

**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 Provide)
For a Standard Service Offer Pursuant to)
R.C. 4928.143 in the Form of an Electric)
Security Plan.)

Case No. 14-1297-EL-SSO

**DIRECT TESTIMONY OF KEVIN M. MURRAY
ON BEHALF OF INDUSTRIAL ENERGY USERS-OHIO**

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Attorneys for Industrial Energy Users-Ohio

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INDEX	<u>PAGE No.</u>
I. INTRODUCTION.....	1
II. HISTORY OF THIS PROCEEDING.....	3
III. ECONOMIC STABILITY PROGRAM.....	4
IV. RIDER NMB	13
V. CONCLUSION	14
CERTIFICATE OF SERVICE	
EXHIBIT KMM-1	

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ON BEHALF OF INDUSTRIAL ENERGY USERS-OHIO**

I. INTRODUCTION

Q1. Please state your name and business address.

A1. My name is Kevin M. Murray. My business address is 21 East State Street, 17th
Floor, Columbus, Ohio 43215-4228.

Q2. By whom are you employed and in what position?

A2. I am employed as a Technical Specialist by McNees Wallace & Nurick LLC
("McNees") and serve as the Executive Director of the Industrial Energy
Users-Ohio ("IEU-Ohio"). I am providing testimony on behalf of IEU-Ohio.

Q3. Please describe your educational background.

A3. I graduated from the University of Cincinnati in 1982 with a Bachelor of Science
degree in Metallurgical Engineering.

Q4. Please describe your professional experience.

1 A4. I have been employed by McNees for 17 years where I focus on helping
2 IEU-Ohio members address issues that affect the price and availability of utility
3 services. I have also been actively involved, on behalf of commercial and
4 industrial customers, in the formation of regional transmission organizations
5 (“RTOs”) and the organization of regional electricity markets from both the
6 supply-side and demand-side perspective. I serve as an end-use customer
7 sector representative as well as Vice Chair on the Midcontinent Independent
8 System Operator, Inc. (“MISO”) Advisory Committee and I have been actively
9 involved in MISO working groups that focus on various issues since 1999. Prior
10 to joining McNees, I was employed by the law firm of Kegler, Brown, Hill & Ritter
11 (“KBH&R”) in a similar capacity. Prior to joining KBH&R, I spent 12 years with
12 The Timken Company, a specialty steel and roller bearing manufacturer. While
13 at The Timken Company, I worked within a group that focused on meeting the
14 electricity and natural gas requirements for facilities in the United States. I also
15 spent several years in supervisory positions within The Timken Company’s
16 steelmaking operations.

17 **Q5. Have you previously testified before the Public Utilities Commission of**
18 **Ohio (“Commission”)?**

19 A5. Yes. The proceedings before the Commission in which I have submitted expert
20 testimony are identified in Exhibit KMM-1.

21 **Q6. What is the purpose of your testimony?**

1 A6. The purpose of my testimony is to recommend the Commission not accept
2 certain elements of the proposed electric security plan ("ESP IV"). Specifically, I
3 recommend that the Commission: (1) deny Ohio Edison Company's, The
4 Cleveland Electric Illuminating Company's and The Toledo Edison Company's
5 (collectively, "FirstEnergy") request for approval of the proposed Economic
6 Stability Program and the related Retail Rate Stability Rider ("RRS Rider"); and
7 (2) not approve FirstEnergy's request to shift additional generation-related costs
8 into the revenues FirstEnergy is permitted to recover through Rider Non-Market-
9 Based ("Rider NMB").

10 II. HISTORY OF THIS PROCEEDING

11 Q7. What are the significant components of the proposed ESP IV?

12 A7. FirstEnergy's proposed ESP IV has a three-year term from June 1, 2016 through
13 May 31, 2019. It is similar to FirstEnergy's current electric security plan in that
14 FirstEnergy has proposed to establish the prices for the default standard service
15 offer ("SSO") through a competitive bidding auction process. However, the
16 proposed ESP IV has notable differences from FirstEnergy's currently-approved
17 electric security plan that would affect the prices all customers pay for electric
18 service (both SSO customers and shopping customers), including the changes I
19 recommend the Commission not authorize. These proposed changes are anti-
20 competitive and contrary to Ohio's pro-competitive market policies. Additionally,
21 and based upon discussions with IEU-Ohio counsel, it is my understanding these
22 proposed changes are contrary to Ohio and federal law.

