices and load requirements would be less
11 than those experienced in the winter months. To date, the market clearing DA
12 LMP at FE.FESR adjusted for retail comparison as previously evidenced in this
13 testimony have averaged \$55.33/MWh for January and \$53.10/MWh through
14 February 20, 2009. It would be expected that clearing prices in April and May
15 would be less than these rates and hence the OHIO RFP established retail rate
16 would be even more inflated and would unreasonably burden the end-use
17 consumer. In fact, the average on-peak Cinergy forward price for April-May,
18 2009 is clearing 34% lower than the average forward prices for January-March,
19 2009 used previously in this Testimony¹³. Thus, it would be unreasonable to
20 extend the auction rate through April and May 2009.

¹³ See Attachment 9

1 **Q15. DO YOU HAVE ANY OTHER OBSERVATIONS REGARDING THE BID**
2 **PRICE?**

3 **A15. **BEGIN CONFIDENTIAL** [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 **END CONFIDENTIAL** ** This, and the short amount of time to conduct the bid
11 process should result in the Commission reviewing as part of this proceeding
12 whether FES exerted market power to the detriment of FE's captive customers.
13 The numbers speak for themselves. ****BEGIN CONFIDENTIAL** [REDACTED]

14 [REDACTED] **END CONFIDENTIAL** **

15

16 **V. CONCLUSIONS**

17 **Q16. WHAT ARE YOUR CONCLUSIONS?**

18 **A16.** My analysis reveals that reliance on the DA FE.FESR prices was a viable option
19 for the Companies that could have replaced use of the OHIO RFP process.
20 Reliance on the DA FE.FESR prices would have been expected to provide prices
21 below the results obtained by means of FirstEnergy's OHIO RFP process. Using
22 the actual DA FE.FESR prices for the period ending February 20, 2009, reliance

1 on the DA FE.FESR prices would have resulted in prices that significantly lower
2 than those provided by means of FirstEnergy's OHIO RFP process.

3
4 I also conclude that reliance upon the results from the OHIO RFP process for
5 pricing electricity for the May through April period is expected to result in even
6 higher percentage differences from the results of using DA markets to supply
7 electricity to the Companies. This results from these months being shoulder
8 months, which is normally a period of lower prices that is revealed in forward
9 prices for these months.

10

11 ***Q17. HOW SHOULD THE COMMISSION PROCEED?***

12 ***A17.*** The period chosen for the hearing in this case is not optimal for the final
13 determination of the degree to which FirstEnergy's OHIO RFP process raised
14 rates for customers unnecessarily. The empirical evidence, as stated in my
15 testimony, reveals a substantial increase in rates. However, the final calculation
16 of the amounts actually lost by customers as the result of the OHIO RFP process
17 should be calculated after the end of the period in question, and refunded to the
18 consumers. The Commission should consider using the cleared DA prices as the
19 benchmark for comparison to the RFP, refunding the difference between the
20 delivered cost of energy established in the RFP and the cleared results in the day-
21 ahead market to consumers. or should determine what the appropriate market
22 price would have been and disallow any cost recovery in excess of the this market
23 price determination. That period ends on March 31, 2009 for the original

1 purchases, and extends to the end of May under the stipulation filed by
2 FirstEnergy and other parties to the ESP case. Ideally, the Commission should
3 receive testimony after the end of the periods in question to determine the fair
4 treatment of customer pricing.

5

6 ***Q18. DOES THIS CONCLUDE YOUR TESTIMONY?***

7 ***A18.*** Yes. However, I reserve the right to incorporate new information that may
8 subsequently become available through discovery or otherwise. I also reserve the
9 right to supplement my testimony in the event that FirstEnergy submit new or
10 corrected data in connection with this proceeding. Additionally, given the
11 unfortunate timing of the Companies' field testimony, I reserve the right to
12 respond on the stand to such testimony.

FILE

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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 BRIEF OF OHIO ENERGY GROUP ON SHORT TERM ESP filed in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,



David F. Boehm, Esq.

Michael L. Kurtz, Esq.

BOEHM, KURTZ & LOWRY

MLKkew

Encl.

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**BEFORE THE
PUBLIC UTILITY COMMISSION OF OHIO**

In The Matter Of The Application Of Ohio Edison	:	
Company, The Cleveland Electric Illuminating	:	Case Nos. 08-935-EL-SS0
Company And The Toledo Edison Company For	:	
Authority To Establish A Standard Service Offer	:	
Pursuant To R.C. §4928.143 In The Form Of An	:	
Electric Security Plan	:	

**BRIEF OF OHIO ENERGY GROUP
ON SHORT TERM ESP**

The Ohio Energy Group (OEG)¹ submits this brief on the Short Term ESP

I. COMMISSION OVERVIEW

Ohio Edison, Toledo Edison, and Cleveland Electric Illuminating (Utilities) currently purchase generation for consumers who do not shop under a FERC-approved all-requirements contract with their affiliate FirstEnergy Solutions (FES). That wholesale power supply agreement was for a three-year

¹ The members of OEG who take service from the FirstEnergy Utilities are: Air Products and Chemicals, Inc., AK Steel Corporation, Alcoa Inc., ArcelorMittal USA, BP-Husky Refining, LLC, Brush Wellman, Inc., Charter Steel, Chrysler LLC, Ford Motor Company, Johns Manville, Linde, Inc., North Star BlueScope Steel, LLC, PPG Industries, Inc., Republic Engineered Products, Inc., Severstal Warren, Inc. (formerly WCI Steel, Inc.), Sunoco, Inc. (R&M) and Worthington Industries.

period and it expires on December 31, 2008. The maximum price FES can charge the Utilities under that FERC-approved contract for POLR service is \$53.62/mWh.²

Assuming that a Long Term ESP is not in place before the end of the year, there are three likely scenarios by which the Utilities will procure generation for non-shopping consumers for the short-term period January 1, 2009 through April 30, 2009.

1. The Commission may accept the Severable Short Term ESP SSO Pricing proposal set forth on pages 35-37 of the Utilities' Application in this docket. The FES Short Term ESP generation price offer is \$77.5/mWh. Because the terms and conditions of the Long Term ESP are incorporated, there are several additional distribution price adjustments in the Short Term ESP proposal. These include a non-bypassable Uncollectible Service Rider of approximately \$22.8 million per year, a non-bypassable Delivery Service Improvement (DSI) Rider of approximately \$112 million per year, and a non-bypassable Minimum Default Service (MDS) charge of \$10/mWh for consumers who shop. The Short Term ESP offered by FES would result in rate increases on average of:

Ohio Edison - 15.73%

Toledo Edison - 18.19%

CEI - 36.6%³

These are the real generation rate increases without any deferrals. While the FES Short Term ESP has the virtue of providing relatively fixed pricing, guaranteed rate increases of 15% - 36% are a steep price to pay for relative certainty. This is especially true since: a) FES' Short Term ESP will severely hinder shopping through the non-bypassable \$10/mWh MDS; and b) generation prices in the wholesale market

² *First Energy Solutions Corp.*, Docket No. ER06-117-000 October 17, 2006 Settlement Agreement, 117 FERC ¶61,278 (2006).

³ The rate increase to CEI customers under the FES Short Term ESP was calculated assuming that CEI would not waive its right to collect four months worth of RTC payments (approximately \$140 million) unless a Long Term ESP agreement is reached.

have fallen by approximately 24% since the FES Short Term ESP offer was made. We recommend against the FES Short Term ESP.

2. OEG has proposed an alternative Short Term ESP in the testimony of its witness Mr. Baron at pages 11-15. Our proposal would require the Utilities to purchase generation for consumers who do not shop through the FERC-regulated MISO wholesale market. Since this case was filed about three months ago, prices in the MISO wholesale market have fallen by approximately 24%. Using the methodology adopted by the Utilities' own witness, but updated to actual prices as of October 10, 2008, if the Utilities were to buy power for non-shoppers through the MISO market for the period January 2009 – April 2009 the expected forward price is \$55.26/mWh. The FES alternative price of \$77.50/mWh represents a 40% premium above current wholesale forward prices. Based upon forward pricing as of October 10, 2008, the Short Term MISO Option recommended by OEG would result in rate decreases for Ohio Edison and Toledo Edison and a small increase to CEI:

Ohio Edison – (13.3%)

Toledo Edison – (13.69%)

CEI – 4.38%

The contrast is sharp. Accept the above-market FES offer and guarantee 15-36% rate increases; or pay only current MISO market prices and have the opportunity for 13%-14% rate reductions for Ohio Edison and Toledo Edison customers (about 65% of the total First Energy load), and a small increase for the CEI customers.⁴

Our plan would not result in daily price changes at the retail level. Retail generation prices would be fixed at their current level, less RTCs as they naturally expire, and would be subject to a monthly true-up (credit or charge) to ensure full recovery of the FERC-regulated wholesale MISO rate.

⁴ The small CEI increase results from the assumption that CEI would not agree to waive its right to collect four months worth of RTC payments (approximately \$140 million) unless a Long Term ESP agreement is reached. This is the same assumption that was made in analyzing the Utilities' Short Term ESP offer.

This process would result in relatively stable prices from month to month. The monthly MISO true-up is similar to a fuel adjustment charge or gas cost recovery charge. Our plan would not burden shoppers with a non-bypassable \$10/mWh MDS charge.⁵ Our plan would also avoid \$45 million in distribution riders over the four month period.

If Ohio and the rest of the economy continue to sink further into recession, then the reduced economic activity and lower demand for power may drive down wholesale market prices even further. For the four months at issue, the total savings to consumers under OEG's MISO Option (based upon October 10, 2008 forward pricing) compared to the FES offer is estimated to be \$418.6 million.

3. The final scenario is a generation rate freeze for all consumers. This cannot be ordered by the Commission, but can be agreed to by FES (subject to the same FERC approval or waiver process as FES' Short Term ESP offer). Because the intent here would be to maintain the status quo for the Utilities, FES and all individual consumers during a four-month period, it would be appropriate to impose the \$10/mWh MDS charge in order to prevent customer migration through shopping. As an incentive, it may also be appropriate to include the two distribution riders. OEG believes that the Short Term MISO Option should be ordered, but that the generation rate freeze/status quo option should be offered to FES as a compromise alternative. The generation rate freeze plus a 2.5% surcharge on each customer's 2008 total bill proposed by Staff is another reasonable alternative that could be offered to FES.

⁵ Because energy would be procured in the day-ahead MISO market there is no volumetric risk associated with customers either leaving SSO service or returning from a third party marketer to SSO service. Therefore, there is no need to compensate the Utilities with this large POLR charge.

II. DISCUSSION

- 1. The FES Short Term ESP Offer Guarantees Rate Increases To Non-Shoppers Of 15%-36%, Would Place A Non-Bypassable \$10/mWh Burden On Shoppers, Is Approximately \$418.6 Million Above Prevailing Wholesale Market Prices And Therefore Should Be Rejected.**

FES has offered to sell generation to the Utilities for non-shopping consumers for the period January 1, 2009 to April 1, 2009 in order to give the Commission additional time to act on the Long Term ESP. The Commission must choose to accept or reject the Short Term ESP by November 14, 2008 or the offer is withdrawn.⁶ The base generation rate under the FES Short Term ESP is \$77.5/mWh, with \$10.0/mWh being deferred with interest for later recovery.⁷ Except as otherwise provided in its Application, the terms and conditions of the Long Term ESP would apply to the Short Term ESP.⁸ This means that consumers would be subject to additional rate increases for:

- a) a non-bypassable Non-Distribution Service Uncollectible Rider of approximately \$22.8 million per year;⁹
- b) recovery of a non-bypassable Delivery Service Improvement (DSI) Rider of approximately \$112 million per year;¹⁰ and
- c) recovery from shoppers of a non-bypassable Minimum Default Service (MDS) charge of \$10/mWh.¹¹

FES is currently providing all-requirements generation service to the Utilities for non-shopping (POLR) load. The current FES wholesale supply contract expires on December 31, 2008. The FES sales price to the Utilities under the current contract cannot exceed \$53.62/mWh in 2008.

FES provides energy-related products and services to affiliated and non-affiliated companies and is a wholly owned subsidiary of FirstEnergy Corp. FES itself has two wholly owned subsidiaries:

⁶ Application at p. 35.

⁷ Application at p. 37.

⁸ Application at pp. 36-37.

⁹ Application at p. 15.

¹⁰ Application at p. 21.

¹¹ Application at p. 14.

FirstEnergy Generation Corp. (which owns and operates 9,395.8 MW of non-nuclear generating facilities); and FirstEnergy Nuclear Operating Company (which operates 3,407.5 MW of nuclear generating facilities). FES' total nuclear and non-nuclear generating capacity in 2007 was 12,803.3 MW. In 2007, these facilities generated 71,140,730 mWh. In 2007, the total fuel, operating and production costs of the FES facilities was \$35.39/mWh. In 2007, FES reported net income of \$528.9 million. This resulted in a 2007 return on common equity for FES of approximately 24%.¹²

FES has provided no cost or market data to justify its four-month price offer of \$77.50/mWh as being just and reasonable under the Federal Power Act. To cure this legal defect, on October 24, 2008 FES filed an application at FERC seeking a waiver from the requirement that it obtain prior approval from FERC for sales of energy or capacity to Ohio Edison, Toledo Edison, and CEL.¹³ FES justified its application for waiver on the grounds that Ohio consumers are protected from affiliate abuse because: 1) retail ratepayers in Ohio are not "*captive*" since they retain the right to shop competitively for generation; and 2) the PUCO is "*fully empowered to protect the interests of Ohio's retail customers.*"¹⁴

The assertion that the ratepayers of the Utilities are not "*captive*" fails to address some important matters. First, the Commission is specifically authorized to place "*limitations on customer shopping for retail electric generation service*" as part of an ESP. ORC §4928.143(2)(d). This statutory provision specifically authorizes the Commission to make customers in an ESP "*captive*". An MRO is different. The Commission has no authority to limit shopping in an MRO. Second, the non-bypassable \$10/mWh MDS charge for consumers who want to shop has the real world effect of making the right to shop much more difficult, and therefore provides the opportunity for affiliate abuse.

¹² Attachment 1.

¹³ Attachment 2.

¹⁴ Attachment 2 at pp. 2-3.

As to the assertion that the PUCO is "fully empowered to protect the interests of Ohio's retail customers," we hope that FES is correct. But merely accepting the above-market \$77.50/mWh generation price offer, plus the distribution riders of \$45 million, plus the non-bypassable \$10/mWh MDS, plus all of the other terms and conditions contained in the Short Term ESP would not constitute adequate protection from affiliate abuse. The FES Short Term ESP offer would result in above market pricing by \$418.6 million. This is only possible because of affiliate abuse.

The following tables show the rate increases for each rate schedule for each Utility under the FES Short Term ESP offer of \$77.5/mWh without a deferral.

<p style="text-align: center;">Table 1 Ohio Edison Company Proposed Short-term ESP Increases No Generation Cost Deferral</p>			
	Present Revenue	Proposed Increase/(Decrease)	Percent Increase
Residential Service	\$1,050,950,746	\$119,295,249	11.4%
General Service - Secondary	\$742,018,527	\$90,407,752	12.2%
General Service - Primary	\$274,619,326	\$46,357,779	16.9%
General Service - Subtransmission	\$71,549,620	\$15,670,323	21.9%
General Service - Transmission	\$324,456,963	\$115,425,171	35.6%
Private Outdoor Lighting Service	\$6,881,189	\$553,280	8.0%
Street Lighting Service	\$10,879,288	\$2,541,948	23.4%
Traffic Lighting Service	\$1,294,903	\$388,852	30.0%
Total Company	\$2,482,650,560	\$390,640,354	15.7%

Source: Filing Schedule 1a.

Table 2
The Toledo Edison Company
Proposed Short-term ESP Increases
No Generation Cost Deferral

	Present Revenue	Proposed Increase/(Decrease)	Percent Increase
Residential Service	\$290,090,704	\$41,983,659	14.5%
General Service - Secondary	\$279,379,142	\$3,661,012	1.3%
General Service - Primary	\$112,735,395	(\$350,278)	-0.3%
General Service - Subtransmission	\$9,014,762	(\$352,361)	-3.9%
General Service - Transmission	\$239,113,335	\$125,170,341	52.3%
Private Outdoor Lighting Service	\$1,835,222	\$412,163	22.5%
Street Lighting Service	\$7,062,145	\$645,956	9.1%
Traffic Lighting Service	\$882,072	(\$146,049)	-16.6%
Total Company	\$940,112,777	\$171,024,443	18.2%

Source: Hearing Schedule 1a.

Table 3
The Cleveland Electric Illuminating Company
Proposed Short-term ESP Increases
No Generation Cost Deferral, Includes Current RTC Level in Proposed

	Present Revenue	Proposed Increase/(Decrease)	Percent Increase
Residential Service	\$642,960,054	\$193,264,797	30.1%
General Service - Secondary	\$813,867,408	\$313,216,424	38.5%
General Service - Primary	\$30,272,861	\$12,715,039	42.0%
General Service - Subtransmission	\$262,511,781	\$116,826,331	44.5%
General Service - Transmission	\$45,793,241	\$21,971,988	48.0%
Private Outdoor Lighting Service	\$10,431,394	\$3,398,767	32.6%
Street Lighting Service	\$17,993,022	\$5,618,971	31.2%
Traffic Lighting Service	\$1,400,081	\$592,732	42.3%
CEI Contracts	\$101,559,051	\$38,607,410	38.0%
Total Company	\$1,926,788,893	\$706,212,459	36.7%

Source: Hearing Schedule 1a.

The rate increase to CEI customers under the FES \$77.5/mWh proposal shown above is much higher than for the other two Utilities because of RTC. The RTCs for Ohio Edison and Toledo Edison

expire at the end of 2008. But the RTCs for CEI continue at their current level until April 30, 2009, at which time they will be reduced by approximately 30% - 35% and then continue until the end of 2010.¹⁵ In 2008, CEI collected \$418.8 million in RTC charges, or approximately \$34.9 million per month. The above analysis assumes that CEI would not agree to waive its right to collect its January 2009 – April 2009 RTC payments of approximately \$140 million unless a Long Term ESP agreement is reached.

