OCC EXHIBIT______

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
KENNETH ROSE, Ph.D.

On Behalf of
The Office of the Ohio Consumers' Counsel
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December 22, 2014

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. PURPOSE OF TESTIMONY..2

III. RECOMMENDATIONS AND ANALYSIS 3

ATTACHMENTS

Attachment KR-1

I. INTRODUCTION

Q1. PLEASE STATE YOUR NAME AND AFFILIATION.

A1. My name is Kenneth Rose, an independent consultant based in Chicago, Illinois. I have been retained by the Office of the Ohio Consumers' Counsel for purposes of this proceeding.

Q2. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.

A2. I received my B.S., M.A., and Ph.D. in economics from the University of Illinois at Chicago. I have been an independent consultant since 2002. Previously, I was a Senior Institute Economist at the National Regulatory Research Institute ("NRRI") at The Ohio State University from 1989 to 2002, and was an economist in the Energy and Environmental Systems Division at Argonne National Laboratory from 1984 to 1989. I have also been a lecturer for the School of Public Policy and Management (1998 to 2002) and the John Glenn School of Public Affairs (2009 to 2011) at The Ohio State University. I have been a Senior Fellow with the Institute of Public Utilities at Michigan State University since 2002.

Q3. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY OR TESTIFIED BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO OR OTHER AGENCIES?

A3. Yes, I have submitted testimony before the Public Utilities Commission of Ohio ("PUCO" or "Commission") in the Dayton Power and Light Electric Security Plan ("ESP") case (Case Nos. 12-426-EL-SSO, et al.) and the Duke Energy Ohio, Inc., cases in 2012 and 2013 for certain tariff and accounting changes (Case Nos. 12-2400-EL-UNC, 12-2401-EL-AAM, and 12-2402-EL-ATA). I have also testified before Ohio legislative committees and before other state commissions and legislative bodies. They are listed in Attachment KR-1 to my testimony. I have also worked with the Ohio Legislative Service Commission ("LSC") on the drafting of legislation that became Senate Bill 3 ("S.B. 3"), which is explained in more detail later in my testimony.

II. PURPOSE OF TESTIMONY

Q4. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A4. The purpose of my testimony is to provide my analysis and recommendations regarding the Retail Rate Stability Rider ("Rider RRS") that is proposed for customers and others affected by the electric utilities' application for a fourth electric security plan ("ESP IV") in these cases. The utility-applicants are the Ohio Edison Company ("Ohio Edison"), The Cleveland Electric Illuminating

Company ("CEI") and The Toledo Edison Company ("Toledo Edison") (together the "FirstEnergy EDUs", the "Utility" or the "Companies").

III. RECOMMENDATIONS AND ANALYSIS

Q5. PLEASE SUMMARIZE YOUR CONCLUSION.

A5. Based on my review and analysis, I conclude as follows. First, the customers of the Utility should not be required to pay additional money in the form of Rider RRS to protect FirstEnergy Corp., or its unregulated subsidiary, FirstEnergy Solutions ("FES"), from any losses it may incur in a competitive electric generation market. Second, any regulatory actions at this time that allow an electric generator or supplier, such as FES, to collect generating costs from the customers in excess of market prices would be giving the generator or supplier unfair advantages (subsidies). Third, the proposed Rider RRS, if approved, will undermine: the State's Retail Electric Service Policy to ensure the availability of reasonably priced retail electric service (R.C. 4928.02(A)); the diversity of electricity supplies and suppliers (R.C. 4928.02(C)); the avoidance of anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail service (R.C. 4928.02(H)); and the facilitation of the state's effectiveness in the global economy (R.C. 4928.02(N)). I conclude that Rider RRS and its associated Purchase Power Agreement ("PPA") between the Utility and its unregulated affiliate, FES, are not in the public interest and will not benefit the customers of FirstEnergy EDUs. Therefore, Rider RRS and its associated PPA should be denied by the PUCO.

Q6. WHAT IS THE PROPOSED RIDER RRS IN THE ESP?

A6 In summary, the proposed Rider RRS would be a non-bypassable generation charge that would be collected from all distribution customers. The charge would be calculated as the difference between the projected costs of specified power sources and the projected PJM market revenues from sales of energy, capacity, and ancillary services from those power sources. There would also be an annual update and reconciliation.