1 **III. ECONOMIC STABILITY PROGRAM**

2 **Q8. What is the proposed Economic Stability Program?**

3 A8. The proposed Economic Stability Program is discussed in the pre-filed written
4 testimony of FirstEnergy witnesses Moul, Strah, Ruberto, Harden, Cunningham,
5 Lisowski, Mikkelsen, Savage, Staub, Rose and Murley. As proposed by
6 FirstEnergy, approval of the Economic Stability Program would result in
7 FirstEnergy entering into a power purchase contract with its non-regulated
8 affiliate, FirstEnergy Solutions ("FES"). The power purchase contract would
9 provide FirstEnergy with entitlement to receive all of the outputs (capacity,
10 energy and ancillary services) associated with FES's ownership interests in the
11 Davis-Besse Nuclear Power Station ("Davis-Besse") in Oak Harbor, Ohio and
12 W.H. Sammis Plant ("Sammis") in Stratton, Ohio, as well as FES's entitlement to
13 the output of two generating units owned and operated by Ohio Valley Electric
14 Corporation ("OVEC"). FirstEnergy would purchase the output of these
15 generating facilities through a formula-based rate and, in turn, sell all of the
16 output of these facilities into the regional electricity markets operated by PJM
17 Interconnection LLC ("PJM"). The costs charged to FirstEnergy would include
18 any legacy costs associated with operating these facilities, any incremental costs
19 required to keep the facilities operational, and the variable costs of operating the
20 facilities.

21 FirstEnergy would, in turn, require that any output associated with these
22 generating facilities be sold into the regional energy, capacity and ancillary
23 services markets for electricity markets operated by PJM. The differences

1 between any costs charged to FirstEnergy as a result of its contract with FES
2 and revenues received from sales into the electricity markets operated by PJM
3 would become a revenue requirement either charged to or collected from
4 customers under FirstEnergy's proposed RRS Rider.

5 FirstEnergy witness Lisowski has included in his testimony projected revenues
6 and expenses for the Davis-Besse, Sammis and OVEC facilities for each year of
7 the facilities' remaining lives. Those estimates indicate that the Economic
8 Stability Program would result in a net cost to customers during the term of the
9 ESP IV. However, FirstEnergy witness Fanelli testifies that eventually
10 FirstEnergy's revenues received by PJM electricity markets due to the sales
11 associated with the Economic Stability Program will exceed the costs associated
12 with its power purchase contract with FES. Witness Fanelli concludes that the
13 Economic Stability Program will provide FirstEnergy's retail customers with over
14 \$2.1 billion in benefits during the remaining lives of the generating facilities
15 subject to the Economic Stability Program and that this is equivalent to \$807.6
16 million in benefits on a net present value basis.

17 **Q9. Should the Commission approve the Economic Stability Program and the**
18 **associated RRS Rider?**

19 A9. No. There are multiple reasons to justify not approving the Economic Stability
20 Program and the associated RRS Rider. First, the proposed contract structure
21 between FirstEnergy and FES guarantees that FES will recover its costs
22 associated with the generating facilities subject to the Economic Stability
23 Program regardless of whether those costs are above market. As such, the

1 contract represents an attempt to collect additional transition revenue when the
2 opportunity to do so has long since passed. Second, the proposed RRS Rider
3 would result in a subsidy flowing to or from FirstEnergy's non-competitive retail
4 electric service distribution customers to a product or service other than retail
5 service - a result that is both contrary to the state's policies and, as I understand
6 it, unlawful. Third, the Economic Stability Program and associated RRS Rider
7 would serve to rebundle electric generation service contrary to Ohio's state
8 policy. With the enactment of SB 3 in 1999, customers were given the ability to
9 independently select their generation providers and in doing so assemble the
10 price and terms of service that provides customers what they believe is the best
11 balance of supply security, pricing and risk. By proposing the Economic Stability
12 Program, FirstEnergy is requesting the Commission to allow FirstEnergy to
13 substitute its decision making for matters that were directly assigned to individual
14 customers through SB 3. Each of these reasons is discussed in more detail in
15 my testimony.