The Commission should recognize that FES needs the Ohio load just as much as the Ohio load needs the FES generation. The 56.5 million mWh that Ohio consumers currently buy from the Utilities cannot easily be replaced. This was recognized in FES' October 24, 2008 waiver application at FERC:

"As explained below, under any plausible outcome of pending regulatory proceedings in Ohio, the FE MBR [market based rate] Sellers will have to continue supplying a material portion of the Ohio Regulated Utilities' load requirements beginning in January 2009.

And, given the magnitude of the Ohio Regulated Utilities' generation needs relative to the amounts of uncommitted capacity in the regional bulk power market, it is virtually certain that Applicants will be selected to provide at least a portion of this power supply. For these same reasons, if Applicants did not participate, the liquidity and depth of the markets would suffer.

Given the short lead times available prior to the expiration of the current rate plan on December 31, 2008, and the virtual certainty that Applicants' generation will be implicated under any new plan approved by the PUCO, the Commission should approve the tariff Amendments proposed herein, recognizing that the PUCO has the ability to protect Ohio retail customers against affiliate abuse."¹⁶

As the de facto purchaser of billions of dollars worth of power, the Commission needs to exercise its buying clout for the benefit of consumers. Since the Utilities will not do it, this is necessary to protect against affiliate abuse.

¹⁵ Case No. 05-1125-EL-ATA (RCP Stipulation).

¹⁶ Attachment 2 at pp. 2, 9 and 13-14.

Risk is a two-way street. While consumers would prefer a fixed price generation option (but not at the above market rate offered by FES), so would FES prefer the revenue stability of a known load and fixed pricing. On October 9, 2008 FirstEnergy Corp. took the extraordinary step of issuing a letter to the Investment Community to calm fears about its liquidity position.¹⁷ This letter was also submitted to the SEC through a Form 8-K filing. On October 8, 2008 FirstEnergy Corp. and FES filed another 8-K with the SEC advising investors that *"to enhance their liquidity position in the face of the turbulent credit and bond markets"* FirstEnergy Corp. and FES entered into a \$300 million secured loan agreement with Credit Suisse under very stringent conditions.¹⁸ These 8-K SEC filings about liquidity underscore the value to FES of having a secure customer base and stable pricing.

Well before the recent credit market turmoil occurred the rating agencies were concerned with FirstEnergy's exposure to volatile wholesale market pricing. On October 18, 2007, Standard & Poors lowered FirstEnergy's credit rating to BBB/Negative from BBB/Stable stating: *"we revised the outlook because of the company's aggressive efforts to expose its generating assets in Ohio and Pennsylvania to market commodity risk."* *"Committing to a market-based future for its generating assets could dampen credit quality."*¹⁹ Moody's Investor Services raised the same concerns earlier this week: *"Power companies that sell electricity at market prices face growing challenges, including fewer trading partners, reduced electricity demand and continued volatility in commodity prices ... Moody's kept the outlook for the merchant power sector at stable, but sees the credit crisis and a slowing economy increasing risks for the industry."*²⁰

The FES Short Term ESP proposal is not reasonable and should be rejected. It is the product of self dealing and affiliate abuse. It would unnecessarily cause consumers to suffer rate increases of 15%

¹⁷ Attachment 3.

¹⁸ Attachment 4.

¹⁹ Attachment 5.

²⁰ Attachment 6.

- 36% through the payment of above-market generation rates and the payment of \$45 million in distribution riders over four months. It would also unnecessarily burden shopping with a \$10/mWh exit fee. In its place the Utilities should be required to purchase generation for non-shoppers under the Short Term MISO Option sponsored by OEG.

2. The Short Term MISO Market Plan Of OEG Should Be Approved.

OEG recommends that the Commission approve its Short Term MISO Market plan. This would allow all consumers to benefit from the 24% decline in wholesale generation prices since this case was filed.

OEG witness Mr. Baron tracks this decline in his updated testimony. Table 2 to his updated testimony is reproduced below. Mr. Baron used the same methodology as the Utilities' witnesses Mr. Graves to calculate wholesale market prices to serve load in the FirstEnergy control area. This is the wholesale energy and capacity price (plus reserves) without any retail premium, or mark-up, to account for shopping risk. For the January 2009 through April 2009 period the FERC-regulated wholesale market price has fallen from \$72.49/mWh as of July 15, 2008; to \$61.85/mWh as of September 19, 2008; to \$55.26/mWh as of October 10, 2008.²¹ This is a 23.8% decline in three months.

²¹ As described in Mr. Graves's testimony, the market rate was developed using an average of Cincergy Hub and PJM West prices.

Table 4
Average of Cinergy Hub and PJM West Forward Prices

<u>Month</u>	<u>July 15, 2008</u>	<u>Sept. 19, 2008</u>	<u>Oct 10, 2008</u>
Jan-09	366,491,637	301,744,112	263,706,909
Feb-09	322,780,327	265,802,942	233,954,477
Mar-09	279,537,902	239,778,174	213,283,427
Apr-09	<u>282,923,809</u>	<u>244,497,973</u>	<u>214,979,534</u>
Jan-Apr Avg.	1,251,733,695	1,051,823,202	927,924,366
Capacity Cost Rate (\$/mW/day)	69.17	69.17	69.17
Peak Load + Reserves	<u>13,327</u>	<u>13,327</u>	<u>13,327</u>
Capacity Cost (@ 120 Days)	\$110,619,431	\$110,619,431	\$110,619,431
Total Cost	\$1,362,353,125	\$1,162,442,633	\$1,038,543,797
MWH Sales	18,794,716	18,794,716	18,794,716
\$/mWh	\$72.49	\$61.85	\$55.26

The most current wholesale market price in the record is the October 10, 2008 price of \$55.26/mWh. The FES Short Term offer represents a 40% premium over this current wholesale market price. In dollars, the FES Short Term offer represents a \$418.6 million above market overpayment by consumers over the four month period.

The mechanics of OEG's Short Term MISO plan to avoid this \$418.6 million overcharge are straightforward.

First, the existing tariff or contract generation charges as of December 31, 2008 would remain in effect during the first four months of 2009, except that the RTC charges would be removed from each tariff or contract as they expire.²² The removal of RTC charges as they expire is required by ORC 4928.141(A).

²² Baron Direct Testimony at pp. 12-13.

Next, each Utility's total average generation revenue per kWh would be calculated based on calendar year 2008 data. This will become the base-rate generation revenue for purposes of calculating future adjustments.²³

Finally, the Utilities would purchase generation in the MISO day-ahead market to serve non-shopping load. The Utilities could also hedge by locking in the pricing for all or part of projected load for one or more months. The difference between each Utility's actual cost of wholesale MISO generation and its average base-rate generation revenue would be added to or subtracted from each retail tariff or contract on an equal cents per kWh basis in the following months.²⁴ The monthly true-up of base generation revenue collected in rates compared to actual purchase power costs from MISO is similar to a fuel adjustment clause or gas cost recovery clause.

This three step process would give the Utilities full recovery of their wholesale power costs as required by federal law. The Utilities would suffer no loss. Retail rates would not change daily. They would change (up or down) only monthly to reflect the MISO true up. Because existing tariff or contract generation rates would be maintained (subject to the monthly MISO true-up) rate continuity for each customer would be achieved.

No retail risk premium would need to be added to the MISO wholesale rate. As shopping customers come and go, the Utilities would simply buy more or less in the daily MISO market. The Utilities would have no retail shopping or POLR risk.

Buying power for non-shoppers from the MISO administered wholesale market is operationally feasible. In the MRO case the Utilities testified that if a winning bidder defaulted on its supply obligations, then *"the Companies will procure the defaulted power in MISO administered markets at*

²³ *Id.*

²⁴ *Id.*

prevailing FirstEnergy zonal spot prices.”²⁵ The Utilities further testified in the MRO case that if a supplier defaulted the Utilities could engage in hedging to manage MISO day ahead LMP price risk but would only do so if ordered to by the Commission.²⁶ Therefore, the Utilities obviously know how this process works. But if the Commission has concerns about MISO’s regulations, business rules or scheduling protocols, then MISO should be contacted directly. Presumably MISO will be very responsive to the efforts of a state commission in this regard.

An additional benefit of this Short Term MISO plan is that no FERC approval would be needed as there would be no direct affiliate sales. In contrast, the FES Short Term ESP proposal would be subject to FERC approval unless the October 24, 2008 FES waiver application is granted in the next two months.

We have developed the following tables which calculate the rate changes each rate schedule would experience under the October 10, 2008 forward price of \$55.26/mWh. The tables do not include the distribution rate changes which are a condition of the FES Short Term offer.

<p align="center">Table 5 Ohio Edison Company Impact of OEG Proposed Short-term ESP No Distribution Rate Change, Generation at \$55.26 per mWh</p>			
	Present Revenue	Proposed Increase/(Decrease)	Percent Increase
Residential Service	\$1,050,950,746	(\$102,398,622)	-9.7%
General Service - Secondary	\$742,018,527	(\$103,226,391)	-13.9%
General Service - Primary	\$274,619,326	(\$44,027,333)	-16.0%
General Service - Subtransmission	\$71,549,620	(\$12,500,394)	-17.5%
General Service - Transmission	\$324,456,963	(\$65,507,720)	-20.2%
Private Outdoor Lighting Service	\$10,879,288	(\$667,448)	-6.1%
Street Lighting Service	\$1,294,903	(\$377,451)	-29.1%
Traffic Lighting Service	\$6,881,189	(\$747,243)	-10.9%
Total Company	\$2,482,650,560	(\$329,452,601)	-13.3%

²⁵ Case No. 08-936 Direct Testimony of Kevin Warvell at p.14.

²⁶ *Id.* at 15.

Table 6
The Toledo Edison Company
Impact of OEG Proposed Short-term ESP
No Distribution Rate Change, Generation at \$55.26 per mWh

	Present Revenue	Proposed Increase/(Decrease)	Percent Increase
Residential Service	\$290,090,704	(\$32,158,707)	-11.1%
General Service - Secondary	\$279,379,142	(\$50,544,178)	-18.1%
General Service - Primary	\$112,735,395	(\$24,648,727)	-21.9%
General Service - Subtransmission	\$9,014,762	(\$1,687,204)	-18.7%
General Service - Transmission	\$239,113,335	(\$19,590,921)	-8.2%
Private Outdoor Lighting Service	\$7,062,145	\$371,675	5.3%
Street Lighting Service	\$882,072	\$57,736	6.5%
Traffic Lighting Service	\$1,835,222	\$84,136	4.6%
Total Company	\$940,112,777	(\$128,116,191)	-13.6%

Table 7
The Cleveland Electric Illuminating Company
Impact of OEG Proposed Short-term ESP
No Distribution Rate Change, Generation at \$55.26 per mWh

	Present Revenue	Proposed Increase/(Decrease)	Percent Increase
Residential Service	\$642,960,054	\$25,751,073	4.0%
General Service - Secondary	\$813,867,408	\$33,944,791	4.2%
General Service - Primary	\$30,272,861	\$1,543,087	5.1%
General Service - Subtransmission	\$262,511,781	\$14,526,127	5.5%
General Service - Transmission	\$45,793,241	\$3,329,978	7.3%
Private Outdoor Lighting Service	\$17,993,022	\$588,003	3.3%
Street Lighting Service	\$1,400,081	\$132,468	9.5%
Traffic Lighting Service	\$10,431,394	\$295,439	2.8%
CEI Contracts	\$101,559,051	\$0	0.0%
Total Company	\$1,926,788,893	\$80,110,966	4.2%

Consistent with the prior analysis, the CEI rate impact assumes that CEI would not agree to waive its right to collect RTC payments of \$140 million absent a Long Term ESP agreement. That is why CEI customers would have a small rate increase.

The economic slowdown or recession this country is currently experiencing may have a silver lining here. NYMEX natural gas futures for months January, February, March and April 2009 are all currently trading in the \$7/mmBtu range.²⁷ When the Utilities' ESP was filed, these same gas futures were nearly double in price.²⁸ Since natural gas generation sets the LMP clearing price in peak hours this indicates continued low MISO pricing during the Short Term ESP.

We have also included a graph showing the Cinergy Hub real time and day ahead prices which actually occurred over the last twelve months.²⁹ The future will obviously be different, but from this graph you can see that Cinergy Hub LMP pricing has been below \$77.5/mWh for the vast majority of the hours over the last year. Again, keep in mind that an economic slowdown and low natural gas prices will tend to dampen LMP pricing even further.

Under these circumstances, reliance on the MISO market for generation for non-shoppers is a better choice than the above-market FES Short Term ESP offer coupled with shopping limitations and unnecessary distribution riders.

3. A Four Month Generation Rate Freeze Would Be A Reasonable Compromise.

Freezing the existing 2008 generation rates for the first four months of 2009 would result in an effective generation rate for Ohio Edison of \$67.92/mWh, for Toledo Edison \$67.28/mWh and for CEI \$47.86/mWh.³⁰ This rate freeze analysis takes into account the fact that the RTCs for Ohio Edison and Toledo Edison expire at the end of 2008, but will continue for CEI. The weighted average generation price from FES needed to freeze existing rates is \$60.77/mWh. This is a 21.6% reduction in the FES

²⁷ Attachment 7.

²⁸ *Id.*

²⁹ Attachment 8.

³⁰ Attachment 9.

Short Term ESP price. Considering that in the last three months wholesale generation prices have declined by 23.8%, a price of \$60.77/mWh seems reasonable.

This proposal would result in all customers, including customers currently served under special contracts which expire at the end of 2008, to maintain stable rates for the first four months of 2009. Staff witness Mr. Fortney made a similar proposal at page 10 of his direct testimony, except that he would also add a 2.5% surcharge on each customer's 2008 bill. A 2.5% surcharge on 2008 total bills would yield approximately \$44.6 million in additional revenue to the Utilities over the four month period. Staff's approach to impose a 2.5% rate increase on each ratepayer for four months is reasonable and should be offered to the Utilities as an alternative.

In order to provide FES with a stable load the non-bypassable \$10/mWh MDS charge could be imposed for four months to limit customer migration through shopping. Finally, an additional incentive to consider would be to allow the two distribution surcharges to operate thus providing the Utilities with an additional \$45 million.

Respectfully submitted,



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October 30, 2008

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September 29, 2008

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


In re: Case No. 03-935-EL-SSO

Dear Sir/Madam:

Please find attached the DIRECT TESTIMONY AND EXHIBITS OF STEPHEN J. BARON on the subject of alternative ESP plan, rate mitigation plan, and interruptible provisions filed ON BEHALF OF THE OHIO ENERGY GROUP ("OEG").

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,



David F. Boehm, Esq.
Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY

MJ,Klow
Encl.

Cc: Certificate of Service
Chairman Alan R. Schriber
Ronda Hartman Pergus
Valerie A. Lommie
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**BEFORE THE
PUBLIC UTILITY COMMISSION OF OHIO**

**IN RE: IN THE MATTER OF THE APPLICATION)
OF OHIO EDISON COMPANY, THE)
CLEVELAND ELECTRIC ILLUMINATING) CASE NO. 08-935-EL-SSO
COMPANY, AND THE TOLEDO EDISON)
COMPANY FOR AUTHORITY TO)
ESTABLISH A STANDARD SERVICE)
OFFER PURSUANT TO R.C. § 4928.143 IN)
THE FORM OF AN ELECTRIC SECURITY)
PLAN)**

**DIRECT TESTIMONY
OF
STEPHEN J. BARON**

**ON BEHALF OF
THE OHIO ENERGY GROUP**

**J. KENNEDY AND ASSOCIATES, INC.
ROSWELL, GEORGIA**

September 2008

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OHIO**

**IN RE: IN THE MATTER OF THE APPLICATION)
OF OHIO EDISON COMPANY, THE)
CLEVELAND ELECTRIC ILLUMINATING) CASE NO. 08-935-EL-SSO
COMPANY, AND THE TOLEDO EDISON)
COMPANY FOR AUTHORITY TO)
ESTABLISH A STANDARD SERVICE)
OFFER PURSUANT TO R.C. § 4928.143 IN)
THE FORM OF AN ELECTRIC SECURITY)
PLAN)**

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I. QUALIFICATIONS AND SUMMARY

Q. Please state your name and business address.

A. My name is Stephen J. Baron. My business address is J. Kennedy and Associates, Inc. ("Kennedy and Associates"), 570 Colonial Park Drive, Suite 305, Roswell, Georgia 30075.

Q. What is your occupation and by who are you employed?

A. I am the President and a Principal of Kennedy and Associates, a firm of utility rate, planning, and economic consultants in Atlanta, Georgia.

Q. Please describe briefly the nature of the consulting services provided by Kennedy and Associates.

A. Kennedy and Associates provides consulting services in the electric and gas utility industries. Our clients include state agencies and industrial electricity consumers. The firm provides expertise in system planning, load forecasting, financial analysis, cost-of-service, and rate design. Current clients include the Georgia and Louisiana Public Service Commissions, and industrial consumer groups throughout the United States. My educational background and professional experience are summarized on Baron Exhibit __ (SJB-1).

J. Kennedy and Associates, Inc.

1 Q. On whose behalf are you testifying in this proceeding?

2 A. I am testifying on behalf of The Ohio Energy Group ("OEG"), a group of large
3 industrial customers of The Toledo Edison Company ("TE"), Ohio Edison
4 Company ("OE") and The Cleveland Electric Illuminating Company ("CEI"),
5 hereinafter referred to as "the Companies". The members of OEG who take service
6 from the Companies are: Air Products & Chemicals, Inc., AK Steel Corporation,
7 Alcoa Inc., ArcelorMittal, BP-Husky Refining, Inc., Brush Wellman Inc., Chrysler
8 LLC., E.I. DuPont de Nemours & Co., Ford Motor Company, Johns Manville
9 (Berkshire Hathaway), North Star BlueScope Steel, LLC, PPG Industries, Inc.,
10 Republic Engineered Products, Inc., Sunoco Toledo Refinery, Severstal Warren,
11 Inc. (formerly WCI Steel, Inc.) Worthington Industries and Linde, Inc.

12
13 Q. Have you previously presented testimony in any of the Companies' cases in
14 Ohio?