However, the Companies' Power Purchase Agreement proposal associated with Rider RRS lacks traditional regulatory oversight. The proposal does not provide for the PUCO to do a prudence review of the legacy costs embedded in past decisions made by the Utilities' unregulated affiliate. Nor will there be a prudence review of costs incurred going forward. This was explained in Witness Mikkelson's testimony where it was stated:

> "Legacy Cost Components are all costs that arise from decisions or commitments made and contracts entered into prior to December 31, 2014, including any costs arising from provisions under such historic contracts that may be employed in the future. * * *.
> **Approval of this ESP IV shall be deemed as approval to**

> **recover all Legacy Cost Components through Rider RRS as not unreasonable costs.**
>
> Rider RRS will be subject to two separate reviews. In the first review, **the Staff will have from April 1 to May 31 to review the annual Rider RRS filing for mathematical errors, consistency with the Commission approved rate design, and incorporation of prior audit findings**, if applicable. In the second review, **the Staff will have the opportunity to audit the reasonableness of the actual costs (excluding Legacy Cost Components which shall not be included in this second review or challenged in any subsequent audit or review)** contained in Rider RSS and the actual market revenues contained in Rider RRS. The audit shall **include a review to confirm that the actual costs and actual market revenues included in Rider RRS are not unreasonable."**[1]

The Companies' proposal limits the PUCO review of the Utilities' costs. Limited review means that customers may end up paying for costs that are unreasonable and imprudent.

[1] Direct Testimony of Eileen Mikkelsen at 14-15 (August 4, 2014) (emphasis added).

Q7. WHAT IS THE MAIN FEATURE OF THE PROPOSED RIDER RRS IN THE ESP?

A7. The main feature of the proposed Rider RRS is the collection by the Utility, on behalf of its unregulated affiliate, FES, the full "cost" or "contract price"(generally above the market price) of electricity produced from the Davis-Besse Nuclear Power Station ("Davis-Besse") and the W.H. Sammis Plant ("Sammis") (collectively, the "Plants"). The above-market price and terms of service of electricity produced from the Plants are in turn set, not by the Federal Energy Regulatory Commission ("FERC") or the PUCO, but through a bilateral contract between two affiliated entities (the Utility and FES). The Companies' witness Savage explains the mechanics of the proposed Rider RRS. She explains that:

> "The revenue requirement for Rider RRS will be derived based on the difference between: (1) the projected costs, including a return on and of invested capital, associated expenses and applicable taxes, for the upcoming year for the Davis-Besse Nuclear Power Station ("Davis-Besse") and the W.H. Sammis Plant ("Sammis") (collectively, the "Plants") along with those costs assessed against FirstEnergy Solutions Corp.'s ("FES") share of the Ohio Valley Electric Corporation ("OVEC"); and (2) the projected PJM market revenues that the Companies will receive for selling the energy,

> capacity and ancillary services from the Plants and OVEC into the PJM market."[2]

In other words, the revenue that the Utility would collect from customers via the Rider RRS would be the difference between the "generation costs" (determined through bilateral contract between two affiliated entities) associated with those Plants and the market revenues the Utility can receive by selling the electricity and related services into the PJM market. Essentially, the Utility will collect from its distribution customers the "generation costs" of its affiliated unregulated generation entity FES not covered in the PJM market—or the above-market generation costs. Specifically, the Companies estimated the total Rider RRS revenue collection (the amount of projected costs above the market prices) from the distribution customers during the three-year term of the ESP to be $464 million.[3]

Q8. WHY HAS THE UTILITY PROPOSED RIDER RRS AND ITS ASSOCIATED POWER PURCHASE AGREEMENT IN THE ESP?

A8. The Companies are of the opinion that current market conditions do not provide a sufficient return on certain generating assets. According to the Companies' witness Moul:

[2] Direct Testimony of Savage at 3 (August 4, 2014).

[3] Direct Testimony of Roberto, JAR-1.