16 **Q10. Is the proposed Economic Stability Program equivalent to a request for**
17 **additional transition revenue?**

18 A10. Yes, the proposed Economic Stability Program is equivalent to a request for
19 additional transition revenue. Further, the request for transition revenue has
20 been submitted by FirstEnergy at a point in time when the opportunity to collect
21 transition revenue has long since terminated.

22 **Q11. What is your understanding of how and when SB 3 permitted collection of**
23 **transition revenue?**

1 A11. Like many states that enacted electric restructuring legislation to allow for
2 competition in the generation supply function, Ohio provided an opportunity for
3 electric distribution utilities (“EDUs”) to seek recovery of “stranded costs” or
4 “transition costs” associated with competitive generation supply. SB 3 also
5 provided an opportunity for an EDU to seek transition revenue associated with
6 the electricity generation function for a period of years but not after December 31,
7 2010. SB 3 contains the criteria that the Commission applied to determine how
8 much, if any, of the transition revenue claim was eligible for recovery. When the
9 Commission approved a transition revenue claim, it also approved transition
10 charges that the EDU could then charge shopping customers for the period
11 specified by the Commission. For non-shopping customers, the transition
12 charges were embedded in the default generation supply price and were equal to
13 the portion of the applicable default generation supply price that was not
14 avoidable by shopping customers.

15 **Q12. What criteria were applied to determine how much, if any, transition**
16 **revenue could be approved by the Commission and collected through**
17 **transition charges?**

18 A12. It is my understanding that Section 4928.39, Revised Code, specified these
19 criteria. These criteria were applied to determine the total amount of transition
20 revenue that was eligible for collection through transition charges if an EDU
21 submitted a claim for transition revenue. SB 3 did not require transition revenue
22 to be addressed unless the EDU submitted a claim for transition revenue.

23 **Q13. Which EDUs submitted a claim for transition revenue?**

1 A13. All of the EDUs, including the FirstEnergy EDUs, submitted a claim with their
2 electric transition plan (“ETP”) applications.

3 **Q14. More specifically, what is your understanding of the criteria that were used**
4 **to determine how much, if any, of a transition revenue claim was eligible**
5 **for collection through transition charges?**

6 A14. As indicated previously, it is my understanding that Section 4928.39, Revised
7 Code, contains the criteria used to determine the total allowable transition
8 revenue claim. A transition revenue claim was eligible for collection through
9 transition charges if the revenue claim was limited to:

- 10 (1) Costs that were prudently incurred;
- 11 (2) Costs that were legitimate, net verifiable, and directly assignable or
12 allocable to retail electric generation service provided to electric
13 consumers in this state;
- 14 (3) Costs that were not recoverable in a competitive market;
- 15 (4) Costs that the utility would otherwise have been entitled an
16 opportunity to recover.

17 Each of these criteria had to be satisfied for the transition revenue claim to be
18 recoverable.

19 **Q15. Was the amount of a total transition revenue claim potentially separated**
20 **into different components?**

1 A15. Yes. The total allowable amount of any transition revenue claim was separated if
2 a portion of that total claim was a claim for regulatory assets. The total transition
3 charge resulting from any allowable transition revenue claim was also separated
4 to show a separate regulatory asset charge. It is my understanding that SB 3
5 required the regulatory asset portion of a transition charge to end no later than
6 December 31, 2010. It is also my understanding that, under SB 3, the non-
7 regulatory asset portion of any transition charge which was associated with
8 above-market generating plants had to end by no later than December 31, 2005
9 or the end of the market development period ("MDP"), whichever occurred first.