15 A. Yes. I have previously testified in Case Nos. 88-171 and 88-170. I have also
16 testified in Case Nos. 99-1212, 99-1213, and 99-1214, the 2000 proceedings in
17 which the Companies' rates were unbundled and the Companies were restructured
18 to implement retail competition. I also have testified in Case Nos. 07-551, 07-552,
19 07-553 and 07-554, and have filed testimony in Case Nos. 08-124 and 08-125.
20 Finally, I have testified in the Companies' MRO proceeding, Case No. 08-936-RL-
21 SSO.

1

2 Q. What is the purpose of your testimony?

3 A. I am addressing a number of issues raised by the Companies' proposed ESP
4 associated with its requested rates and riders. First, I will be addressing the
5 Companies' proposed Long Term and Short Term ESP SSO procurements. I will
6 address the impact of the Companies' discuss the Companies' proposed contracts
7 for generation supply from FES and discuss an alternative procurement strategy
8 using an active portfolio approach.¹

9

10 I also will also discuss the Companies' proposals on large industrial rate schedules
11 and the lack of a reasonable mitigation proposal in it plan. In this regard, I will
12 discuss an OEG proposal to mitigate the rate increases proposed in the Companies'
13 ESPs (or alternative ESPs approved by the Commission) that will promote
14 economic development.

15

16 I will also address the Companies' proposed Economic Load Response rider
17 ("ELR") and recommend appropriate adjustments that will make the rider more
18 reasonable.

19

20 I will also address the Companies' proposed non-bypassable 1 cent per kWh
21 generation charge associated with provider of last resort (POLR) risk. This charge,

1 which is included in the generation rate for each Company, is designed to
2 compensate the Companies for supplier risk in providing POLR standard offer
3 service. I will recommend adjustments to this charge.
4

5 Q. Would you please summarize your testimony?

6 A. Yes.
7

8 1. As discussed by OEG witness Lane Kollen, the Companies' proposed Long
9 Term ESP generation rate is not reasonable. As an alternative, OEG recommends
10 that the Companies issue requests for proposals for all facets of wholesale
11 generation supply sufficient to meet their POLR requirements. The ultimate goal
12 should be a least cost portfolio of wholesale generating resources to supply those
13 consumers who do not shop. The shopping risk, or POLR responsibility, should be
14 retained by the Companies.
15

16 2. The Companies' Short Term ESP proposal is not reasonable and should be
17 modified. If a long term ESP is not in place, OEG recommends that the Companies
18 purchase energy via the MISO day-ahead market. The existing generation rates less
19 RTCs as they naturally expire should be continued, subject to an adjustment to

¹ OEG witness Lane Kollen also addresses the Companies' Long Term ESP ESO procurement proposal.

1 reflect the difference between the revenues produced by the current effective
2 generation rates and the cost of actual purchases from the MISO day-ahead market.

4 3. The Companies' proposed rate increases in 2009 under the ESP do not
5 consider the state policy to facilitate Ohio's competitiveness in the global economy.
6 In particular, The Companies' ESP rate proposals fail to adequately mitigate the
7 increases to large industrial customers. In some cases, the Companies are proposing
8 industrial customer increases in 2009 (versus 2008) of more than 33%, while
9 proposing rate reductions to the commercial customer class. No matter how
10 wholesale power for non-shoppers is procured, the increases for each Company
11 should be modified using the following three principles:

- 12 ■ Residential rates should reflect the increases suggested by the Companies
13 (if the filed ESP rates are adopted) and not be charged any costs associated
14 with rate mitigation under this plan. If alternative wholesale generation
15 rates are approved, then residential rates should be adjusted accordingly
16 to recover the residential class share of costs, without any additional
17 mitigation charges produced under this plan.
- 18 ■ No rate schedule should receive an increase greater than "2 Times" the
19 average increase.
- 20 ■ No rate schedule should receive a rate decrease if other schedules get an
21 increase.

22 This rate mitigation plan moderates the full effect of wholesale price increases by
23 increasing the non-bypassable EDR charge to non-residential customers. This plan
24
25
26
27

1 is revenue neutral to the utilities and promotes economic development and job
2 retention.

3
4 4. The Companies have incorporated a 1 cent per kWh charge in the
5 base generation rates of each Company to provide compensation to the Companies
6 due to their obligations to provide POLR service to customer, who may switch to an
7 alternative supplier during the term of the ESP. This charge is non-bypassable and
8 is included in the ESP generation rates (via Rider GEN) and separately charged to
9 shopping customers via Rider MDS. This charge should be waived for ESP
10 customers who either: a) agree to forego their right to shop during the three year
11 term of the ESP; or b) agree to not take service under the ESP and, in the event of a
12 return to POLR service, agree to waive their right to take service under the ESP and
13 accept market based rates.

14
15 5. The Companies have proposed an Economic Load Response ("ELR") rider
16 that offers existing interruptible and special contract interruptible customers an
17 option to receive additional interruptible credits if these customers agree to an
18 unlimited number of economic interruptions. OEG recommends that the proposed
19 ELR rider be modified as follows:

- 20 a. Economic interruptions will be invoked when the day-ahead LMP
21 exceeds 125% of the ESP generation rate for three consecutive hours
22
23 b. Economic interruptions are limited to 1,000 hours annually.

1
2 6. The Companies are proposing a Capacity Cost Adjustment Rider ("CCA")
3 to recover the costs of additional required reserves during the months of May
4 through September, in the event that the FES capacity available to the Companies is
5 insufficient to provide such reserves. It is inappropriate to charge this capacity rider
6 to interruptible load. The requirement to obtain sufficient annual planning reserves
7 is an obligation of the Companies, based on their firm load, not interruptible load.

1 **II. LONG TERM AND SHORT TERM ESP PROCUREMENTS**

2
3 **Q. OEG witness Kollen has raised concerns regarding the reasonableness of the**
4 **Companies' proposed Long Term ESP procurement rates in his testimony. Do**
5 **you have any recommendations for an alternative approach that could be used**
6 **by the Companies to procure POLR supplies under the Long Term ESP?**

7 **A. Yes. In my testimony in Case No. 08-936-EL-SSO, which concerned the**
8 **Companies' MRO procurement, I recommended that an active portfolio approach be**
9 **used to obtain the necessary wholesale generation supplies for the distribution**
10 **Companies' non-shopping customers. A similar procurement approach should be**
11 **implemented to obtain generation supply for the ESP as well.**

12
13 **Q. Would you describe approach that you recommend to obtain POLR**
14 **generation service for the Companies?**

15 **A. The Companies should issue requests for proposals for all facets of wholesale**
16 **generation supply sufficient to meet its POLR requirements. The ultimate goal**
17 **should be a least cost portfolio of wholesale generating resources to supply those**
18 **consumers who do not shop. The retail shopping risk, or POLR responsibility,**
19 **should be retained by the Companies. The Companies should be fully**
20 **compensated for this risk by rates set by this Commission. The POLR risk should**
21 **not be outsourced to the wholesale generation suppliers.**

1

2 **Q. Why are you proposing an ESP procurement process that places the POLR**
3 **risk on Toledo Edison, Ohio Edison and CEI, instead of FES or other**
4 **wholesale suppliers?**

5 **A. A procurement process wherein the Companies obtain, via a competitive sealed**
6 **bid RFP process, blocks of wholesale power, rather than full requirements service,**
7 **places the risk of POLR supply on the Companies. As a result, the cost of**
8 **wholesale generation should be significantly reduced. The supplier risks inherent**
9 **in a full requirements POLR service solicitation were quantified by the**
10 **Companies' witness Scott Jones in this case. Dr. Jones explained how third**
11 **parties who bid on supplying non-shopping load must factor in many different**
12 **types of retail risk. According to Dr. Jones, when utilities out-source the**
13 **responsibility and risk of POLR supply to third parties, the result is a retail mark-**
14 **up over the wholesale generation price of between 17% - 40%. Keep in mind that**
15 **this retail mark-up is over and above the already high FERC regulated wholesale**
16 **market generation prices established through the MISO or PJM locational**
17 **marginal price (LMP) process.**

18

19 **Table 1 summarizes the "margins," in excess of the wholesale cost of generation**
20 **that Dr. Jones has estimated for the years 2009 through 2011 under a competitive**
21 **full requirements solicitation.**

Table 1 Estimated Procurement Margins in Excess of FERC Regulated Wholesale Market Price*				
	2009	2010	2011	Total
Direct	\$ 4,422,980,216	\$ 4,220,202,509	\$ 4,381,580,987	\$ 13,024,743,712
Retail Margin above Market	\$ 751,974,881	\$ 1,465,254,033	\$ 1,751,336,938	\$ 3,968,565,852
Total Cost to Retail Customers	\$ 5,174,935,177	\$ 5,675,456,542	\$ 6,142,917,922	\$ 16,993,309,641
* Source: Direct Testimony of Scott Jones, Exhibits 8, 9 and 10				

1
2

3 As can be seen from Dr. Jones' analysis, the estimated retail "margins" that
4 customers would have to pay over and above the market based wholesale
5 generation cost are nearly \$4 billion during the three year period. This is
6 equivalent to a margin of \$22.86 per mWh. This is a very substantial payment
7 that may be reduced if the Companies procure wholesale blocks of power, use the
8 MISO market for load following and absorb the POLR risk themselves.

9

10 Q. Should the Companies be permitted to recover all of their competitively bid
11 generation supply costs under your proposal?

12 A. Yes, to the extent that such costs were prudently incurred. The Companies should
13 conduct a competitive procurement using an RFP process for wholesale blocks of
14 power and other necessary generation services to meet POLR load. Based on a
15 reasonable mix of fixed block wholesale contracts and spot purchase and sales

1 contracts (to deal with load following, sales forecast variation, shopping
2 migration, etc.) the Companies would effectively absorb the risks cited by Dr.
3 Jones. The reasonable costs associated with these purchases to meet customer
4 load should be recovered from customers who take POLR service, subject to
5 Commission approval. Under this procurement approach, the Commission would
6 have oversight on the level and recovery of the implicit "risk premiums" being
7 charged to customers. The Commission would therefore have the ability to keep
8 the retail risk premium below the \$4 billion amount estimated by Dr. Jones (an
9 average of \$1.33 billion per year).

10
11 Q. Have you reviewed the Companies proposal to implement a Short Term ESP,
12 in the event that the Commission has not made a determination on the ESP
13 proposal in time to implement it by January 1, 2009?

14 A. Yes. The Short Term ESP, which must be approved by the Commission by
15 November 14, 2008 or it is automatically withdrawn, is an offer by the Companies
16 to the Commission for a temporary SSO Pricing plan that will be in effect for the
17 period January 1, 2009 through April 30, 2009. If the Commission approves the
18 Short Term ESP, according to the Companies application, "the Commission will
19 have established known rates that will be in effect on January 1, 2009, in the event
20 that there is no approved ESP acceptable to the Companies within the 150 day
21 period provided pursuant to Am. Sub. S. B.221."

1
2 The rates and terms of the Short Term ESP are the same as those of the longer term
3 ESP except that the average base generation rate is 7.75 cents/kWh (6.75 cents/kWh
4 current charge, 1.0 cents/kWh deferred).²
5

6 Q. How does this proposed average base generation rate of 7.75 cents/kWh
7 compare to the proposed longer term ESP average generation rate for 2009?

8 A. The longer term ESP proposal requests a 7.50 cent/kWh average generation rate for
9 2009. The Short Term ESP generation rate is thus 3.3% greater than the Long Term
10 ESP proposed base generation rate for 2009.
11

12 Q. Do you have any concerns with the Companies' proposed Short Term ESP
13 proposal?

14 A. Yes. For the reasons discussed in Mr. Kollen's testimony regarding the proposed
15 Long Term ESP generation rates, I believe that the Short Term ESP proposal is not
16 reasonable and should be modified.
17

18 Q. How should the Companies' Short Term ESP pricing proposal be modified?

19 A. OEG recommends that the Companies purchase energy for non-shopping customers
20 via the MISO day-ahead market. The Companies' existing generation rates should

² Certain provisions of the longer term ESP do not apply related to Green Resources and the Economic Development Rider.

1 be continued, subject to an adjustment to reflect the difference between the revenues
2 produced by the currently effective generation rates and the cost of actual purchases
3 from the MISO day-ahead market. In addition, the RTC should be eliminated from
4 current rates as it expires.³

6 Q. What mechanism should be established to implement this proposed Short
7 Term ESP?

8 A. The most appropriate mechanism would be to implement a purchased power
9 recovery rider that would compute the difference between the costs each month
10 associated with power purchases and the revenues produced via the existing
11 generation rates. The Companies should be permitted to recover all of their costs
12 associated with obtaining the POLR supply that are not recovered via the existing
13 generation rates or other riders (such as the transmission cost recovery rider). This
14 would include ancillary services, capacity costs, congestion charges and any other
15 costs incurred, in excess of the revenues produced by the existing generation rates
16 (less RTC as it naturally expires) and the existing transmission charges.

17
18 Q. Have you made any analysis of the estimated cost of acquiring energy on the
19 MISO day-ahead market for 2009?

20 A. Yes, I have summarized my analysis in Table 2, which follows. Based on the July
21 15, 2008 analysis of PJM West and Cinergy Hub forward prices presented by Mr.

³ The RTC will terminate at the end of 2008 for OE and TE customers.

Graves, the expected price for energy and capacity for the four months ending April 2009 would be 7.249 cents/kWh. Using an updated analysis of the same PJM West and Cincergy Hub forward prices as of September 19, 2008, the expected price for energy and capacity for the four months ending April 2009 would be 6.185 cents/kWh. The difference between the 6.185 cent/kWh rate and the Companies' proposed Short Term ESP generation rate of 7.75 cents/kWh is \$294 million for the four month period January to April 2009.

Table 2 Average of Cincergy Hub and PJM West Forward Prices		
Month	July 18, 2008	Sept. 19, 2008
Jan-09	388,481,857	301,744,112
Feb-09	322,780,327	285,802,942
Mar-09	279,537,902	238,778,174
Apr-09	382,923,808	244,487,973
Jan-Apr Avg.	1,251,733,696	1,051,823,202
Capacity Cost Rate (\$/mW/day)	69.17	69.17
Peak Load + Reserves	13,327	13,327
Capacity Cost (@ 120 Days)	\$110,819,431	\$110,819,431
Total Cost	\$1,362,363,126	\$1,162,442,633
MWH Sales	18,794,718	18,794,718
\$/mWh	\$72.49	\$61.85

Q. Should the Companies, or their agent, employ hedging to provide more stable prices during this four month period?

1 A. My recommendation would be to permit the Companies, via their agent, to engage
2 in hedging, if that is determined to be cost effective.

3
4 Q. Are you recommending that the Companies participate directly in the MISO
5 day-ahead market?

6 A. Not necessarily. The Companies can either elect to participate directly in the MISO
7 market or issue an RFP to obtain this product from a third party. The Companies
8 should also evaluate the costs and benefits of purchasing financial hedges.

III. OEG PROPOSED RATE MITIGATION PLAN

Q. Would you address the Companies' proposals to mitigate rate increases under their respective ESP's?

A. As discussed by various Companies' witnesses (e.g., David Blank, Gregg Hussing) in their testimony, the Companies have proposed a number of so-called "rate mitigation" riders that are designed to facilitate a reasonable transition from the current RSP rates to the proposed rates that would otherwise prevail under their respective ESP's. For example, Mr. Hussing testifies at page 5, line 9 of his testimony that:

The transition from historic rate levels and structures to proposed rates must be accomplished through a reasoned and gradual approach in order to accomplish the objective of mitigating customer impacts. Incorporating the concept of gradualism is a useful tool in managing overall customer impacts resulting from rate design objectives.

Q. Do you agree with Mr. Hussing's stated rate mitigation objectives in this case?

A. While I agree with the Companies' stated objectives, a review of the proposed rate increases under the ESP's shows that the utilities have not come close to incorporating gradualism into their rate proposals and have failed to adequately mitigate the increases to large industrial customers.

1 **Q. What increases are the Companies proposing for 2009 under their respective**
2 **ESP's?**

3 **A. Table 3 below summarizes the percentage rate increases by rate class for each**
4 **Company in 2009, compared to 2008 rate levels. Rate GT is the transmission**
5 **voltage rate used to serve large industrial customers. As can be seen, for some rate**
6 **schedules (for example, Ohio Edison rate GT, Cleveland Electric Illuminating rate**
7 **GT and Toledo Edison rate GT), the proposed ESP increases are many multiples of**
8 **the average retail increases for those Companies. In the case of Toledo Edison, the**
9 **Company is proposing to increase the GT industrial rate by 33.8%, compared to an**
10 **average retail increase of 6.96%. At the same time, Toledo Edison is proposing**
11 **significant rate reductions for the commercial customer classes. The GT industrial**
12 **rate increase is nearly 5 times as large as the average increase. This cannot possibly**
13 **be consistent with the concept of gradualism supported by Mr. Humming.**

14

Table 3 Companies' Proposed Rate Increases			
RATE CODE	2009 / 2008 Percentage Increases		
	OE	CE	IE
RS	2.38%	6.17%	5.73%
GS	2.53%	4.77%	-6.82%
GP	5.33%	2.23%	-10.27%
GSU	8.68%	1.74%	-14.68%
GT	19.63%	13.60%	33.63%
POL	2.46%	26.29%	18.17%
STL	11.53%	17.20%	1.92%
TRF	12.36%	21.33%	-26.66%
CONTRACTS		-6.92%	
TOTAL COMPANY	5.23%	4.62%	9.96%

1
2 Q. Do the increases shown in Table 3 reflect all of the Companies' proposed
3 mitigation assistance?

4 A. Yes. These include the full extent of the Companies' limited attempts at mitigation.
5 It should be obvious that these rate mitigation proposals are simply insufficient to
6 accomplish any reasonable gradualism objective, contrary to the stated objectives of
7 the Companies that I quoted earlier.

8
9 Q. Are the increases proposed in the ESP's consistent with Ohio state policy, as
10 required in Ohio Revised Code §4928.02 and SB 221?