> The economic viability of the Plants is in doubt. Market-based revenues for energy and capacity have been at historic lows and are insufficient to permit FES to continue operating the Plants and to make the necessary investments. Near-term forecasts for energy and capacity prices are unfavorable."[4]

The "Plants" he is referring to are the Davis-Besse Nuclear Power Station and the W.H. Sammis Plant. The Companies are also seeking to collect costs associated with FirstEnergy Solutions' share of the output of two generating plants owned and operated by Ohio Valley Electric Corporation. Moul continues by stating that "[m]arkets have not, and are not, providing sufficient revenues to ensure continued operation of the Plants" and that [t]he only thing that can be said with certainty is that the future of the Plants is in doubt." Then he repeats that "[t]he Plants are not receiving sufficient revenues to cover the Plants' costs, both from an energy and capacity standpoint."[5]

In other words, according to the Companies, the specified plants are uneconomic and cannot compete on their own in the marketplace. Witnesses Ruberto, Savage, and Strah describe how the Rider RRS was calculated to make up these FES' market losses— to be paid for by customers of the Companies through the RRS charge. The evidence presented by the Companies would support a conclusion that during the period of the ESP (2016 – 2018) these Plants are uneconomical.

[4] Direct Testimony of Moul, p. 2.

[5] Witness Moul, p. 3.

However, it should be noted that I have not concluded whether these power plants covered under Rider RSS are economical during the 15-year period of the PPA, nor what future prices of electricity or other fuels will be. The discussion here is to summarize the Utility's rationales for proposing the Rider RSS.

Q9. DO YOU CONCUR WITH THE UTILITY'S RATIONALE FOR PROPOSING THE RIDER RRS?

A9. No. Essentially, the proposed Rider RRS and its associated PPA, if approved, would amount to a bail-out funded by the customers of the Utility for two of FES's unregulated generation plants.

After the market development period, utilities are required under Ohio law to be fully on their own in the competitive market. The Companies' market development period ended on December 31, 2005.[6] Being on your own in the competitive market means that the Companies' unregulated generation efforts cannot be aided by a subsidy—especially one paid for by the Companies' distribution customers.

[6] It should be noted that the "Generation Transition Charge" (GTC) ended at the end of 2005, but, for "regulatory transition charges" (RTC), the end dates were extended, per the PUCO-approved stipulation. Specifically, the stipulation indicates that the RTC recovery periods will not extend beyond December 31, 2006 for Ohio Edison, June 30, 2007 for Toledo Edison, and December 31, 2008 for CEI except in some limited circumstances. See *In the Matter of the Application of FirstEnergy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues*, PUCO Case Nos. 99-1212-EL-ETP, 99-1213-EL-ATA, and 99-1214-EL-AAM, Opinion and Order (July 19, 2000). p. 11"

Q10. IN YOUR OPINION, IS THE COMPANIES' ESTIMATE OF THE SO-CALLED LONG-TERM "BENEFITS" UNDER THE PPA FOR THE UTILITY'S CUSTOMERS RELIABLE?

A10. No.

Q11. WHY IS THE COMPANIES' ESTIMATE OF BENEFITS NOT RELIABLE?

A11. There is great uncertainty regarding the long-term price and cost projections for electricity and other forms of energy. Consequently, the estimated impact provided by the Utility in this proceeding, especially those projections further into the future, is of little value in assessing the purported benefits of Rider RRS as claimed by the Utility. It is possible that the future market prices of electricity in the PJM market will be much lower than those estimated by the Utility and the revenue (the difference between market price and "generation costs") to be collected through Rider RRS from customers will be much higher than currently estimated. For example, as discussed earlier, the Utility did provide estimates regarding the impact of the proposed Rider RRS for over an extended period of time (from 2016 through 2031).[7] However, another OCC/NOPEC (Northeast Ohio Public Energy Council) witness, James Wilson, has produced a vastly different estimate of the impact of the proposed Rider RRS.

Q12. DO YOU AGREE THAT THE COMPANIES SHOULD BE ALLOWED TO COLLECT AND TRANSFER TO FES (THEIR UNREGULATED AFFILIATE) THE COMPENSATION FOR THE DEREGULATED GENERATION ASSETS COVERED UNDER THE PROPOSED RRS?

A12. No, I do not believe that the Companies should be allowed to collect the above-market "costs" for those Plants owned by FES from their customers and transfer the collected revenue to FES through a bilateral contract not regulated by the FERC or the PUCO. It should also be noted that Ohio Edison, CEI, and Toledo Edison do not own any generation plants at this time. The power plants to be included in the Rider RRS are owned and operated by FES, an unregulated affiliate of the Companies. I do not believe that the Companies should be allowed to collect above-market generation costs from customers and transfer the collected revenues to its unregulated affiliates. My opinion is based on my knowledge of established and sound regulatory policy as a regulatory economist and on my understanding of Ohio laws that limit charges to customers for competitive generation market losses by electric utilities.