10 **Q16. Generally, how was the amount of transition revenue associated with**
11 **above-market generating plants measured?**

12 A16. If an EDU wanted to make a claim for transition revenue, it had to include the
13 claim in its proposed ETP. In the case of FirstEnergy, it submitted two studies
14 performed separately by ICF Consulting and Lexicon, Inc. to estimate above-
15 market generation costs.

16 The studies relied upon a revenue-based approach to project expected revenue
17 streams for the various generating plants and computed a present value of the
18 future estimated revenue streams. The present value of the future estimated
19 revenue streams was then compared to the net book value of the generating
20 plants at December 31, 2000. Generation plant related transition costs were
21 deemed to be positive (and potentially eligible for recovery through transition
22 charges) if the present value of the projected revenue stream was, in the
23 aggregate, less than the net book value of the generating plants at December 31,

2000. Again, the generation plant related transition revenue had to be recovered during the period beginning January 1, 2001 through either the end of the MDP or December 31, 2005, whichever occurred first.

Q17. How was FirstEnergy's ETP resolved?

A17. FirstEnergy's ETP was resolved by a stipulation supported by the majority of parties to the case that was accepted by the Commission. The Commission's order accepting the stipulation stated that total allowable transition costs were \$2,527,579,833 for Ohio Edison Company, \$3,017,813,280 for The Cleveland Electric Illuminating Company and \$1,366,034,515 for The Toledo Edison Company. As previously stated, all transition revenue was required to be recovered by no later than December 31, 2010.

Q18. Did the FirstEnergy ETP Stipulation address stranded benefits?

A18. Yes. At the time of its ETP application, FirstEnergy estimated it would have above-market generation costs and thus require transition revenue. However, a specific provision in the stipulation provided that if FirstEnergy ultimately sold any generation asset to a non-regulated affiliate at a price above the assumed fair market value reflected in the ETP application, then any net after-tax gain would be netted to adjust (reduce) regulatory transition revenue. This provision of the stipulation also provided that FirstEnergy would bear any risk associated with the sale of a generating asset that resulted in a net loss.

1 **Q19. Would the Economic Stability Program and associated RRS Rider result in**
2 **a subsidy flowing from FirstEnergy's non-competitive distribution service**
3 **to its generation related business?**

4 A19. Yes. Ohio's electricity policies require that the Commission "[e]nsure effective
5 competition in the provision of retail electric service by avoiding anticompetitive
6 subsidies flowing from a noncompetitive retail electric service to a competitive
7 retail electric service or to a product or service other than retail electric service,
8 and vice versa, including by prohibiting the recovery of any generation-related
9 costs through distribution or transmission rates."¹ FirstEnergy's proposed non-
10 bypassable RRS Rider is structured to provide a direct subsidy flowing to or from
11 FirstEnergy's retail non-competitive distribution service customers and to or from
12 a product or service other than retail electric service - in this case, wholesale
13 generation supply service available to FirstEnergy pursuant to its proposed
14 contract with FES. The RRS Rider causes such a subsidy payment from
15 FirstEnergy retail distribution customers when it results in a charge (the cost of
16 the FES wholesale supply contract with FirstEnergy is in excess of the revenue
17 resulting from liquidation in the wholesale markets). The RRS Rider is a subsidy
18 to retail distribution customers when it results in a credit (the cost of the FES
19 wholesale supply contract with FirstEnergy is less than the revenue resulting
20 from liquidation in the wholesale markets). In either case, the result runs afoul of
21 Ohio's pro-competitive policies.

¹ Section 4928.02(H), Revised Code.

Q20. Would the Economic Stability Program and associated RRS Rider result in rebundling of generation service?

A20. Yes. With the enactment of SB 3, Ohio implemented a policy that allows customers to select the unbundled generation service components to meet a customer's supply, price, terms and conditions that meets the customer's needs. By entering into the proposed power purchase contract with FES, FirstEnergy is effectively substituting its judgment for the source of generation supply when the Ohio legislature has determined such decisions are to be in the control of customers.