11 A. No, not in my opinion. ORC §4928.02(A) and (N) provide clear guidance to the
12 Commission in evaluating the Companies' ESP. These policy objectives are:

1 (A) Ensure the availability to consumers of adequate, reliable, safe,
2 efficient, nondiscriminatory, and reasonably priced retail electric
3 service;
4

5 (N) Facilitate the state's effectiveness in the global economy.
6
7

8 Increases for the Companies' largest industrial manufacturing firms in the range of
9 25% to 34%, compared to retail average increases in the 5% range, do not comport
10 with Ohio state policy requiring reasonably priced electric service and clearly do not
11 "facilitate the state's effectiveness in the global economy." A more substantial and
12 reasonable mitigation plan is required.
13

14 While reasonably priced electric power will not save Ohio's manufacturing sector
15 by itself, it will help. From January 2000 to the first quarter of 2008, Ohio's goods-
16 producing industries (manufacturing, construction, natural resources, and mining)
17 lost 23.3% of their employment. In the last eight months this rate of decline has
18 accelerated. From January 2008 to August 2008, Ohio's unemployment rate
19 increased by 34.5% (from 5.5% to 7.4%). This is 115,888 additional unemployed
20 workers. Heavy manufacturing is concentrated in the Companies' service
21 territories. According to the Ohio Department of Development, in 2007, Ohio had
22 201 large manufacturing plants. Of this total, 161 are located in counties served by
23 the Companies.
24

1 Q. Can the Commission improve the rate mitigation plan proposed by the
2 Companies to accomplish the statutory objectives?

3 A. Yes. The Commission can improve the proposed rate mitigation plan to more
4 reasonably apply the concepts of gradualism to the ESP rates in order to promote
5 state policies, especially economic development. In a number of prior cases, the
6 PUCO has adopted the regulatory concept of gradualism in approving increases to
7 rate classes.

8
9 Q. Has OEG developed an alternative rate allocation methodology that promotes
10 the policy objectives of the state ?

11 A. Yes. OEG recommends that the approved ESP revenue increases for non-shopping
12 customers be allocated to retail rate schedules using the following three principles:

- 13 1. Residential rates should reflect the increases suggested by the
14 Companies (if the filed ESP rates are adopted) and not be charged
15 any costs associated with rate mitigation under this plan. If
16 alternative wholesale generation rates are approved, then residential
17 rates should be adjusted accordingly to recover the residential class
18 share of costs, without any additional mitigation charges produced
19 under this plan.
20
- 21 2. No rate schedule should receive an increase greater than "2 Times"
22 the retail average increase.
23
- 24 3. No rate schedule should receive a rate decrease if other schedules
25 get an increase.
26

1 These three principles should be adopted by the Commission no matter how
2 wholesale generation supply is obtained for non-shopping load. These three
3 principles can and should be applied even if the wholesale supply proposal from
4 FES is rejected.

5
6 Baron Exhibit __ (SJB-2) presents the results of the OEG Rate Mitigation Plan as
7 applied to the FES offer. This Table is for illustrative purposes only, as I believe the
8 FES generation supply proposal is not reasonable and should be rejected. Table 4
9 summarizes the 2009 (versus 2008) increases for each rate schedule under the FES
10 offer.

Table 4 OEG Mitigated Proposed Rate Increases			
RATE CODE	2009 / 2008 Percentage Increases		
	OE	CE	IE
RS	2.38%	6.17%	8.73%
GS	8.31%	4.81%	4.74%
QF	8.18%	2.09%	0.00%
GSU	10.47%	1.00%	0.00%
GT	10.47%	0.24%	13.93%
POL	5.23%	0.24%	13.93%
STL	10.47%	0.24%	13.77%
TRF	10.47%	0.24%	0.00%
CONTRACTS		0.00%	
TOTAL COMPANY	8.23%	4.62%	8.66%

1 Q. Would you describe the methodology used to mitigate the increases for each of
2 the Companies' rate schedules?

3 A. Yes. First, as stated above, OEG is not proposing any changes for residential rate
4 schedules.⁴ The OEG mitigation analysis begins by first determining the maximum
5 increase for each non-residential rate schedule, based on the "2 Times" the average
6 retail increase criterion. The next step is to reallocate the revenue deficiency
7 produced by the "2 Times" limitation to all non-residential rate schedules. Finally,
8 rate schedules that continue to show a rate decrease are adjusted such that there is a
9 "0" increase for that rate, with the resulting excess revenues used to reduce the
10 increases for all non-residential rates.

11
12 Q. Have you made any special adjustments for the CEI Contract rate class?

13 A. No. At this point, I have treated this rate class similarly to all other CEI non-
14 residential classes. To the extent that all, or a portion of the revenue adjustment
15 shown for this rate class in my analysis are precluded by the terms of the contract,
16 my recommendation is to allocate the shortfall to all non-residential classes in the
17 manner that I have followed in my analysis.

18
19 Q. Do you have a recommendation to specifically implement the OEG Economic
20 Development Plan?

⁴ Of course, to the extent that the Commission authorizes a lower overall ESP increase, residential rates would be adjusted to reflect these changes.

1 A. Yes. The mitigation should be accomplished via the charges and credits in the
2 Companies' proposed Economic Development Rider ("EDR"). As stated in the
3 Direct Testimony of Companies' witness Hussing at page 8, line 17, "[T]he purpose
4 of the Economic Development Rider is to promote gradualism and mitigate overall
5 bill impacts to customers through a series of credits and charges." I agree fully with
6 Mr. Hussing's testimony wherein he states: "...it is better to proactively address
7 disproportionate rate impacts typically felt by those customers previously served on
8 tariffs below average rates in order to promote economic stability."³ The OEG
9 Mitigation Plan is consistent with this objective and OEG recommends that each
10 Company's EDR be modified to incorporate the provisions of the OEG plan. In
11 addition to the fact that the rationale for the OEG Rate Mitigation plan is to facilitate
12 Ohio state policy, amounts charged to each rate schedule via the EDR should be
13 non-bypassable, which will facilitate the implementation of the mitigation plan and
14 ensure that any revenue shortfalls are fully recovered by the Companies.

15
16 Q. What effect will these proposed changes to the non-bypassable EDR rider have
17 on shopping and POLR risk to the utilities?

18 A. OEG's plan moderates the full effect of wholesale cost increases to the industrial
19 class by increasing the non-bypassable EDR charge on non-residential customers.
20 Industrial customers will have an incentive to remain on standard offer service. This
21 will reduce POLR risks to the utilities. This will benefit all non-shopping customers

³ Hussing Direct at page 9, line 2.

1 customers by minimizing the retail risk premium that must be added to the
2 wholesale generation price. By reducing the utilities' POLR risk, OEG's proposal
3 will tend to drive down the \$4 billion retail risk premium Company witness Dr.
4 Jones has forecasted.

5
6 I believe this plan promotes the overall economic interests of Ohio. The
7 Commission has a choice: numerous high cost shopping options, or low rates.

8
9 **Q. Will the OEG Rate Mitigation Plan produce State-wide economic benefits by**
10 **lowering the industrial power rate?**

11 **A. Yes. The primary effect of the OEG rate mitigation plan is a reduction in what**
12 **otherwise would be very large electric rate increases to Ohio manufacturing**
13 **facilities. Such increases will adversely affect the economic viability of these**
14 **customers and potentially lead to increases in the decline of the Ohio manufacturing**
15 **base, and employment. When an auto manufacturing or steel plant closes, those**
16 **jobs are likely gone forever. The market share that was served by the closed auto or**
17 **steel plant is then absorbed by a manufacturer in another state or another country.**
18 **Unlike commercial customers, industrial customers in Ohio face national and**
19 **international competition. Therefore, growing and maintaining industrial operations**
20 **through reasonable electric rates is consistent with SB 221's policy goal to**
21 **"facilitate the state's effectiveness in the global economy."**

IV. MINIMUM DEFAULT SERVICE CHARGE

Q. Have you reviewed the Companies' proposal to incorporate a 1 cent per kWh non-bypassable minimum default charge in their generation rates?

A. Yes. As described by Companies' witness Kevin Warvell on page 8 of his Direct Testimony, the Companies have incorporated a 1 cent per kWh charge in the base generation rates of each Company to provide compensation to the Companies due to their obligations to provide POLR service to customers, who may switch to an alternative supplier during the term of the ESP. In particular, if the Companies procure generation for ESP load and a portion of this load elects to shop during the ESP (presumably due to lower market prices), the Companies would face excess capacity for which they would receive insufficient revenues. Alternatively, if more customers take POLR service than expected due to higher market prices, the Companies would be required to make market purchases at higher prices. To mitigate this market risk, according to Mr. Warvell, the Companies must purchase hedges.

Q. How is this cost being recovered under the Companies' ESP?

A. This charge is non-bypassable and is included in the ESP generation rates (via Rider GEN) and separately charged to shopping customers via Rider MDS.

1 Q. Do you oppose the inclusion of this charge in the ESP generation rate?

2 A. No. However, as I will discuss, it should be waived for ESP customers who either:

3 a) Agree to forego their right to shop during the three year term of the
4 ESP

5 OR

6
7 b) Agree to not take service under the ESP and, in the event of a return
8 to POLR service, agree to waive their right to take service under the
9 ESP and accept market based rates.
10

11

12 Q. Would you please explain your proposed modification to the Companies'
13 minimum default service charge?

14 A. The MDS charge is essentially designed to compensate the Companies for the
15 volumetric risk incurred to provide POLR service that is subject to shopping
16 migration (either to or from an alternative supplier). POLR suppliers face this risk
17 for the reasons cited by Mr. Warvell and I do not dispute his testimony on this issue.
18 However, to the extent that the ESP can be modified to eliminate this risk for some
19 ESP customers, these customers should not be charged the costs associated with
20 volumetric risk.
21

22 Q. Would you explain your specific proposal?

23 A. Yes. According to Mr. Warvell's testimony, the Companies have determined that 1
24 cent per kWh of the overall generation rate is associated with compensating the

1 distribution utilities for shopping risk. If a customer, by election, agrees to either
2 remain an ESP customer for the entire three year plan term, or agrees to not take the
3 ESP POLR generation rate during the three year plan because the customer elects to
4 shop, and further agrees to take market priced service in the event of a return to
5 POLR service, the Companies would not incur any of the risks identified by Mr.
6 Warvell in support of the 1 cent per kWh minimum default service charge.
7 Therefore, these customers should not be charged the 1 cent rate. For customers
8 agreeing to remain ESP customers for the entire three year ESP term, the generation
9 rate (Rider GEN) should be reduced by 1 cent per kWh. For customers that shop
10 and agree not to take the ESP POLR rate if they return to POLR service during the
11 three year period, the Companies' proposed Rider MDS should be waived.

12
13 **Q.** Would your recommendation regarding the applicability of POLR charges to
14 shopping and non-shopping customers apply only in the event that the
15 Commission adopts the Companies' proposed ESP plan?

16 **A.** No. As a matter of principle, the recommendation that I am making regarding the
17 application of POLR charges to ESP customers who elect to waive their option to
18 shop during the term of the ESP or agree to shop and only return to POLR service at
19 market prices would apply, regardless of the final structure of the Commission
20 approved ESP plan for the Companies.

V. ECONOMIC LOAD RESPONSE RIDER

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Q. Would you please briefly describe the Economic Load Response rider ("ELR")?

A. The ELR rider offers existing interruptible and special contract interruptible customers an option to receive additional interruptible credits if these customers agree to an unlimited number of economic interruptions. These economic interruptions would be triggered when the market price of power exceeds the ESP generation rate. At this point, customers would be permitted to buy-through the interruption at market prices. Effectively, if a customer elects the ELR rider, the customer would pay market based rates when market prices exceed the ESP generation rate and the ESP generation rate otherwise.

Q. Do you believe that the terms of the ELR rider are reasonable?

A. No. While OEG supports the ELR rider and its goals of rate mitigation, the terms of the rider are not reasonable and would likely result in customers foregoing the rider, thus causing potential benefits to these customers and to the Companies' firm customers from being achieved. In the Companies' July 2007 Application to Establish a Competitive Bidding Process ("CBP", Case No. 07-796-EL-ATA), the Companies proposed a similar ELR rider, yet one with more reasonable terms.

1 Q. Would you describe the terms of the Companies 2007 CBP Economic Load
2 Response Program ("LRP")?

3 A. The optional LRP proposal in the 2007 CBP case was similar to the ELR rider
4 provisions in this case except for two very important differences. First, economic
5 interruptions would only be called in the event that the day-ahead locational
6 marginal price ("LMP") exceeded 125% of the competitive bid price. This is in
7 contrast to the Companies' ELR proposal in this case that initiates an economic
8 interruption in the event that the day-ahead LMP exceeds the ESP generation rate
9 (GEN rider and GPI rider).

10

11 The second very important difference between the 2007 proposal and the current
12 ESP ELR rider is that the 2007 proposal limited the number of economic
13 interruptions to 1000 hours annually. The current ELR proposal has no limitation
14 on the maximum annual hours of economic interruption. For large industrial
15 manufacturing customers, this 1000 hour limitation, while significant, is a risk that
16 can be assessed by the customer. The ESP ELR proposal, with no limitation
17 (effectively 8,760 hours limitation), is highly risky for customers, which creates a
18 significant barrier to participation.

19

20 Q. Do you have a recommendation to modify the ESP ELR rider?

1 A. Yes. OEG recommends that the two terms that I just discussed from the 2007 CHP
2 case be adopted for the ELR. These two modifications to the ELR are:

- 3 1. Economic interruptions will be invoked when the day-ahead LMP exceeds
4 125% of the ESP generation rate for three consecutive hours
5
6 2. Economic interruptions are limited to 1,000 hours annually.
7

8
9 Q. Do you have any concerns about the proposed basic \$1.95 per kW month
10 interruptible credit to reflect the value of avoided capacity?

11 A. Yes. In the Direct Testimony of Companies' witness Scott Jones at page 13, line 9,
12 he testifies that the appropriate capacity cost for the Companies is \$2.20 per kW
13 month. This cost, when adjusted by a 13.5% factor (as used by Dr. Jones in his
14 Exhibit 4) equates to a \$2.50 per kW month interruptible credit. The Companies
15 should be required to justify why a \$1.95 credit is just and reasonable in light of Dr.
16 Jones' testimony.
17

18 Q. Do you have any comments on the Companies' proposed methodology to
19 determine the amount of interruptible load each month that will receive an
20 interruptible credit?

21 A. Yes. The Companies have proposed to calculate the monthly interruptible credit
22 on the basis of Realizable Curtailable Load ("RCL"), which is determined
23 annually by the difference between a customer's firm load and its average hourly

1 demand ("AHD") during the hours of noon to 6:00 pm during the months of June
2 through August. Effectively, the RCL on which customers will receive
3 interruptible credits is limited to a customer's average on-peak load (less firm
4 load), rather than a customer's on-peak load (less firm load). Notwithstanding
5 this calculation, customers are required to curtail down to their firm load during
6 any hour required by the Companies', if they request either an emergency or
7 economic interruption. To the extent that a customer has a peak load in the on-
8 peak period that may substantially exceed the customer's AHD (average on-peak
9 load), the Companies are not providing compensation for this interruptible load.
10

11 Q. Do you agree with this method of calculating the RCL?

12 A. No. The RCL should be computed based on the difference between a customer's
13 on-peak load (used for billing purposes) and its firm load. From a planning
14 standpoint, a utility would be required to provide capacity sufficient to meet its
15 firm load requirements. To the extent that an interruptible customer has an on-
16 peak load that is subject to curtailment down to a firm load level, the customer
17 should receive credit for the full amount of its load that is subject to curtailment.
18

19 Q. Are there any additional issues that you would like to address regarding the
20 Companies' ESP riders?

1 A. Yes. The Companies are proposing a Capacity Cost Adjustment Rider ("CCA") to
2 recover the costs of additional required reserves during the months of May through
3 September, in the event that the FES capacity available to the Companies is
4 insufficient to provide such reserves. The costs associated with such purchases are
5 to be recovered from POLR customers via a bypassable charge.

6
7 Q. Do you oppose the Companies proposed Capacity Cost Adjustment Rider?

8 A. Yes, in part. Though I do not oppose the proposed rider as it would apply to firm
9 POLR load, it is inappropriate to charge this capacity rider to interruptible load. The
10 requirement to obtain sufficient annual planning reserves is an obligation of the
11 Companies, based on their firm load, not interruptible load. As a result, it would be
12 inappropriate to apply this charge to interruptible load, for which the Companies do
13 not need to obtain planning reserves. In particular, pursuant to the FERC's Order on
14 the MISO Resource Adequacy Proposal (Order in FERC Docket No. ER08-394-
15 000, issued March 26, 2008), planning reserve requirements for MISO members
16 will be based on Load Serving Entity peak loads, excluding "Load Modifying
17 Resources." Interruptible load represents one of the designated Load Modifying
18 Resources. The Companies will not be required to obtain planning reserves for
19 interruptible load, and therefore should not charge the CCA rider to interruptible
20 customers.

21

1 Q. Does that complete your Direct Testimony?

2 A. Yes.

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OHIO**

IN RE: IN THE MATTER OF THE APPLICATION)	
OF OHIO EDISON COMPANY, THE)	
CLEVELAND ELECTRIC ILLUMINATING)	CASE NO. 08-935-EL-SSO
COMPANY, AND THE TOLEDO EDISON)	
COMPANY FOR AUTHORITY TO)	
ESTABLISH A STANDARD SERVICE)	
OFFER PURSUANT TO R.C. § 4928.143 IN)	
THE FORM OF AN ELECTRIC SECURITY)	
PLAN)	

EXHIBITS

OF

STEPHEN J. BARON

**ON BEHALF OF
THE OHIO ENERGY GROUP**

**J. KENNEDY AND ASSOCIATES, INC.
ROSWELL, GEORGIA**

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OHIO**

IN RE: IN THE MATTER OF THE APPLICATION)	
OF OHIO EDISON COMPANY, THE)	
CLEVELAND ELECTRIC ILLUMINATING)	CASE NO. 04-935-EL-SSO
COMPANY, AND THE TOLEDO EDISON)	
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ESTABLISH A STANDARD SERVICE)	
OFFER PURSUANT TO R.C. § 4928.143 IN)	
THE FORM OF AN ELECTRIC SECURITY)	
PLAN)	

EXHIBIT (SJB-1)

OF

STEPHEN J. BARON

ON BEHALF OF

THE OHIO ENERGY GROUP

**J. KENNEDY AND ASSOCIATES, INC.
ROSWELL, GEORGIA**

Professional Qualifications

Of

Stephen J. Baron

Mr. Baron graduated from the University of Florida in 1972 with a B.A. degree with high honors in Political Science and significant coursework in Mathematics and Computer Science. In 1974, he received a Master of Arts Degree in Economics, also from the University of Florida. His areas of specialization were econometrics, statistics, and public utility economics. His thesis concerned the development of an econometric model to forecast electricity sales in the State of Florida, for which he received a grant from the Public Utility Research Center of the University of Florida. In addition, he has advanced study and coursework in time series analysis and dynamic model building.