Q13. IS THE COMPANIES' PROPOSAL CONSISTENT WITH OHIO LAWS?

A13. No.

Q14. PLEASE DESCRIBE YOUR UNDERSTANDING OF THE OHIO LAWS THAT YOU REFERENCE IN YOUR PRECEDING ANSWER.

A14. In the late 1990s, while I was employed at NRRI at The Ohio State University, I worked for the Ohio LSC directly assisting the legislators tasked with drafting what became S.B. 3. In particular, my work was directly related to the drafting of language (statutes) regarding "transition costs" or "stranded cost" recovery and the methods for determining the standard service offer rate. S.B. 3 became the law in Ohio in 1999[8] and the specific provisions pertaining to stranded investment, R.C. 4928.38 and 4928.39, remain applicable today.

It is my understanding, as confirmed by counsel, that the Legislative goals of S.B. 3 were to deregulate the generation market and end the use of cost-based rates for generation services in the state of Ohio.[9] Cost-based regulation was to be replaced by market competition as a means to determine the wholesale and retail generation price for all electricity customers. Consequently, after the enactment of S.B. 3, market forces are to determine which power plants should be operated and which power plants should be retired if they are inefficient and uneconomic.

However, there is an important analytic point to be made in that regard. The test for economic viability of the Plants is whether PJM Interconnection L.L.C.

[8] As Passed by the Ohio 123rd General Assembly, 1999.

[9] Legislative Service Commission, Final Analysis, Am. Sub. S.B. 3, 123rd General Assembly, 1999.

("PJM") market prices are sufficiently high to cover the supplier's average variable costs, i.e., costs that vary with output.

But under the Companies' proposal, customers will be charged the full embedded costs of generation plant including a return on and a return of legacy capital. Thus, it is entirely possible that Rider RRS would "produce" a "loss" that customers pay for (meaning full cost of service exceeds PJM revenue from the generation) even though the PJM market prices are still high enough to cover average variable costs. Thus, the fact that the Rider RRS produces a loss for customers does not mean that absent that rider the plants covered under Rider RRS would or should be retired.

Q15. IS THE UTILITY'S RIDER RRS PROPOSAL CONSISTENT WITH S.B. 3?

A15. No. The fundamental idea behind this deregulation of the generation business (S.B. 3) is that retail customers should not now be asked to protect Ohio electric utilities from competitive generation market risks or losses. A market development period was provided under S.B. 3. The intent of the market development period was to provide electric utilities in Ohio time to prepare for a competitive environment. That market development period has elapsed, and it is no longer the Utility's customers' obligation to cover the operating generating costs and guarantee a return on generating assets owned by the Companies' unregulated affiliate whether those generating assets are uneconomic or less competitive in the marketplace. The Companies are now "wholly responsible" for whether they are in a competitive position in the generation market. Customers should not be asked to guarantee the profitability of the Companies' affiliate-owned generation units.

Q16. WHY IS THE PROPOSED RRS AND ITS ASSOCIATED PPA CONTRADICTING THE LEGISLATIVE INTENT AND THE POLICY GOALS OF ELECTRICITY DEREGULATION IN OHIO, IN PARTICULAR S.B. 3?

A16 From a policy perspective, the Companies' proposed Rider RRS and its associated PPA is based on the premise that captive retail customers should make up the potential losses of certain generation assets owned and operated by the Companies' unregulated affiliate, FES, and ultimately, the Utility's parent company, FirstEnergy Corp. This is contrary to Ohio's policy direction since 1999. The proposed RRS charge is an attempt to re-introduce revenue guarantees for the specified unregulated (and currently uneconomic) generation assets.

What the Companies have proposed regarding the Rider RRS can be viewed as either (1) a continuation of transition or "stranded" cost recovery for those power plants, which as explained below should no longer be permitted or (2) a loosely-designed cost-based regulation that incorporate a revenue guarantee for those generation plants. This is problematic because the "cost" (or PPA contract price) of the specific generation assets is determined through bilateral contract between affiliated companies, and the "cost" (or contract price) are not set by FERC or the PUCO.