Q21. Why is the Economic Stability Program equivalent to a request for additional transition revenue?

A21. In those instances in which the revenue for the output of the generating facilities sold into the markets operated by PJM is less than the costs FirstEnergy incurs for the purchase of the output of those facilities, the shortfall to be collected through the RRS Rider charge are costs that are recoverable in PJM's competitive electricity markets. This is equivalent to transition revenue.

Q22. Can you summarize your recommendations on FirstEnergy's proposed Economic Stability Program and associated RRS Rider?

A22. Yes. The Commission should deny FirstEnergy's request for authorization to implement the Economic Stability Program and associated RRS Rider.

1 **IV. RIDER NMB**

2 **Q23. Has FirstEnergy proposed any changes to the cost it collects from**
3 **customers under Rider NMB?**

4 A23. Yes. As discussed in the testimony of FirstEnergy witness Stein, FirstEnergy
5 currently recovers various charges invoiced by PJM through Rider NMB, which is
6 paid by all customers (both shopping and non-shopping). The majority of costs
7 collected through Rider NMB reflect costs and credits invoiced by PJM for
8 network integration transmission service (“NITS”), transmission expansion
9 charges and some PJM ancillary services.

10 In its application, FirstEnergy has proposed to expand the costs and credits
11 invoiced by PJM that would be recovered through Rider NMB to include various
12 generation-related costs. Specifically, FirstEnergy has proposed to recover,
13 through Rider NMB, costs and credits associated with planning period congestion
14 uplift, meter error correction, emergency energy, balancing operating reserve,
15 balancing operating reserves for load response and reactive services.

16 **Q24. Why has FirstEnergy proposed these changes to Rider NMB?**

17 A24. FirstEnergy witness Stein states in his testimony that including these charges
18 and credits is designed to reduce the risk premium that may be added to SSO
19 generation supply bids or prices offered by competitive retail electric service
20 (“CRES”) providers and ensure customers only pay the actual costs for these
21 items.

Q25. Should the Commission approve these changes to Rider NMB?

A25. No. These additional costs are generation-related costs and it is contrary to Ohio's policies to rebundle these generation-related charges and recover them through a non-bypassable rider. SSO bidders and CRES providers are in the best position to manage their exposure to these generation-related costs. Further, for customers currently served by CRES providers, the costs and credits associated with these PJM line items should already be reflected in their offer prices. Shifting these line items into a non-bypassable charge recovered through Rider NMB would simply result in a windfall for CRES providers with any remaining term contracts, unless the contract was structured to include a direct pass-through of any PJM related costs.

V. CONCLUSION

Q26. What are your overall recommendations on the proposed ESP IV?

A26. If the Commission chooses to approve the ESP IV, it should modify the proposal and direct FirstEnergy to eliminate the Economic Stability Program and the associated RRS Rider. The Commission should also modify the ESP IV to eliminate FirstEnergy's proposal to shift additional generation-related costs and credits to be recovered through Rider NMB.

Q27. Does this conclude your testimony?

A27. Yes.

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, "The PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties." In addition, I hereby certify that a service copy of the foregoing *Direct Testimony of Kevin M. Murray on Behalf of Industrial Energy Users-Ohio* was sent by, or on behalf of, the undersigned counsel for IEU-Ohio to the following parties of record this 22nd day of December 2014, via electronic transmission.

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Exhibit KMM-1

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Recover Costs Associated with the Construction and Operation of an Integrated Gasification Combined Cycle Electric Generating Facility, PUCO Case No. 05-376-EL-UNC.

In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Revised Code, in the Form of an Electric Security Plan, et al., PUCO Case Nos. 13-2385-EL-SSO, et al.

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In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan; an Amendment to its Corporate Separation Plan, and the Sale or Transfer of Certain Generating Assets, Case No. 08-917-EL-SSO and In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan; and an Amendment to its Corporate Separation Plan, PUCO Case No. 08-918-EL-SSO (remand phase).

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