Mr. Baron has more than thirty years of experience in the electric utility industry in the areas of cost and rate analysis, forecasting, planning, and economic analysis.

Following the completion of my graduate work in economics, he joined the staff of the Florida Public Service Commission in August of 1974 as a Rate Economist. His responsibilities included the analysis of rate cases for electric, telephone, and gas utilities, as well as the preparation of cross-examination material and the preparation of staff recommendations.

In December 1975, he joined the Utility Rate Consulting Division of Ebasco Services, Inc.

J. KENNEDY AND ASSOCIATES, INC.

as an Associate Consultant. In the seven years he worked for Ebasco, he received successive promotions, ultimately to the position of Vice President of Energy Management Services of Ebasco Business Consulting Company. His responsibilities included the management of a staff of consultants engaged in providing services in the areas of econometric modeling, load and energy forecasting, production cost modeling, planning, cost-of-service analysis, cogeneration, and load management.

He joined the public accounting firm of Coopers & Lybrand in 1982 as a Manager of the Atlanta Office of the Utility Regulatory and Advisory Services Group. In this capacity he was responsible for the operation and management of the Atlanta office. His duties included the technical and administrative supervision of the staff, budgeting, recruiting, and marketing as well as project management on client engagements. At Coopers & Lybrand, he specialized in utility cost analysis, forecasting, load analysis, economic analysis, and planning.

In January 1984, he joined the consulting firm of Kennedy and Associates as a Vice President and Principal. Mr. Baron became President of the firm in January 1991.

During the course of my career, he has provided consulting services to more than thirty utility, industrial, and Public Service Commission clients, including three international utility clients.

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He has presented numerous papers and published an article entitled "How to Rate Load Management Programs" in the March 1979 edition of "Electrical World." His article on "Standby Electric Rates" was published in the November 8, 1984 issue of "Public Utilities Fortnightly." In February of 1984, he completed a detailed analysis entitled "Load Data Transfer Techniques" on behalf of the Electric Power Research Institute, which published the study.

Mr. Baron has presented testimony as an expert witness in Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Indiana, Kentucky, Louisiana, Maine, Michigan, Minnesota, Maryland, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Texas, Virginia, West Virginia, Wisconsin, Wyoming, the Federal Energy Regulatory Commission and in United States Bankruptcy Court. A list of his specific regulatory appearances follows.

J. KENNEDY AND ASSOCIATES, INC.

**Expert Testimony Appearances
of
Stephen J. Baron
As of September 2008**

Date	Case	Jurisdiction	Party	Utility	Subject
4/81	203(B)	KY	Louisville Gas & Electric Co.	Louisville Gas & Electric Co.	Cost-of-service.
4/81	ER-81-42	MO	Kansas City Power & Light Co.	Kansas City Power & Light Co.	Forecasting.
5/81	U-1838	AZ	Arizona Corporation Commission	Tucson Electric Co.	Forecasting planning.
2/84	8824	KY	Alcoa Carbide	Louisville Gas & Electric Co.	Revenue requirements, cost-of-service, forecasting, wage/price normalization.
3/84	84-038-U	AR	Arkansas Electric Energy Consumers	Arkansas Power & Light Co.	Excess capacity, cost-of-service, rate design.
5/84	83B470-BI	FL	Florida Industrial Power Users' Group	Florida Power Corp.	Allocation of fixed costs, load and capacity balance, and reserve margin. Diversification of utility.
10/84	84-189-U	AR	Arkansas Electric Energy Consumers	Arkansas Power and Light Co.	Cost allocation and rate design.
11/84	R-842851	PA	Lehigh Valley Power Committee	Pennsylvania Power & Light Co.	Interruptible rates, excess capacity, and phase-in.
1/85	85-85	ME	Alcoa Industrial Gases	Central Maine Power Co.	Interruptible rate design.
2/85	1-840361	PA	Philadelphia Area Industrial Energy Users' Group	Philadelphia Electric Co.	Load and energy forecast.
3/85	9243	KY	Alcan Aluminum Corp., et al.	Louisville Gas & Electric Co.	Economics of coopting fossil generating unit.
3/85	3488-U	GA	Attorney General	Georgia Power Co.	Load and energy forecasting, generation planning economics.
3/85	R-842632	PA	West Penn Power Industrial Interconnectors	West Penn Power Co.	Generation planning economics, prudence of a pumped storage hydro unit.
5/85	84-248	AR	Arkansas Electric Energy Consumers	Arkansas Power & Light Co.	Cost-of-service, rate design return multipliers.
5/85		City of Santa	Chamber of Commerce	Santa Clara Municipal	Cost-of-service, rate design.

J. KENNEDY AND ASSOCIATES, INC.

Expert Testimony Appearances
of
Stephen J. Baron
As of September 2008

Date	Case	Jurisdiction	Party	Utility	Subject
6/85	84-786 E-42T	Class WV	West Virginia Industrial Intervenor	Monongahela Power Co.	Generation planning economics, prudence of a pumped storage hydro unit.
6/86	E-7 Sub 301	NC	Carolina Industries (CISFUR III)	Duke Power Co.	Cost-of-service, rate design, interruptible rate design.
7/86	25046	NY	Industrial Energy Users Association	Orange and Rockland Utilities	Cost-of-service, rate design.
10/85	85-043-U	AR	Akathite Gas Consumers	Akath, Inc.	Regulatory policy, gas cost-of- service, rate design.
10/86	85-83	ME	Alco Industrial Gases	Central Maine Power Co.	Feasibility of interruptible rates, pooled cost.
2/88	85- 850788	NJ	Air Products and Chemicals	Jersey Central Power & Light Co.	Rate design.
3/85	R-850220	PA	West Penn Power Industrial Intervenor	West Penn Power Co.	Optimal reserve, prudence, off-system sales guarantee plan.
2/86	R-850220	PA	West Penn Power Industrial Intervenor	West Penn Power Co.	Optimal reserve margin, prudence, off-system sales guarantee plan.
3/86	85-288J	AR	Arkansas Electric Energy Consumers	Arkansas Power & Light Co.	Cost-of-service, rate design, revenue distribution.
3/86	85-725- 81-AJR	OH	Industrial Electric Consumers Group	Ohio Power Co.	Cost-of-service, rate design, interruptible rates.
5/88	88-081- E-61	WV	West Virginia Energy Users Group	Monongahela Power Co.	Generation planning economics, prudence of a pumped storage hydro unit.
9/86	E-7 Sub 408	NC	Carolina Industrial Energy Consumers	Duke Power Co.	Cost-of-service, rate design, interruptible rates.
10/86	U-17378	LA	Louisiana Public Service Commission Staff	Gulf States Utilities	Excess capacity, economic analysis of purchased power.
12/86	38063	IN	Industrial Energy Consumers	Indiana & Michigan Power Co.	Interruptible rates.

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**Expert Testimony Appearances
of
Stephen J. Baron
As of September 2008**

<u>Date</u>	<u>Case</u>	<u>Jurisdiction</u>	<u>Party</u>	<u>Utility</u>	<u>Subject</u>
3/87	EL-86-53-801 EL-86-57-801	Federal Energy Regulatory Commission (FERC)	Louisiana Public Service Commission Staff	Gulf States Utilities, Southern Co.	Cost-benefit analysis of unit power sales contract.
4/87	U-17282	LA	Louisiana Public Service Commission Staff	Gulf States Utilities	Load forecasting and impenetrance damages, River Bend Nuclear unit.
5/87	87-028-E-C	WV	Alcoa Industrial Gases	Monongahela Power Co.	Interruptible rates.
5/87	87-072-E-G1	WV	West Virginia Energy Users' Group	Monongahela Power Co.	Analyze Mon Power's fuel billing and examine the reasonableness of MP's claims.
8/87	88-534-E-SC	WV	West Virginia Energy Users' Group	Monongahela Power Co.	Economic dispatching of pumped storage hydro unit.
8/87	9761	KY	Kentucky Industrial Energy Consumers	Louisville Gas & Electric Co.	Analysis of impact of 1988 Tax Reform Act.
8/87	3873-U	GA	Georgia Public Service Commission	Georgia Power Co.	Economic prudence, evaluation of Vogtle nuclear unit - load forecasting, planning.
8/87	U-17282	LA	Louisiana Public Service Commission Staff	Gulf States Utilities	Phase-in plan for River Bend Nuclear unit.
7/87	86-10-22	CT	Connecticut Industrial Energy Consumers	Connecticut Light & Power Co.	Methodology for refunding rate moderation fund.
8/87	3873-U	GA	Georgia Public Service Commission	Georgia Power Co.	Test year sales and revenue forecast.
9/87	R-850220	PA	West Penn Power Industrial Intervenor	West Penn Power Co.	Express capacity, reliability of generating system.
10/87	R-870651	PA	Duquesne Industrial Intervenor	Duquesne Light Co.	Interruptible rate, cost-of-service, revenue allocation, rate design.
10/87	L-880028	PA	Pennsylvania Industrial Intervenor	-	Proposed rules for cogeneration, avoided cost, rate recovery.

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Expert Testimony Appearances
of
Stephen J. Baron
As of September 2008

Date	Case	Jurisdiction	Party	Utility	Subject
10/87	E-818/ GR-87-223	MN	Tacoma Intervenor	Minnesota Power & Light Co.	Excess capacity, power and cost-of-service, rate design.
10/87	8702-EL	FL	Occidental Chemical Corp.	Florida Power Corp.	Revenue forecasting, weather normalization.
12/87	87-47-01	CT	Connecticut Industrial Energy Consumers	Connecticut Light Power Co.	Excess capacity, nuclear plant phase-in.
3/88	90064	KY	Kentucky Industrial Energy Consumers	Louisville Gas & Electric Co.	Revenue forecast, weather normalization rate treatment of cancelled plant.
3/88	87-163-TF	AR	Arkansas Electric Consumers	Arkansas Power & Light Co.	Standby/backup electric rates.
6/88	878171C001	PA	GPU Industrial Intervenor	Metropolitan Edison Co.	Cogeneration demand mechanism, modification of energy cost recovery (ECR).
6/88	870172C005	PA	GPU Industrial Intervenor	Pennsylvania Electric Co.	Cogeneration demand mechanism, modification of energy cost recovery (ECR).
7/88	88-171- EL-AIR 88-170- EL-AIR Interim Rate Case	OH	Industrial Energy Consumers	Cleveland Electric/ Toledo Edison	Financial analysis used for interim rate relief.
7/88	Appeal of PSC	19th Judicial District U-17282	Louisiana Public Service Commission Chrs. Court of Louisiana	Gulf States Utilities	Load forecasting, inadvertent damages.
11/88	R-880866	PA	United States Steel	Carnegie Gas	Gas cost-of-service, rate design.
11/88	88-171- EL-AIR 88-170- EL-AIR	OH	Industrial Energy Consumers	Cleveland Electric/ Toledo Edison. General Rate Case.	Weather normalization of peak loads, excess capacity, regulatory policy.
3/89	870216/283 284/288	PA	Amoco Admco Materials Corp., Allegheny Ludlum Corp.	West Penn Power Co.	Calculated avoided capacity, recovery of capacity payments.

J. KENNEDY AND ASSOCIATES, INC.

Expert Testimony Appearances
of
Stephen J. Baron
As of September 2008

Date	Case	Jurisdiction	Party	Utility	Subject
8/89	8506	TX	Occidental Chemical Corp.	Houston Lighting & Power Co.	Cost-of-service, rate design.
8/89	38404J	GA	Georgia Public Service Commission	Georgia Power Co.	Revenue forecasting, weather normalization.
9/89	2097	NM	Attorney General of New Mexico	Public Service Co. of New Mexico	Preference - Palo Verde Nuclear Units 1, 2 and 3, load forecasting.
10/89	2282	NM	New Mexico Industrial Energy Consumers	Public Service Co. of New Mexico	Fuel adjustment clause, off-system sales, cost-of-service, rate design, marginal cost.
11/89	38728	IN	Industrial Consumers for Fair Utility Rates	Indiana Michigan Power Co.	Excess capacity, capacity equalization, jurisdictional cost allocation, rate design, interruptible rates.
1/90	U-17282	LA	Louisiana Public Service Commission Staff	Gulf States Utilities	Jurisdictional cost allocation, Q&M expense analysis.
5/90	880396	PA	GPU Industrial Intervenor	Metropolitan Edison Co.	Non-utility generator cost recovery.
8/90	PL-901600	PA	Armco Advanced Materials Corp., Allegheny Ludlum Corp.	West Penn Power Co.	Allocation of QF demand charges in the fuel cost, cost-of-service, rate design.
9/90	8278	MD	Maryland Industrial Group	Baltimore Gas & Electric Co.	Cost-of-service, rate design, revenue allocation.
12/90	U-8346 Rebuttal	MI	Association of Businesses Advocating Tariff Equity	Consumers Power Co.	Demand-side management, environmental externalities.
12/90	U-17282 Phase IV	LA	Louisiana Public Service Commission Staff	Gulf States Utilities	Revenue requirements, jurisdictional allocation.
12/90	90-205	ME	Alcoa Industrial Gases	Central Maine Power Co.	Investigation into interruptible service and rates.
1/91	90-12-05 Interim	CT	Connecticut Industrial Energy Consumers	Connecticut Light & Power Co.	Interim rate relief, financial analysis, close revenue allocation.

J. KENNEDY AND ASSOCIATES, INC.

Expert Testimony Appearances
of
Stephen J. Blanton
As of September 2008

Date	Case	Jurisdiction	Party	Utility	Subject
5/91	90-12-03 Phase II	CT	Connecticut Industrial Energy Consumers	Connecticut Light & Power Co.	Revenue requirements, cost of service, rate design, demand-side management.
8/91	E-7, SUB SUB 487	NC	North Carolina Industrial Energy Consumers	Duke Power Co.	Revenue requirements, cost allocation, rate design, demand- side management.
8/91	8341 Phase I	MD	Westvaco Corp.	Potomac Edison Co.	Cost allocation, rate design, 1990 Clean Air Act Amendments.
8/91	91-372 BL-UNC	OH	Armco Steel Co., L.P.	Cincinnati Gas & Electric Co.	Economic analysis of cogeneration, avoid cost rate.
9/91	P-910511 P-910512	PA	Allegheny Ludlum Corp., Armco Advanced Materials Co., The West Penn Power Industrial Users' Group	West Penn Power Co.	Economic analysis of proposed CWP Rider for 1990 Clean Air Act Amendments expenditures.
9/91	91-221 -E-NC	WV	West Virginia Energy Users' Group	Monongahela Power Co.	Economic analysis of proposed CWP Rider for 1990 Clean Air Act Amendments expenditures.
10/91	8341 - Phase II	MD	Westvaco Corp.	Potomac Edison Co.	Economic analysis of proposed CWP Rider for 1990 Clean Air Act Amendments expenditures.
10/91	U-17282	LA	Louisiana Public Service Commission Staff	Gulf States Utilities	Results of comprehensive management audit.
Note: Testimony was proffered on this.					
11/91	U-17549 Subchapter A	LA	Louisiana Public Service Commission Staff	South Central Bell Telephone Co. and proposed merger with Southern Bell Telephone Co.	Analysis of South Central Bells restructuring and
12/91	91-410- EL-AR	OH	Armco Steel Co., Air Products & Chemicals, Inc.	Cincinnati Gas & Electric Co.	Rate design, interruptible rates.
12/91	P-880288	PA	Armco Advanced Materials Corp., Allegheny Ludlum Corp.	West Penn Power Co.	Evaluation of appropriate avoided capacity costs - CF projects.

J. KENNEDY AND ASSOCIATES, INC.

**Expert Testimony Appearances
of
Stephen J. Baron
As of September 2008**

Date	Case	Jurisdiction	Party	Utility	Subject
1/92	C-913424	PA	Duquesne Interruptible Complainants	Duquesne Light Co.	Industrial Interruptible rate.
8/92	92-02-19	CT	Connecticut Industrial Energy Consumers	Yankee Gas Co.	Rate design.
8/92	2437	NM	New Mexico Industrial Intervenor	Public Service Co. of New Mexico	Cost-of-service.
8/92	R-00922814	PA	GPU Industrial Intervenor	Metropolitan Edison Co.	Cost-of-service, rate design, energy cost rate.
9/92	38314	ID	Industrial Consumers for Fair Utility Rates	Indiana Michigan Power Co.	Cost-of-service, rate design, energy cost rate, rate treatment.
10/92	M-00920312 C-007	PA	The GPU Industrial Intervenor	Pennsylvania Electric Co.	Cost-of-service, rate design, energy cost rate, rate treatment.
12/92	U-17848	LA	Louisiana Public Service Commission Staff	South Central Bell Co.	Management audit.
12/92	R-00922378	PA	Amoco Advanced Materials Co. The WPP Industrial Intervenor	West Penn Power Co.	Cost-of-service, rate design, energy cost rate, SO ₂ allowance rate treatment.
1/93	8487	MD	The Maryland Industrial Group	Baltimore Gas & Electric Co.	Electric cost-of-service and rate design, gas rate design (flexible rates).
2/93	83024GR- 92-1185	MN	North Star Steel Co. Proair, Inc.	Northern States Power Co.	Interruptible rates.
4/93	83042 21008 83042-006- 008 (Rebuttal)	Federal Energy Regulatory Commission	Louisiana Public Service Commission Staff	Gulf States Utilities/Energy agreement.	Merger of G&U into Entergy System; impact on system
7/93	93-0114- E-C	WV	Alcoa Gases	Monongahela Power Co.	Interruptible rates.
8/93	930758-ED	FL	Florida Industrial Power Users' Group	GenCorp - Electric Utilities	Cost recovery and allocation of O&M costs.
9/93	M-009 30406	PA	Lehigh Valley Power Committee	Pennsylvania Power & Light Co.	Rate-making treatment of off-system sales revenues.