Q17. DO YOU HAVE CONCERNS FOR CUSTOMERS REGARDING THE UTILITIES' ATTEMPT TO RE-INTRODUCE A REVENUE GUARANTEE INTO THEIR UNREGULATED BUSINESS?

A17. Yes, I do. This approach is a loosely based attempt at "re-regulation" (or more precisely the re-introduction of revenue guarantee through unregulated bilateral contracts between affiliated entities). The Utilities' proposal is an attempt to "re-regulate" the very service (competitive generation) that has been the focus of attempts to deregulate, at both the federal and state levels. However, the proposed Rider RRS is considerably inferior to the traditional cost-based regulation because it is actually a revenue guarantee masked as partial cost-based regulation. As discussed above, the Utility's proposal lacks the important checks and balances that usually accompany traditional or cost-based regulation, such as prudence review of costs incurred.

Under the proposed Rider RRS, in a broader sense, the FirstEnergy Corp. would be collecting additional revenues (that are above market price) from captive customers of its regulated distribution subsidiaries, Ohio Edison, CEI, and Toledo Edison. And then the revenues would be transferred to the unregulated subsidiary FES (the entity that actually owned generation assets that are no longer price-regulated by the State of Ohio). By doing so, the FirstEnergy Corp. will receive a guaranteed return on some of its generation capital investments. These revenues would provide the FirstEnergy Corp., or its unregulated subsidiary FES, additional dollars that it allegedly otherwise cannot collect by selling generation services in the wholesale or retail market.

This scheme is contrary to the legislative intent of S.B. 3 to create a competitive generation market in the state. If the proposed Rider RRS were granted by the Commission, some of FirstEnergy's generation plants would receive this additional revenue in the form of a guaranteed return. But other non-affiliated electric suppliers would not receive any similar guaranteed return for their competing in the market. In this regard, the approval of the Rider RRS and its associated power purchase agreement will place generators other than FES at a competitive disadvantage in the market. And the Rider RRS will impair the operation of a competitive market that is intended to provide generation pricing for Ohio electric customers.

Q18. FIFTEEN YEARS AFTER SENATE BILL 3'S ENACTMENT, SHOULD THE COMPANIES' TRANSITION TO COMPETITION BE DONE?

A18. Yes. The Companies should no longer charge customers a price, especially one that includes a guaranteed return for generation service determined by the PUCO.

Q19. DOES OHIO LAW PROVIDE THE COMPANIES WITH AN ADDITIONAL TRANSITION PERIOD?

A19. No. My understanding of S.B. 3, confirmed by counsel, is that Ohio law prohibits the recovery of stranded costs or transition costs or "equivalent revenues" beyond the "market development period." That time period expired on December 31, 2005, plus the additional time the Companies were granted. Specifically, Section 4928.38 of the Revised Code, as adopted on October 5, 1999, provides that an electric utility may receive transition revenues from the starting date of competitive retail electric service through the end of the market development period. Further, that section of the Revised Code provides that once the utility's market development period ends, it "shall be fully on its own in the competitive market." Being fully on its own in the competitive market means that the utility (and its affiliate) are not charging captive customers of regulated services for revenues to support power plants.

Q20. WHAT TYPE OF COSTS ARE THE COMPANIES TRYING TO COLLECT FROM CUSTOMERS THROUGH THE PROPOSED RIDER RRS AND ITS ASSOCIATED PPA?

A20. Specifically, the Utilities are seeking to charge customers for above-market generation costs.

Q21. ARE THE COMPANIES ATTEMPTING TO COLLECT, ONE MORE TIME, TRANSITION COSTS OR "EQUIVALENT REVENUES"?