J. KENNEDY AND ASSOCIATES, INC.

Expert Testimony Appearances
of
Stephen J. Baron
As of September 2008

Date	Case	Jurisdiction	Party	Utility	Subject
11/93	348	KY	Kentucky Industrial Utility Customers	Gesco - Gas Utilities	Allocation of gas pipeline transition costs - FERC Order 636.
12/93	U-17735	LA	Louisiana Public Service Commission Staff	Cajun Electric Power Cooperative	Nuclear plant prudency, forecasting, excess capacity.
4/94	E-018/ GR-84-001	MN	Large Power Intervenor	Minnesota Power Co.	Cost allocation, rate design, rate phase-in plan.
5/94	U-20178	LA	Louisiana Public Service Commission	Louisiana Power & Light Co.	Analysis of least cost integrated resource plan and demand-side management program.
7/94	R-00842808	PA	Amco, Inc.; West Penn Power Industrial Intervenor	West Penn Power Co.	Cost-of-service, allocation of rate increases, rate design, emission allowance value, and operations and maintenance expense.
7/94	94-0038- E-42T	WV	West Virginia Energy Users Group	Monongahela Power Co.	Cost-of-service, allocation of rate increases, and rate design.
8/94	EC94 13-000	Federal Energy Regulatory Commission	Louisiana Public Service Commission	Gulf States Utilities/Entergy	Analysis of extended reserve shutdown units and violation of system agreement by Entergy.
8/94	R-00843 081 R-00843 081C0001	PA	Lehigh Valley Power Committee	Pennsylvania Public Utility Commission	Analysis of interruptible rate terms and conditions, availability.
9/94	U-17735	LA	Louisiana Public Service Commission	Cajun Electric Power Cooperative	Evaluation of appropriate avoided cost rate.
9/94	U-19804	LA	Louisiana Public Service Commission	Gulf States Utilities	Revenue requirements.
10/94	5288-U	GA	Georgia Public Service Commission	Southern Bell Telephone & Telegraph Co.	Proposals to address competition in telecommunication markets.
11/94	EC94-7-000 FERC ER94-898-000		Louisiana Public Service Commission	88 Pass Electric and Central and Southeast	Merger economics, transmission equalization hold harmless proposals.
2/95	941-430EG	CO	CFE Steel, L.P.	Public Service Company of Colorado	Interruptible rates, cost-of-service.

J. KENNEDY AND ASSOCIATES, INC.

Expert Testimony Appearances
of
Stephen J. Baron
As of September 2008

Date	Case	Jurisdiction	Party	Utility	Subject
4/95	R-00943271	PA	PP&L Industrial Customer Alliance	Pennsylvania Power & Light Co.	Cost-of-service, allocation of rate increases, rate design, interruptible rates.
8/95	C-00913424 C-00946104	PA	Duquesne Interruptible Complaints	Duquesne Light Co.	Interruptible rates.
5/98	ER95-112 -000	FERC	Louisiana Public Service Commission	Entergy Services, Inc.	Open Access Transmission Tariffs - Wholesale
10/98	U-21485	LA	Louisiana Public Service Commission	Gulf States Utilities Company	Nuclear decommissioning, revenue requirements, capital structure.
10/98	ER95-1042 -000	FERC	Louisiana Public Service Commission	System Energy Resources, Inc.	Nuclear decommissioning, revenue requirements.
10/98	U-21485	LA	Louisiana Public Service Commission	Gulf States Utilities Co.	Nuclear decommissioning and cost of debt capital, capital structure.
11/98	I-94032	PA	Industrial Energy Consumers of Pennsylvania	State-wide - all utilities	Retail competition issues.
7/98	U-21485	LA	Louisiana Public Service Commission	Central Louisiana Electric Co.	Revenue requirement analysis.
7/98	8725	MD	Maryland Industrial Group	Baltimore Gas & Elec. Co., Potomac Elec. Power Co., Constellation Energy Co.	Rate-making issues associated with a Merger.
8/98	U-17738	LA	Louisiana Public Service Commission	Cajun Electric Power Cooperative	Revenue requirements.
9/98	U-22032	LA	Louisiana Public Service Commission	Entergy Gulf States, Inc.	Decommissioning, weather normalization, capital structure.
2/97	R-973877	PA	Philadelphia Area Industrial Energy Users Group	PECO Energy Co.	Competition restructuring policy issues, stranded cost, transition charges.
6/97	Civil Action No. 94-11474	US Bankruptcy Court Middle District of Louisiana	Louisiana Public Service Commission	Cajun Electric Power Cooperative	Confirmation of reorganization plan; analysis of rate paths produced by competing plans.

J. KENNEDY AND ASSOCIATES, INC.

Expert Testimony Appearances
of
Stephen J. Baron
As of September 2008

Date	Case	Jurisdiction	Party	Utility	Subject
6/97	R-973663	PA	Philadelphia Area Industrial Energy Users Group	PECO Energy Co.	Retail competition issues, rate unbundling, stranded cost analysis.
6/97	8736	MD	Maryland Industrial Group	Generic	Retail competition issues
7/97	R-973664	PA	PP&L Industrial Customer Alliance	Pennsylvania Power & Light Co.	Retail competition issues, rate unbundling, stranded cost analysis.
10/97	97-304	KY	Alcoa Aluminum Corp. Bauxite Co.	Big River Electric Corp.	Analysis of cost of service issues - Big Rivers Restructuring Plan
10/97	R-974008	PA	Metropolitan Edison Industrial Users	Metropolitan Edison Co.	Retail competition issues, rate unbundling, stranded cost analysis.
10/97	R-974009	PA	Pennsylvania Electric Industrial Customer	Pennsylvania Electric Co.	Retail competition issues, rate unbundling, stranded cost analysis.
11/97	U-22491	LA	Louisiana Public Service Commission	Entergy Gulf States, Inc.	Decommissioning, weather normalization, capital structure.
11/97	R-971388	PA	Philadelphia Area Industrial Energy Users Group	Enron Energy Services Power, Inc./ PECO Energy	Analysis of Retail Restructuring Proposal.
12/97	R-973981	PA	West Penn Power Industrial Intervenor	West Penn Power Co.	Retail competition issues, rate unbundling, stranded cost analysis.
12/97	R-974104	PA	Cuquema Industrial Intervenor	Cuquema Light Co.	Retail competition issues, rate unbundling, stranded cost analysis.
3/98	U-22082 (Allocated Stranded Cost Issues)	LA	Louisiana Public Service Commission	Gulf States Utilities Co.	Retail competition, stranded cost quantification.
3/98	U-22082		Louisiana Public Service Commission	Gulf States Utilities, Inc.	Stranded cost quantification, restructuring issues.
8/98	U-17735		Louisiana Public Service Commission	Cajon Electric Power Cooperative, Inc.	Revenue requirements analysis, weather normalization.
12/98	8794	MD	Maryland Industrial Group and	Baltimore Gas and Electric Co.	Electric utility restructuring, stranded cost recovery, rate

J. KENNEDY AND ASSOCIATES, INC.

**Expert Testimony Appearances
of
Stephen J. Baron
As of September 2008**

<u>Date</u>	<u>Case</u>	<u>Jurisdiction</u>	<u>Party</u>	<u>Utility</u>	<u>Subject</u>
			Millennium Inorganic Chemicals Inc.		unbundling.
12/98	U-23358	LA	Louisiana Public Service Commission	Entergy Gulf States, Inc.	Nuclear decommissioning, weather normalization, Entergy System Agreement.
5/99	EC-98- (Cross-40-000 Answering Testimony)	FERC	Louisiana Public Service Commission	American Electric Power Co. & Central South West Corp.	Merger issues related to market power mitigation proposals.
5/99	98-428 (Response Testimony)	KY	Kentucky Industrial Utility Customers, Inc.	Louisville Gas & Electric Co.	Performance based regulation, settlement proposal issues, cross-subsidies between electric gas services.
8/99	98-0452	WV	West Virginia Energy Users Group	Appalachian Power, Monongahela Power, & Potomac Edison Companies	Electric utility restructuring, stranded cost recovery, rate unbundling.
7/99	99-03-35	CT	Connecticut Industrial Energy Consumers	United Illuminating Company	Electric utility restructuring, stranded cost recovery, rate unbundling.
7/99	Adversary Proceeding No. 98-1088 Court	U.S.	Louisiana Public Service Commission	Cajun Electric Power Cooperative	Motion to dissolve preliminary injunction.
7/99	98-03-08	CT	Connecticut Industrial Energy Consumers	Connecticut Light & Power Co.	Electric utility restructuring, stranded cost recovery, rate unbundling.
10/99	U-24182	LA	Louisiana Public Service Commission	Entergy Gulf States, Inc.	Nuclear decommissioning, weather normalization, Entergy System Agreement.
12/99	U-17735	LA	Louisiana Public Service Commission	Cajun Electric Power Cooperative Inc.	Analysis of Proposed Contract Rates, Market Rates.
03/00	U-17735	LA	Louisiana Public Service Commission	Cajun Electric Power Cooperative, Inc.	Evaluation of Cooperative Power Contract, Electric
03/00	99-1804- BL-ETP	OH	AK Steel Corporation	Cincinnati Gas & Electric Co.	Electric utility restructuring, stranded cost recovery, rate Unbundling.

J. KENNEDY AND ASSOCIATES, INC.

Expert Testimony Appearances
of
Stephen J. Baron
As of September 2008

Date	Case	Jurisdiction	Party	Utility	Subject
08/00	98-0452 E-GI	WVA	West Virginia Energy Users Group	Appalachian Power Co. American Electric Co.	Electric utility restructuring rate unbundling.
08/00	00-1058 E-T 00-1051-E-T	WVA	West Virginia Energy Users Group	Mon Power Co. Potomac Edison Co.	Electric utility restructuring rate unbundling.
10/00	SOAH 473- 00-1029 PUC 2234	TX	The Dallas-Fort Worth Hospital Council and The Coalition of Independent Colleges And Universities	TXU, Inc.	Electric utility restructuring rate unbundling.
12/00	U-24995	LA	Louisiana Public Service Commission	Entergy Gulf States, Inc.	Nuclear decommissioning, revenue requirements.
12/00	EL00-88- 000 & ER00-2864 EL86-33-002	LA	Louisiana Public Service Commission	Entergy Services Inc.	Inter-Company System Agreement: Modifications for retail competition, interruptible load.
04/01	U-21453, U-20928, U-22062 (Subdocted B) Addressing Contested Issues	LA	Louisiana Public Service Commission	Entergy Gulf States, Inc.	Jurisdictional Business Separation - Texas Restructuring Plan
10/01	14000-U	GA	Georgia Public Service Commission Advisory Staff	Georgia Power Co.	Test year revenue forecast.
11/01	U-25887	LA	Louisiana Public Service Commission	Entergy Gulf States, Inc.	Nuclear decommissioning requirements transmission revenues.
11/01	U-25890	LA	Louisiana Public Service Commission	Gannett	Independent Transmission Company ("Transco"). RTO rate design.
03/02	001148-01	FL	South Florida Hospital and Healthcare Assoc.	Florida Power & Light Company	Retail cost of service, rate design, resource planning and demand side management.
06/02	U-25855	LA	Louisiana Public Service Commission	Entergy Gulf States Entergy Louisiana	RTO issues
07/02	U-21453	LA	Louisiana Public Service Commission	SWERCQ, AEP	Jurisdictional Business Sep. - Texas Restructuring Plan.

J. KENNEDY AND ASSOCIATES, INC.

Expert Testimony Appearances
of
Stephen J. Baron
As of September 2008

Date	Case	Jurisdiction	Party	Utility	Subject
08/02	U-25588	LA	Louisiana Public Service Commission	Entergy Louisiana, Inc. Entergy Gulf States, Inc.	Modifications to the Inter-Company System Agreement, Production Cost Equalization.
08/02	EL01-88-000	FERC	Louisiana Public Service Commission	Entergy Services Inc. and the Entergy Operating Companies	Modifications to the Inter-Company System Agreement, Production Cost Equalization.
11/02	028-313EG	CO	CF&I Steel & Clinker Molybdenum Co.	Public Service Co. of Colorado	Fuel Adjustment Clause
01/03	U-17738	LA	Louisiana Public Service Commission	Louisiana Coops	Contract Issues
02/03	028-894E	CO	Cripple Creek and Victor Gold Mining Co.	Aquila, Inc.	Revenue requirements, purchased power.
04/03	U-29627	LA	Louisiana Public Service Commission	Entergy Gulf States, Inc.	Weather normalization, power purchase expenses, System Agreement expenses.
11/03	ER03-783-000	FERC	Louisiana Public Service Commission Staff	Entergy Services, Inc. and the Entergy Operating Companies	Proposed modifications to System Agreement Tariff MGS-4.
11/03	ER03-883-000 ER03-883-001 ER03-883-002 ER03-881-000, ER03-881-001 ER03-882-000, ER03-882-001 ER03-882-002	FERC	Louisiana Public Service Commission	Entergy Services, Inc. the Entergy Operating Companies, ENO Marketing, L.P., and Entergy Power, Inc.	Evaluation of Wholesale Purchased Power Contracts.
12/03	U-77138	LA	Louisiana Public Service Commission	Entergy Louisiana, Inc.	Evaluation of Wholesale Purchased Power Contracts.
01/04	E-01346-03-0437	AZ/Kager Company	Arizona Public Service Co.	Revenue allocation rule design.	
02/04	00032071	PA	Duquesne Industrial Inquiries	Duquesne Light Company	Provider of last resort issues.
03/04	03A-435E	CO	CF&I Steel, LP and Clinker Molybdenum	Public Service Company of Colorado	Purchased Power Adjustment Clause.

J. KENNEDY AND ASSOCIATES, INC.

Expert Testimony Appearances
of
Stephen J. Baron
As of September 2008

Date	Case	Jurisdiction	Party	Utility	Subject
04/04	2003-00433 2003-00434	KY	Kentucky Industrial Utility Customers, Inc.	Louisville Gas & Electric Co. Kentucky Utilities Co.	Cost of Service Rate Design
0-6/04	03S-5395	CO	Cripple Creek, Victor Gold Mining Co., Brookfield Corp., Helcim (U.S.), Inc., and The Transo Co.	Aquila, Inc.	Cost of Service, Rate Design Interruptible Rates
05/04	R-00049225	PA	PP&L Industrial Customer Alliance PPLICA	PPL Electric Utilities Corp.	Cost of service, rate design, tariff issues and transmission service charge.
10/04	04S-1545	CO	CF&I Steel Company, Climax Mines	Public Service Company of Colorado	Cost of service, rate design, interruptible Rates.
03/05	Case No. 2004-00420 Case No. 2004-00421	KY	Kentucky Industrial Utility Customers, Inc.	Kentucky Utilities Louisville Gas & Electric Co.	Environmental cost recovery.
06/05	030043-EI	FL	South Florida Hospital and Healthcare Assoc.	Florida Power & Light Company	Retail cost of service, rate design
07/05	U-25156	LA	Louisiana Public Service Commission Staff	Entergy Louisiana, Inc. Entergy Gulf States, Inc.	Independent Coordinator of Transmission - Cost/Benefit
08/05	Case Nos. 08-0432-E-CN 08-0790-E-PC	WVA	West Virginia Energy Users Group	Mon Power Co. Potomac Edison Co.	Environmental cost recovery, Securitization, Financing Order
01/06	2005-00341	KY	Kentucky Industrial Utility Customers, Inc.	Kentucky Power Company	Cost of service, rate design, transmission expenses, Congestion Cost Recovery Mechanism
03/06	U-22082	LA	Louisiana Public Service Commission Staff	Entergy Gulf States, Inc.	Separation of EG&I into Texas and Louisiana Companies.
04/06	U-25116	LA	Louisiana Public Service Commission Staff	Entergy Louisiana, Inc.	Transmission Prudence Investigation
06/06	R-00061346 00601-0006	PA	Duquesne Industrial Intervenor & IECPA	Duquesne Light Co.	Cost of Service, Rate Design, Transmission Service Charge, Tariff Issues
06/06	R-00061388 R-00061397 P-00062210 P-00062214		Met-Ed Industrial Energy Users Group and Penelec Industrial Customer Alliance	Metropolitan Edison Co. Pennsylvania Electric Co.	Generation Rate Cap, Transmission Service Charge, Cost of Service, Rate Design, Tariff Issues
07/06	U-22082 Sub-I	LA	Louisiana Public Service Commission Staff	Entergy Gulf States, Inc.	Separation of EG&I into Texas and Louisiana Companies.

J. KENNEDY AND ASSOCIATES, INC.

**Expert Testimony Appearances
of
Stephen J. Baron
As of September 2008**

Date	Case	Jurisdiction	Party	Utility	Subject
07/06	Case No. 2006-00130 Case No. 2006-00129	KY	Kentucky Industrial Utility Customers, Inc.	Kentucky Utilities Louisville Gas & Electric Co.	Environmental cost recovery.
08/06	Case No. PUE-2006-00086	VA	Old Dominion Committee For Fair Utility Rates	Appalachian Power Co.	Cost Allocation, Allocation of Revenue Inst, Off-System Sales margin rate treatment
11/06	Doc. No. 87-01-15RE32	CT	Connecticut Industrial Energy Consumers	Connecticut Light & Power United Illuminating	Rate unbundling issues.
01/07	Case No. 08-0988-B-42T	WV	West Virginia Energy Users Group	Mon Power Co. Polkman Edison Co.	Retail Cost of Service Revenue apportionment
03/07	U-29784	LA	Louisiana Public Service Commission Staff	Entergy Gulf States, Inc. Entergy Louisiana, LLC	Implementation of FERC Decision Jurisdictional & Rate Class Allocation
03/07	Case No. 07-63-EL-UNC	OH	Ohio Energy Group	Ohio Power, Columbus Southern Power	Environmental Surcharges Rate Design
05/07	R-00049258 Remed	PA	PPL Industrial Customer Alliance PPLICA	PPL Electric Utilities Corp.	Cost of service, rate design, tariff issues and transmission service charges.
08/07	R-00072155	PA	PPL Industrial Customer Alliance PPLICA	PPL Electric Utilities Corp.	Cost of service, rate design, tariff issues.
07/07	Doc. No. 07F-0327E	CO	Gateway Canyons LLC	Grand Valley Power Coop.	Distribution Line Cost Allocation
09/07	Doc. No. 05-LR-108	WI	Wisconsin Industrial Energy Group, Inc.	Wisconsin Electric Power Co.	Cost of Service, rate design, tariff issues, interruptible rates.
11/07	ER07-882-000	FERC	Louisiana Public Service Commission Staff	Entergy Services, Inc. and the Entergy Operating Companies	Proposed modifications to System Agreement Schedule MBS-3. Cost Allocation/Allocation Issues.
1/08	Doc. No. 20080-277-ER-07	WY	Chimney Energy Company	Rocky Mountain Power (PacifiCorp)	Vintage Pricing, Marginal Cost Pricing Projected Fuel Year
1/08	Case No. 07-481	OH	Ohio Energy Group	Ohio Edison, Toledo Edison Cleveland Electric Illuminating	Class Cost of Service, Rate Restructuring, Apportionment of Revenue Increase to Rate Schedules
2/08	ER07-888	FERC	Louisiana Public Service Commission Staff	Entergy Services, Inc. and the Entergy Operating Companies	Entergy's Compliance Filing System Agreement Bandwidth Calculations.
3/08	Doc No. F-80072342	PA	West Penn Power Industrial Intervenor	West Penn Power Co.	Detrital Service Plan Issues.

J. KENNEDY AND ASSOCIATES, INC.

Expert Testimony Appearances
of
Stephen J. Baron
As of September 2008

Date	Case	Jurisdiction	Party	Utility	Subject
3/08	Doc No. E-01933A-05-0830	AZ	Kroger Company	Tucson Electric Power Co.	Cost of Service, Rate Design
05/08	06-0278 E-GI	WVA	West Virginia Energy Users Group	Appalachian Power Co. American Electric Co.	Expanded Net Energy Cost "ENEC" Analysis
06/08	Case No. 06-124-EL-ATA	OH	Ohio Energy Group	Ohio Edison, Toledo Edison Cleveland Electric Illuminating	Recovery of Deferred Fuel Cost
7/08	Docket No. 07-035-03	UT	Kroger Company	Rocky Mountain Power Co.	Cost of Service, Rate Design
08/08	Doc. No. 0890-UR-118	WI	Wisconsin Industrial Energy Group, Inc.	Wisconsin Power and Light Co.	Cost of Service, rate design, tariff issues, interruptible rates.

J. KENNEDY AND ASSOCIATES, INC.

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OHIO**

**IN RE: IN THE MATTER OF THE APPLICATION)
OF OHIO EDISON COMPANY, THE)
CLEVELAND ELECTRIC ILLUMINATING) CASE NO. 08-935-EL-SSO
COMPANY, AND THE TOLEDO EDISON)
COMPANY FOR AUTHORITY TO)
ESTABLISH A STANDARD SERVICE)
OFFER PURSUANT TO R.C. § 4928.143 IN)
THE FORM OF AN ELECTRIC SECURITY)
PLAN)**

**EXHIBIT_(SJB-2)
OF
STEPHEN J. BARON**

**ON BEHALF OF
THE OHIO ENERGY GROUP**

**J. KENNEDY AND ASSOCIATES, INC.
ROSWELL, GEORGIA**

ORG RATE MITIGATION PLAN
CASE NO. 08-008-BL-380
OF SD EDSOM COMPANY
ANNUALIZED RATE IMPACTS AT 2008 VS 2008 RATES

PROPOSED ANNUAL 2008										
LINE NO.	RATE CODE	CLASS / DESCRIPTION	CUSTOMER BILLS	MAY SALES	AVERAGE RATES - 2008	REVENUE 2008	PROPOSED RATES - 2008	REVENUE - 2008	2008 / 2008 % INCREASE	% OF TOTAL REVENUE - 2008
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	RS	RESIDENTIAL SERVICE	11,185,857	8,238,891,896	\$0.14091	\$1,580,000,705	\$0.11482	\$1,278,038,035	2.38%	41.14%
2	GS	GENERAL SERVICE - SECONDARY	1,253,383	7,891,379,354	\$0.14088	\$174,299,637	\$0.10887	\$135,888,248	2.68%	25.12%
3	GP	GENERAL SERVICE - PRIMARY	13,264	3,218,753,857	\$0.00040	\$54,000,355	\$0.00035	\$46,888,658	5.20%	11.87%
4	GLI	GENERAL SERVICE - SUBTRANSMISSION	1,216	888,894,889	\$0.07253	\$87,949,439	\$0.07188	\$87,765,743	0.09%	2.84%
5	GT	GENERAL SERVICE - TRANSMISSION	2,398	5,452,463,761	\$0.00039	\$324,469,895	\$0.03188	\$395,189,345	18.83%	14.84%
6	POL	PRIVATE OUTDOOR LIGHTING SERVICE	38,000	37,648,700	\$0.18078	\$6,869,100	\$0.18737	\$7,152,294	2.48%	0.27%
7	SSL	STREET LIGHTING SERVICE	19,388	126,194,134	\$0.00004	\$16,579,388	\$0.00010	\$12,133,888	11.55%	0.48%
8	TRF	TRAFFIC LIGHTING SERVICE	48,887	22,368,480	\$0.00782	\$1,284,888	\$0.00907	\$1,438,192	17.38%	0.09%
9	TOTAL COMPANY		12,147,325	18,678,297,880	\$0.74471	\$2,489,289,880	\$0.61155	\$2,013,888,888	4.25%	100%

NOTE:
Street lighting contains E&P.

ORE RATE MITIGATION PLAN
CA 98 807 85-08-05-050
OHIO EDISON COMPANY
ANNUALIZED RATE IMPACTS AT 2009 VS 2008 RATES

LINE NO.	RATE CODE	CLASS / DESCRIPTION	CHANGED INCREASES (B) OF REVENUE	REVENUE IN EXCESS OF CAP	RECOVERY OF REVENUE SHORTFALL	MITIGATED REVENUE NEEDS (D)	MITIGATED REVENUE NEEDS (E)	MITIGATED 2009 / 2008 % CHANGE
(A)	(B)	(C)	(1)	(2)	(3)	(4)	(5)	(6)
1	RS	RESIDENTIAL SERVICE	\$188,000,000 \$	-		\$24,000,100	\$24,000,100	1.20%
2	OS	GENERAL SERVICE - SECONDARY	\$77,054,802 \$	-	\$80,007,040 \$	\$6,852,407 \$	\$6,376,697	8.21%
3	OP	GENERAL SERVICE - PRIMARY	\$28,738,882 \$	-	\$7,048,872 \$	\$2,854,770 \$	\$2,400,000	8.40%
4	GUS	GENERAL SERVICE - DISTRIBUTION	\$7,487,910 \$	-	\$2,040,102 \$	\$,882,288 \$	\$,407,040	10.47%
5	OT	GENERAL SERVICE - TRANSMISSION	\$25,000,000 \$	\$0,740,000	\$0 \$	\$2,000,000 \$	\$2,000,000	10.47%
6	POL	PRIVATE OUTDOOR LIGHTING SERVICE	\$725,140 \$	-	\$700,000 \$	\$24,782 \$	\$25,000	1.20%
7	STL	STREET LIGHTING SERVICE	\$1,130,000 \$	\$10,140	\$0 \$	\$,130,000 \$	\$,130,000	10.47%
8	TRP	TRAVEL LIGHTING SERVICE	\$100,000 \$	\$0,740	\$0 \$	\$20,000 \$	\$20,000	10.47%
9 TOTAL COMPANY				\$2,000,000	\$2,000,000	\$7,000,000	\$7,000,000	1.20%

NOTE:
Street lighting service EMP.

OMB RATE MITIGATION PLAN
CASE NO. 04-00664-000
THE CLIMATE AND ELECTRICITY ADMINISTRATION
ANNUALIZED RATE IMPACTS AT 2004 VS 2003 RATES
W/OUT POWER PERFORMANCE HOLES, SCHEDULES 1A-C, 5A-7

LINE NO.	RATE CODE	CLASS / DESCRIPTION	CUSTOMER CLASS	2003	2004	AVERAGE RATES - 2003	REVENUE - 2003	PROPOSED RATES - 2004	REVENUE - 2004	2004 / 2003 %	% OF TOTAL REVENUE - 2003	Total Revenue
				(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)
1	RES	RESIDENTIAL SERVICE	00000000	1,000,000	1,000,000	0.111000	111,000,000	0.111000	111,000,000	100.00%	10.00%	111,000,000
2	GEN	GENERAL SERVICE - RESIDENTIAL	00000000	1,000,000	1,000,000	0.111000	111,000,000	0.111000	111,000,000	100.00%	10.00%	111,000,000
3	OP	GENERAL SERVICE - PRIMARY	00000000	1,000,000	1,000,000	0.111000	111,000,000	0.111000	111,000,000	100.00%	10.00%	111,000,000
4	DEL	GENERAL SERVICE - DELIVERABLES	00000000	1,000,000	1,000,000	0.111000	111,000,000	0.111000	111,000,000	100.00%	10.00%	111,000,000
5	OT	GENERAL SERVICE - TRANSMISSION	00000000	1,000,000	1,000,000	0.111000	111,000,000	0.111000	111,000,000	100.00%	10.00%	111,000,000
6	POL	PRIVATE OUTDOOR LIGHTING SERVICE	00000000	1,000,000	1,000,000	0.111000	111,000,000	0.111000	111,000,000	100.00%	10.00%	111,000,000
7	STL	STREET LIGHTING SERVICE	00000000	1,000,000	1,000,000	0.111000	111,000,000	0.111000	111,000,000	100.00%	10.00%	111,000,000
8	TRP	TRAILING LIGHTING SERVICE	00000000	1,000,000	1,000,000	0.111000	111,000,000	0.111000	111,000,000	100.00%	10.00%	111,000,000
9	CONTRACTS	CONTRACTS	00000000	1,000,000	1,000,000	0.111000	111,000,000	0.111000	111,000,000	100.00%	10.00%	111,000,000
10	TOTAL COMPANY			1,000,000	1,000,000	0.111000	111,000,000	0.111000	111,000,000	100.00%	10.00%	111,000,000

NOTE:
Annualized Distribution rates in 2004, with rates effective May 2004.

LINE#	RPT CODE	CLASS DESCRIPTION	CHARGE	REVENUE BY	RECOVERY	UNPAID	UNPAID	UNPAID	UNPAID	UNPAID	UNPAID
			2000	CHARGE OF	OF REVENUE	REVENUE	REVENUE	REVENUE	REVENUE	REVENUE	REVENUE
			(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	RS	RESIDENTIAL SERVICE	888,414,188	\$	-	888,414,188	\$	888,414,188	\$	888,414,188	8.17%
2	GS	GENERAL SERVICE - SECONDARY	879,283,365	\$	-	879,283,365	\$	879,283,365	\$	879,283,365	4.91%
3	GP	GENERAL SERVICE - PROPERTY	62,707,485	\$	-	62,707,485	\$	62,707,485	\$	62,707,485	2.85%
4	GS	GENERAL SERVICE - SUBTRANSMISSION	824,384,894	\$	-	824,384,894	\$	824,384,894	\$	824,384,894	1.00%
5	GT	GENERAL SERVICE - TRANSMISSION	54,597,685	\$	1,582,894	54,597,685	\$	54,597,685	\$	54,597,685	0.34%
6	POL	POLYTECH LIGHTING SERVICE	888,414,188	\$	1,776,372	888,414,188	\$	888,414,188	\$	888,414,188	0.20%
7	SL	STREET LIGHTING SERVICE	94,482,785	\$	1,482,894	94,482,785	\$	94,482,785	\$	94,482,785	0.30%
8	TRF	TRAFFIC LIGHTING SERVICE	54,597,685	\$	1,482,894	54,597,685	\$	54,597,685	\$	54,597,685	0.30%
9	CONTRACTS	CONTRACTS	888,414,188	\$	-	888,414,188	\$	888,414,188	\$	888,414,188	0.00%
10	TOTAL COMPANY			\$	4,842,150		\$	4,842,150	\$	4,842,150	0.00%

NOTE.
Approved Discharge Status is **2000**, with other effective date 2000

OES RATE INITIATION PLAN
CASE NO. 88-00-000
THE KANSAS POWER COMPANY
ANNUAL 2000 RATE HIRING AT 2000 VS 2000 RATES
WORK PAPER REFERENCE WORK SCHEDULES 1-5, 9-17

PROPOSED ANNUAL 2000											
LINE NO.	RATE CODE	CLASS / DESCRIPTION	CURRENT		PROPOSED		2000 / 2000		% OF TOTAL		2000
			SALES	SALES	SALES	SALES	REVENUE	REVENUE	REVENUE	REVENUE	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
			(000)	(000)	(000)	(000)	(000)	(000)	(%)	(000)	(000)
1	RS	RESIDENTIAL SERVICE	3,302,520	2,401,100,230	30,140	300,000,000	30,000,000	300,000,000	1.20%	30,000	300,000,000
2	GS	GENERAL SERVICE - SECONDARY	400,000	3,240,100,000	30,130	300,000,000	30,000,000	300,000,000	1.20%	30,000	300,000,000
3	GP	GENERAL SERVICE - PRIMARY	4,000	1,100,000,000	30,000	300,000,000	30,000,000	300,000,000	1.20%	30,000	300,000,000
4	GSU	GENERAL SERVICE - SUBSTATION WORK	40	100,000,000	30,000	300,000,000	30,000,000	300,000,000	1.20%	30,000	300,000,000
5	GT	GENERAL SERVICE - TRANSMISSION	40	100,000,000	30,000	300,000,000	30,000,000	300,000,000	1.20%	30,000	300,000,000
6	POL	PRIVATE OUTDOOR LIGHTING SERVICE	10,000	10,000,000	30,000	300,000,000	30,000,000	300,000,000	1.20%	30,000	300,000,000
7	ST	STREET LIGHTING SERVICE	40,000	40,000,000	30,000	300,000,000	30,000,000	300,000,000	1.20%	30,000	300,000,000
8	TRF	TRAFFIC LIGHTING SERVICE	40,000	40,000,000	30,000	300,000,000	30,000,000	300,000,000	1.20%	30,000	300,000,000
9	TOTAL COMPANY		3,786,560	3,786,560,000	30,140	300,000,000	30,000,000	300,000,000	1.20%	30,000	300,000,000

[illegible]

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Application of Ohio)
 Edison Company, The Cleveland Electric)
 Illuminating Company and The Toledo)
 Edison Company for Authority to)
 Establish a Standard Service Offer)
 Pursuant to R.C. 4928.143 in the Form of)
 an Electric Security Plan.)

Case No. 08-935-EL-SSC CO

**BRIEF REGARDING A
SHORT-TERM ELECTRIC SECURITY PLAN
BY
THE OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES**

October 31, 2008

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	Case No. 08-935-EL-SSO
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**BRIEF REGARDING A
SHORT-TERM ELECTRIC SECURITY PLAN
BY
THE OHIO CONSUMER AND ENVIRONMENTAL ADVOCATES**

I. INTRODUCTION AND STATEMENT OF THE ISSUE

A. Introduction

On July 31, 2008, Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company, (collectively, "FirstEnergy" or the "Companies") filed in this case their first-ever application ("Application") for approval of an electric security plan ("ESP"). If granted by the Public Utilities Commission of Ohio ("PUCO" or "Commission"), the Application will result in a significant increase in the rates paid by FirstEnergy's customers.

This brief by the undersigned members of the Ohio Consumer and Environmental Advocates ("OCEA") responds to the PUCO's request for arguments on the matter of whether a short-term ESP should be instituted while a longer-term standard service offer ("SSO") proposal is considered by the PUCO. The Companies included a "Severable Short Term ESP SSO Pricing" proposal ("Short-Term ESP Proposal") in paragraph 8 of

its Application.¹ According to the Short-Term ESP Proposal, the Commission must act by November 14, 2008.² The Application states that its Short-Term ESP Proposal would apply until March 5, 2009, at which time the SSO would be offered either on ESP terms acceptable to FirstEnergy or according to the Companies' market rate offer ("MRO" proposed in Case No. 08-936-EL-SSO) proposal as modified by surviving terms from the Short-Term ESP Proposal.³ FirstEnergy's terms include an *increase* in the generation rate consumers would pay over FirstEnergy's three-year ESP proposal, from an overall rate of 7.5 cents per kilowatt-hour⁴ for the three-year plan to 7.75 cents per kilowatt-hour for the Short-Term ESP Proposal.⁵

Adoption of the Companies' Short-Term ESP Proposal would include approval of many parts of the Companies' longer-term ESP proposal. Such action would defeat the purpose of permitting additional time to work on an acceptable longer-term SSO.

B. The Companies' Short-Term ESP Proposal

FirstEnergy's Short-term ESP Proposal provides for the survival (i.e. approval) of many of the provisions in its longer-term ESP proposal, including some of the provisions of the longer-term proposal that are most troubling for consumers. The Companies propose to resolve issues in the distribution rate case (i.e. Cases 07-551-EL-ATA, et al., the "*Distribution Rate Case*") -- including the rate of return on equity, rate design, and

¹ Application at 35.

² Id. at 35, ¶8.a.

³ Id. at 36, ¶8.c.

⁴ Id. at 5.

⁵ Id. at 37.

tariff provisions -- according to the terms of the proposed longer-term ESP proposal.⁶

These provisions conflict, however, with the Commission's severance of distribution rate case issues from the above-captioned case.⁷

FirstEnergy also proposes that provisions in the Short-Term ESP Proposal regarding distribution service would survive the expiration of that proposal that, while not at issue in the *Distribution Rate Case*, would increase distribution rates by means not previously approved by the Commission. The Delivery Service Improvement ("DSI") rider, additional distribution deferrals, and distribution riders would increase distribution rates that customers would pay and provide additional benefits to FirstEnergy.⁸ These provisions are only distinguishable from the Companies' aim to resolve the *Distribution Rate Case* on terms favorable to FirstEnergy by the fact that these distribution service terms are not at issue in that case.