A21. Yes. Section 4928.39 of the Revised Code defines transition costs. It clearly states that the costs unrecoverable in a competitive environment are considered a part of the transition costs. At this time in 2014, the Companies are claiming one more time that revenue derived from a competitive marketplace is insufficient to cover the cost of operating the plants. That the cost of generation plants exceeds the market price is essentially the very definition of transition cost. During the Market Development Period, the Companies charged customers for considerable amounts of money (billions of dollars) to adjust to market conditions. Specifically, the Commission's Order that approved the FirstEnergy stipulation stated the amount that the companies can collect from customers:

> "Pursuant to Section 4928.39, Revised Code, the total allowable transition costs for the FirstEnergy operating companies are $2,527,579,833 for Ohio Edison, $3,017,813,280 for CEI, and $1,366,034,515 for Toledo Edison."[10]

Indeed, the Companies were well compensated (approximately $7 billion) for their transition to competition. Therefore, it is unlawful for the PUCO to authorize, one more time, these Companies to collect additional transition costs or

[10] *In the Matter of the Application of FirstEnergy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues,* PUCO Case Nos. 99-1212-EL-ETP, 99-1213-EL-ATA, and 99-1214-EL-AAM, Opinion and Order (July 19, 2000), p. 71.

equivalent revenues from customers after the conclusion of the Market Development Period.

Q22. WOULD IT BE PROPER FOR THE COMPANIES TO NOW CHARGE CUSTOMERS FOR ADDITIONAL GENERATION-RELATED TRANSITION COSTS, ABOVE MARKET PRICES, AND TRANSFER THOSE COLLECTED REVENUES TO FES IN ORDER TO KEEP THE UNREGULATED POWER PLANTS IN OPERATION?

A22. No. The law is very clear that "[w]ith the termination of that approved revenue source, the utility shall be fully on its own in the competitive market" and that the commission "shall not authorize the receipt of transition revenues or any equivalent revenues" after the termination of the market development period. This means that the Companies cannot charge customers of the regulated distribution business dollars that subsidizes FES' non-regulated generation service. But that's just what the Companies propose to do.

In addition, the Companies have not demonstrated that it is in the best interests of the customers or the state of Ohio, at this time in 2014, to support those power plants covered under the proposed Rider RRS through hundreds of millions or even billions of dollars in subsidies. Those power plants should compete in the market with other power plants, on their own without customer-provided subsidies. Therefore, the Companies' proposal violates Ohio's retail electric service policy and Ohio law. FirstEnergy's proposal should be rejected by the PUCO.

Q23. DOES THE PROPOSED RIDER RRS AND ITS ASSOCIATED PPA ADVANCE AND PROMOTE STATE ELECTRIC SERVICE POLICY ENUMERATED IN OHIO REVISED CODE 4928.02?

A23. No. The proposed Rider RRS and its associated PPA, if approved by the Commission, do not advance or promote the state electric service policy as enumerated in R.C. 4928.02. It is clear to me that approval of the proposed Rider RRS would undermine many of the State's Electric Service Policies. Specifically and without limitation, these state electric service policies include ensuring: the availability of reasonably priced retail electric service (4928.02(A); the diversity of electricity supplies and suppliers (4928.02(C)); the avoidance of anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail service and other policies (4928.02(H)); and the facilitation of the state's effectiveness in the global economy (4928.02(N).

Q24. PLEASE EXPLAIN WHY THE PROPOSED RIDER RRS DOES NOT ADVANCE THE STATE RETAIL ELECTRIC SERVICE POLICY OF ENSURING THE AVAILABILITY OF REASONABLY PRICED RETAIL ELECTRIC SERVICE?

A24. Ohio Revised Code (R.C.) 4928.02(A) states that it is the policy of the state of Ohio to "Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service." The best way to ensure "reasonably priced retail electric service" is to let a competitive market operate freely without subsidies to any of the market participants such as the non-bypassable Rider RRS charges collected by the Utility and transferred to FES. The proposed Rider RRS will also unnecessarily and unreasonably increase the costs paid by the retail customers of the Utility. The Utilities' proposal admits that during the first three years of the ESP customers are expected to pay $464 million under the proposed Rider RRS.[11]

Q25. PLEASE EXPLAIN WHY THE PROPOSED RIDER RRS DOES NOT ADVANCE THE STATE ELECTRIC SERVICE POLICY OF PROMOTING DIVERSITY OF ELECTRICITY SUPPLIES AND SUPPLIERS.

A25. R.C. 4928.02(C) states that it is the policy of the state of Ohio to "Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities." To "ensure

[11] Direct Testimony of Roberto, JAR-1.

diversity," it is important to have a level playing field for all suppliers to compete on. However, the Rider RRS would be a non-bypassable charge assessed to all customers, and the revenue collected would only go to *one* supplier, FES. Other alternative suppliers or generators would be at a disadvantage because they would not receive guaranteed revenues or a subsidy and would have to operate only on the revenues they receive in the electricity markets.