FirstEnergy proposes the survival of provisions related to the determination of transmission rates.⁹ The Companies propose the approval of their methodology regarding how significantly excess returns on common equity would be determined as part of its Short-Term ESP Proposal.¹⁰ In the event of alterations to the Companies' terms or a successful appeal to the Supreme Court of Ohio, the Short-Term ESP Proposal would,

⁶ Id. at 37, approval of ¶A.3.b and A.3.d.

⁷ Tr. Vol. I (October 16, 2008) (Attorney Examiner Price).

⁸ Id., approval of ¶A.3.e. through A.3.k.

⁹ Id., approval of ¶A.5.a and A.5.b.

¹⁰ Id., approval of ¶A.7.d.

according to the Companies, require adjustment such that the Companies' profitability would be maintained.¹¹

Finally, the Companies' Short-Term ESP Proposal provides that the bidding procedure contained in the proposed MRO be accepted as the means of setting SSO rates upon termination of the electric security plan determination of SSO rates.¹² The Commission, however, has not approved FirstEnergy's MRO proposal as sought by the Companies within ninety days of the date when the MRO proposal was submitted to the Commission.¹³

The foregoing shows that adoption of the Companies' Short-Term ESP Proposal would be harmful to customers and is impossible to implement at this juncture. The Commission's decision to resolve the *Distribution Rate Case* apart from the instant case conflicts with the terms of the Short-Term ESP Proposal. Approval of the Companies' other terms would require the adoption of proposals in FirstEnergy's longer-term ESP, and would defeat the purpose of permitting additional time to develop an acceptable SSO plan.

¹¹ Id., approval of ¶A.7.h.

¹² Id., approval of ¶A.7.i.

¹³ R.C. 4928.142(B). The application of the "90-day statutory timeframe expressly provided for in Section 4928.142(B), Revised Code" has been addressed in this proceeding. Entry at 4, ¶(8) (September 12, 2008).

II. ARGUMENT

A. The PUCO Should Protect Customers by Rejecting FirstEnergy's Terms for a Short-Term ESP.

A short-term ESP may have advantages, but the Companies' proposal would be counter-productive as a means towards providing reasonably priced electric generation service for FirstEnergy's customers.¹⁴ As stated above, FirstEnergy's proposal requires acceptance of too many components from the Companies' longer-term ESP that are contentious as part of the hearings before the PUCO.

The Commission has already rejected at least one of the fundamental planks in the Companies proposed Short-Term ESP Proposal. The rates customers pay for distribution service will be determined in the *Distribution Rate Case* and not according to the Companies' filing in the above-captioned case.¹⁵ Also, the Companies' MRO proposal has not won approval after the ninety-day period provided for such approval.¹⁶ For all practical purposes, FirstEnergy's Short-Term ESP Proposal has already been rejected by the Commission.

The other planks of the Short-Term ESP Proposal are also unreasonable. The DSI rider, additional distribution deferrals, and distribution riders would increase distribution

¹⁴ R.C. 4928.02(A).

¹⁵ Tr. Vol. I (October 16, 2008) (Attorney Examiner Price). Staff Witness Fortney proposed a course for a short-term ESP (Testimony at 10) that would require that the rate design proposed by FirstEnergy in the *Distribution Rate Case*, supported by Staff, not be adopted and placed into effect on January 1, 2009. Mr. Fortney was concerned about the "mismatch" of rate designs in the *Distribution Rate Case* and the ESP proceeding. Tr. Vol. VIII (October 27, 2008) (Fortney). He concluded, however, that the recommendation contained in his October 6, 2008 testimony was no longer possible. *Id.* The alteration of billing systems required by implementation of electric restructuring legislation enacted in 1999 (i.e. "S.B. 3") should accommodate different rate designs for distribution (non-competitive service) and generation service (a separate competitive service).

¹⁶ R.C. 4928.142(B).

rates¹⁷ in a manner that is inconsistent with protections for customers in normal distribution ratemaking. These provisions also increase distribution rates for existing distribution service that were not under consideration in the *Distribution Rate Case* and cannot result from the record in that case. Money is fungible. FirstEnergy's categorization of some money as resulting from the resolution of the *Distribution Rate Case* and other money, such as that resulting from the DSI rider, as resulting from additional needs to provide distribution service¹⁸ does not change the practical result sought by FirstEnergy -- increased distribution rates. Staff Witness Fortney's recommendation -- that distribution rates should be adjusted in comprehensive distribution rate proceedings conducted according to R.C. Chapter 4905 -- should be adopted.¹⁹

The Companies propose to determine how significantly excess earnings would be tested under the provisions in S.B. 221 as part of its Short-Term ESP Proposal.²⁰ The test for whether utilities are making significantly excess earnings is a key element of customer protection in S.B. 221. As stated by Staff Witness Cahaan, the complete determination of the method by which Ohio utilities have a return on common equity "significantly in excess" of those companies having "comparable business and financial

¹⁷ Application, approval of ¶A.3.e. through A.3.k.

¹⁸ Id. at 21, ¶A.3.e.

¹⁹ Staff Witness Fortney Testimony at 6 (Fortney).

²⁰ Application, approval of ¶A.7.d.

risk”²¹ would be premature as part of an initial ESP reviewed during 2008.²² A test is not needed immediately since it would first be applied in 2010 for the annual evaluation of ESP results from 2009.²³ The matter requires additional study and evaluation by the Commission, as stated by Staff Witness Cahaan,²⁴ and should certainly not be approved as part of a *short-term* ESP.

FirstEnergy is impertinent in its demand that any adjustment to the ESP, in the event of alterations to the Companies’ terms or a successful appeal to the Supreme Court of Ohio, must maintain the Companies’ profitability.²⁵ The Companies essentially ask that the Commission agree at this early juncture that opinions by the PUCO and/or the Court should bow to the Companies’ demands. The Companies’ demands could ultimately result in asking the PUCO to defy an opinion by the Supreme Court of Ohio in an appeal, a direction that cannot be lawfully undertaken by the Commission.

B. An Effective Short-Term ESP Requires the Commission to Set Reasonable Terms for SSO Service and to Fully Compensate FirstEnergy.

The modification of FirstEnergy’s ESP should provide rates until such time that FirstEnergy makes further application for PUCO approval to meet its obligation to “provide consumers, on a comparable and nondiscriminatory basis . . . a standard service offer of all competitive retail electric services necessary to maintain essential electric

²¹ R.C. 4928.143(F).

²² Staff Witness Cahaan Testimony at 5-6 (“bad venue”).

²³ R.C. 4928.143(F) (“following the end of each annual period of the plan”).

²⁴ Staff Witness Cahaan Testimony at 5-6 (“workshop or technical conference”).

²⁵ Application, approval of ¶A.7.h.

service to consumers, including a firm supply of electric generation service.²⁶

Distribution service will be provided according to rates determined in FirstEnergy's pending *Distribution Rate Case*.

FirstEnergy has proposed high generation rates in its ESP Application, and even *higher* rates for the beginning of 2009 in the Companies' Short-Term ESP Proposal that is part of the overall ESP Application. FirstEnergy's customers already have the dubious distinction of paying the highest electricity rates in Ohio, and the Companies' proposals would exacerbate that situation. Additionally, great diversity in rate changes within customer classes would result from FirstEnergy's ESP proposal.²⁷ These rate design concerns further support establishing a longer period during which FirstEnergy's proposals can be reviewed under requirements set in the Commission's recently approved rules.²⁸ The Commission should, for many reasons, modify the proposals set out in the Companies' Application.

One means by which the Commission can effectively provide for the required generation service is to modify FirstEnergy's ESP proposal to require FirstEnergy to purchase generation and related services required by R.C. 4928.141(A) from the day-ahead Midwest Independent System Operator ("MISO") market. The trend line for day-ahead generation prices shows that averaging short-run results would result in reasonable short-term rates even without the recent declines in energy prices.²⁹ Retail rates based

²⁶ R.C. 4928.141(A).

²⁷ Tr. Vol. IV (October 21, 2008) (Higgins).

²⁸ *MRO and ESP Rulemaking*, Case No. 08-777-EL-SSO, Order (September 17, 2008).

²⁹ OCC Ex. 3 at 17-20 (Yankel).

upon purchases in the day-ahead market should be acceptable, in part because of the decline in electricity prices. OEG Witness Baron reports that prices have declined considerably from those on July 15, 2008 (i.e. from the base date used by FirstEnergy Witnesses Graves and Jones), trending lower along with generally lower energy prices.³⁰ Short-term generation rates should therefore result in prices considerably lower than the 7.75 cents per kilowatt-hour offered in FirstEnergy's Short-Term ESP Proposal.³¹ The duration of such purchases and related charges for FirstEnergy's customers should be the 270-day period to permit consideration of a second ESP application³² or the implementation date following Commission approval of a SSO plan for FirstEnergy, whichever is sooner.³³

The modified ESP could provide rates for all FirstEnergy customers by means of a Purchased Power Adjustment ("PPA") mechanism. A PPA would be calculated on a

³⁰ OEG Witness Baron Testimony at 13-14 (OEG Ex. 1). According to OEG Witness Baron, prices dropped approximately 15 percent using forward prices on September 19, 2008 rather than July 15, 2008. The updated forward prices presented by OEG Witness Baron for October, the latest available in the record, are approximately 24 percent below those for July 15, 2008. *Id.*, Updated Exhibits (OEG Ex. 1-A).

³¹ Application at 37. The updated tables from OEG Witness Kollen revise FirstEnergy Ex. 1-A, Alternate Attachment 1, page 1 of 4 (an attachment to FirstEnergy Witness Blank Testimony) using updated price information for October 2008. The results -- which do not include other criticisms of FirstEnergy's evaluations -- show that the ESP is less favorable in the aggregate than the alternative by \$452.2 million compared to a net benefit of \$1,008.3 million in FirstEnergy's calculations based upon July 15 prices. Attachments to OEG Witness Kollen Testimony, OEG Ex. 2-A (LK-9A).

³² R.C. 4928.143(C)(1).

³³ Staff Witness Johnson offered his view on generation pricing for the time period proposed by FirstEnergy in its Short-Term ESP Proposal. Tr. Vol. X (October 29, 2008). Mr. Johnson opined that FirstEnergy should charge 6.75 cents per kilowatt-hour during the first few months of 2009. *Id.* Mr. Johnson did not, however, provide an opinion regarding important implementation matters. *Id.* While Mr. Johnson stated that his opinion reflected recent declines energy prices, the stated basis for his 6.75 cent figure involved the relationship between the Companies' rate plan offer in 2004 compared with auction prices in 2004. *Id.* Energy prices had not similarly declined before the time when the 2004 auction was conducted, so a decline in prices was apparently not a factor upon which Mr. Johnson's opinion was based.

monthly basis and applied using the existing FirstEnergy rate structure³⁴ with equal percentage changes to all rates (i.e. initially for decreases) as needed to provide the funds to compensate FirstEnergy for the purchases. FirstEnergy's reasonable and prudent expenditures to administer the modified SSO program would be reimbursed as part of the PPA. The costs of the program could be monitored and audited by the PUCO Staff or by an outside auditor.³⁵

The Revised Code provides for the contingencies involved in the modification of FirstEnergy's ESP proposal. One contingency involves FirstEnergy's acceptance of the modified plan. Under those circumstances, a plan must be placed into effect to provide electric service by the end of the 270-day period for the short-term ESP. While short, this period is sufficiently long to permit Commission consideration of a SSO proposal in a form proposed by FirstEnergy.

In the event FirstEnergy rejects the modified plan, the Revised Code provides for that contingency:

If the commission modifies and approves an application . . . the electric distribution utility may withdraw the application, thereby terminating it, and may file a new standard service offer under this section [4928.143 ESP] or a standard service offer under section 4928.142 [MRO] of the Revised Code.³⁶

Further, the Revised Code provides for rates in conjunction with FirstEnergy's termination of the Commission's modifications.

³⁴ OCEA does not argue or concede that FirstEnergy's existing rate structure is appropriate.

³⁵ The PPA mechanism is similar to the methodology recommended as a short-term approach by OEG Witness Baron. OEG Witness Baron Testimony at 12-13. Some differences exist. For example, there does not appear to be any compelling need to start with existing prices. *Id.* at 12-13. The lower level of prices in the day-ahead MISO market should be recognized in the Commission's order.

³⁶ R.C. 4928.143(C)(2)(a).

If the utility terminates an application pursuant to (C) (2) (a) of this section . . . the commission shall issue such order as is necessary to continue the provisions, terms, and condition of the utility's most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent offer is authorized pursuant to this section or section 4928.141 of the Revised Code, respectively.³⁷

Since FirstEnergy has no generating units and therefore has no fuel costs, no adjustments to current rates should be made in the event FirstEnergy terminates the modified rate plan. The resulting rates would fully compensate FirstEnergy since the rates would result from the Companies' choice over a PPA procedure that fully compensates the electric distribution utilities for their costs of operation.³⁸ The result is again short-term rates for a period that would not exceed 270 days.

III. CONCLUSION

Customers would be harmed by adoption of the Companies' Short-Term ESP Proposal because it would require the approval of many undesirable parts of the Companies' longer-term ESP proposal. Such action would defeat any purpose for a short-term ESP. An important term in FirstEnergy's Short-Term ESP Proposal -- the Commission's determination that distribution rates be decided in the ESP proceeding and not in the *Distribution Rate Case* -- has already been rejected by the Commission.

A short-term ESP should be established on more reasonable grounds than is proposed in the Companies' Application. One means of proceeding would be for the PUCO to order the PPA as a modification to FirstEnergy's ESP proposal. The PPA

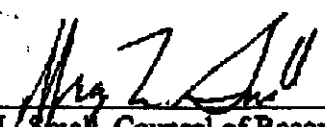
³⁷ R.C. 4928.143(C)(2)(b).

³⁸ This feature is missing, for example, by the Commission ordering an aggregate generation rate of 6.75 cents per kilowatt-hour, as proposed by Staff Witness Johnson. Tr. Vol. X (October 29, 2008) (Johnson).

would permit the collection of sufficient revenues to prevent any unconstitutional "taking" from the Companies. Rejection of the short-term ESP by FirstEnergy would result in the short-term continuation of existing rates, which would be preferable to FirstEnergy's Short-Term ESP Proposal. With additional time, an improved and longer-term SSO plan could be analyzed and refined for approval by the Commission.

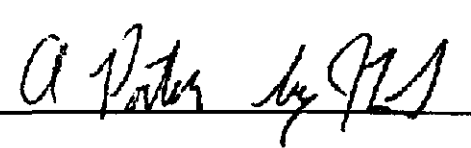
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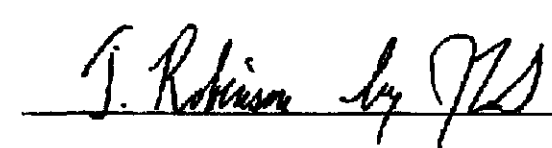
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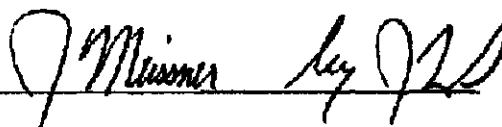
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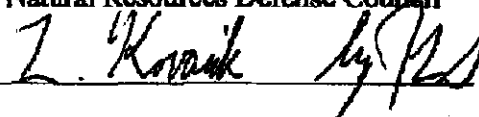
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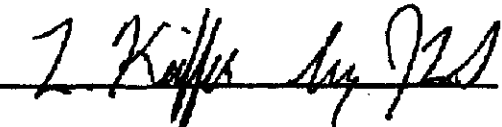
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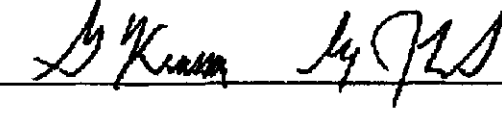
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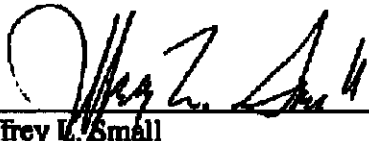


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I hereby certify that a copy of the foregoing the OCEA's Brief Regarding a Short-Term Electric Security Plan was served by first class United States Mail, postage prepaid, to the persons listed below, on this 31st day of October 2008.



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Attachment SJH-3
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Attachment SJH-4
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Attachment SJH-5
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Table 2

<i>Upper Bound</i>				
Forward On-Peak Clearing Price Jan-Mar		\$/MWh	Factor (%)	Source
Loadshape Adjustment		48.75		NYMEX, December 26, 2008
Distribution Losses		N/A		
Transmission and ancillary services		2.09	4.28%	Scott Jones, Exhibit 5
Locational Adjustment		7.50		
		0.53		Harper, Attachment 7
Total		58.87		
<i>Lower Bound</i>				
Forward ATC Clearing Price Jan-Mar		41.89		NYMEX, December 26, 2008
Loadshape Adjustment		1.60	3.83%	Harper, Attachment 8
Distribution Losses		1.79	4.28%	Scott Jones, Exhibit 5
Transmission and ancillary services		7.50		
Locational Adjustment		0.53		Harper, Attachment 7
Total		53.32		

Cinergy First Energy Location Adjustment Adder

Month	Average of locational difference (\$/MWh)
Nov-08	1.06
Dec-08	0.01
AVERAGE	0.53

Attachment SJH-8

Loadshape Adjustment Factor

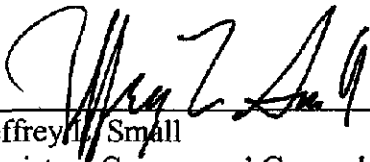
January Weighted Average DA LMP (\$/MWh)	40.22
January LMP Simple Average (\$/MWh)	38.68
Loadshape Adj.	3.83%

Forward Market Results

Symbol	Pricing Point	26-Dec-08	On Peak	Off-Peak	
XEMF9*	Cinergy	JAN	49.50	35.44	
XEMG9*	Cinergy	FEB	49.50	35.44	
XEMH9*	Cinergy	MAR	47.25	34.19	
Average			48.75		
		Feb 23, 2009			
XEM J9**	Cinergy	Apr	32.90	25.05	
XEM K9**	Cinergy	May	31.75	23.25	
Average			32.33		
Percent Change from Jan-Mar and Arp-May					33.7%

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing the *Public Version of the Direct Testimony of Stacia Harper on behalf of the Office of the Ohio Consumers' Counsel* has been served via electronic transmission this 23rd day of February, 2009.


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