Q26. PLEASE EXPLAIN WHY THE PROPOSED RIDER RRS DOES NOT ADVANCE THE STATE ELECTRIC SERVICE POLICY OF AVOIDING ANTICOMPETITIVE SUBSIDIES FLOWING FROM A NONCOMPETITIVE RETAIL ELECTRIC SERVICE TO A COMPETITIVE RETAIL SERVICE.

A26. R.C. 4928.02(H) states that the state's policy is to "[e]nsure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates." This is often referred to as cross-subsidization, which includes, for example, having non-competitive services (such as distribution) subsidize competitive services (such as generation). Because Rider RRS is a non-bypassable generation charge assessed through the FirstEnergy distribution companies—and collected from all captive distribution customers, it is an example of cross-subsidization of generation service by distribution customers. An approval of the Rider RRS is a violation of this state policy. The non-bypassable charge collected through Rider RRS only benefits one supplier, and provides additional revenue to that supplier, that other suppliers in the market do not receive.

Q27. PLEASE EXPLAIN WHY THE PROPOSED RIDER RRS DOES NOT ADVANCE OR PROMOTE STATE ELECTRIC SERVICE POLICY OF FACILITATING THE STATE'S EFFECTIVENESS IN THE GLOBAL ECONOMY.

A27. R.C. 4928.02(N) states that it is the policy of the state to"[f]acilitate the state's effectiveness in the global economy." A good way to help Ohio be competitive in the global economy is to allow Ohio's residential, commercial, and industrial customers to have competitively priced electricity services. The non-bypassable charge collected through the proposed Rider RSS will be equivalent to an electricity tax, approximately $ 464 million over three years based on Companies' estimate, that would undoubtedly reduce the disposable incomes of the Companies' many residential customers, and increase the energy costs of the industrial and commercial customers. Simply put, subsidies paid to an affiliate supplier through non-bypassable charges do not help minimize the impact on retail electricity prices in the State. The approval of Rider RSS will likely hurt, and not help the economy and employment in the State of Ohio.

Q28. PLEASE SUMMARIZE YOUR CONCLUSION AND RECOMMENDATION REGARDING THE PROPOSED RIDER RRS IN THE PROPOSED ESP.

A28. My primary recommendation is that the PUCO should reject the proposed Rider RRS and its associated PPA as part of the ESP IV. The Utilities should not be allowed to collect above-market generation costs (or contract rates), through Rider RRS, from the customers for the electricity produced by the Plants. And the Utilities should not be allowed to then transfer the collected revenues to their unregulated affiliate, FES. As discussed before, the above-market generation costs (or contract rates), charged to the customers of the Utilities, are inconsistent with the legislative intent of a deregulated generation market in the state of Ohio. The imposition of Rider RRS on the customers amounts to providing an unjust subsidy to one particular generator, FES. The approval of Rider RRS will distort a competitive generation market. The approval of Rider RRS will likely impose substantial and additional costs on the captive customers of the Utility (for example, the $464 million in first three years as estimated by the Companies). And the PUCO will have almost no recourse to undo the damages to customers and the competitive generation market if the difference between generation costs and market prices persists well into the future.

Q29. DOES THIS CONCLUDE YOUR TESTIMONY?

A29. Yes. However, I reserve the right to incorporate new information that may subsequently become available through outstanding discovery or otherwise.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Direct Testimony of Kenneth Rose, Ph.D.* was served via electronic transmission to the persons listed below on this December 22nd day of 2014.

/s/ Larry S. Sauer
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Ph.D. Economics, University of Illinois at Chicago, 1988.
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The 36th Annual National Conference of Regulatory Attorneys, "Session I – Why Regulation Is Important," San Francisco, California, June 17, 2013.

The 35th Annual National Conference of Regulatory Attorneys, "Why Regulation Matters IV (and how to improve it)," Indianapolis, Indiana, May 21, 2012.

The 34th Annual National Conference of Regulatory Attorneys, "Why Regulation Matters III (and How to Improve It)," Missoula, Montana, June 6, 2011.

The 33rd Annual National Conference of Regulatory Attorneys, "Why Regulation Matters Today–More than In Decades," June 21, 2010, Charleston, West Virginia.

The 32nd Annual National Conference of Regulatory Attorneys, "Why Regulation Does Not Fail Us (Unless We Fail Regulation)," June 1, 2009, Las Vegas, Nevada.

Cap & Trade Workshop, 2009 Mid-America Regulatory Conference, June 16, 2009, Traverse City, Michigan.

"Procedures for Implementing the 'PURPA Standards' in the Energy Independence and Security Act of 2007," E-Forum, sponsored by American Public Power Association, Edison Electric Institute, National Association of Regulatory Utility Commissioners, and National Rural Electric Cooperative Association, August 21, 2008.

"Status of Retail Electric Supply Competition," Thirty-First Annual National Conference of Regulatory Attorneys, Charleston, South Carolina, June 11, 2008.

"Status of Retail Competition in the U.S. Electric Supply Industry," 12th Annual Ohio Energy Management & Restructuring Conference, Columbus, Ohio, February 27, 2008.

"The Impact of Competition on Electricity Prices: Can We Discern a Pattern?," presented at the Harvard Electricity Policy Group Forty-Ninth Plenary Session, Los Angeles, California, December 6, 2007.

"Independent Market Monitoring of RTOs and ISOs," 30th Annual National Conference of Regulatory Attorneys, Bismarck, North Dakota, June 4, 2007.

State Retail Price Comparisons, Michigan Manufacturers Association CEO Forum, Lansing, Michigan, May 8, 2007.

"Perspective on the National Electricity Marketplace," 11th Annual Ohio Energy Management & Restructuring Conference, Columbus, Ohio, February 28, 2007.

Energy Virginia Conference, "A Greener Energy Pasture for Virginia's Economy," Virginia Military Institute, Lexington, Virginia, October 17, 2006.

"Status of Competition," Michigan Electric Power Conference, Crystal Mountain Resort, Thompsonville, Michigan, July 20, 2006.

"Who's Smiling Now?: A Comparison of Electricity Rates in Restructured and Non-Restructured States," National Association of State Utility Consumer Advocates Mid-Year Meeting, Memphis, Tennessee, June 12, 2006.

"Status of Markets and Market Manipulation Control," 29th Annual National Conference of Regulatory Attorneys, Scottsdale, Arizona, June 13, 2006.

"Electricity Market Overview," Michigan Municipal Electric Association, 2006 Spring Conference, Marshall, Michigan, May 11, 2006.

"Procedures for Implementing the PURPA Standards," E-Forum, sponsored by American Public Power Association, Edison Electric Institute, National Association of Regulatory Utility Commissioners, and National Rural Electric Cooperative Association, May 4, 2006.

"Developments in National Electricity Markets and Policy," 2006 Michigan Forum on Telecommunications and Energy Regulatory Policy, Institute of Public Utilities, Michigan State University, East Lansing, Michigan, January 27, 2006.

37th Annual Regulatory Policy Conference, Institute of Public Utilities, Richmond, Virginia, "Workshop I: From Spectrum to Energy: What Regulators Need to Know About Auctions," December 4, 2005; and "Can We Make Markets Work? Performance and Oversight," December 6, 2005.

"FERC's Market Power Proceeding: The Current State of the Federal Regulatory Landscape," NARUC 117th Annual Convention, Palm Springs, California, November 15, 2005.

47th Annual Regulatory Studies Program, Institute of Public Utilities, Michigan State University, East Lansing, Michigan, "Electricity: Economics, Structure, & Regulation," August 1, 2005; "Electric Transmission Networks and Markets" and "Wholesale Electric Market Design and Performance," August 9, 2005; and "Retail Electric Market Design & Performance," August 10, 2005.

"The Future of Deregulation: Is It Really Dead or Will It Be An Aspect of Our Future?," National Rural Utilities Cooperative Finance Corporation, Forum 2005, Hollywood, Florida, July 29, 2005.

2005 Advanced Regulatory Studies Program, Institute of Public Utilities, Michigan State University, East Lansing, Michigan, "LMP and FTRs" and "Regional Transmission Models," April 26, 2005 and "Market Performance," April 27, 2005.

"The State of Competition in Utility Industries: Why are the Outcomes Different? (Keynote address), Pennsylvania Public Utility Law Conference, Pennsylvania Bar Institute Program, Harrisburg, Pennsylvania, January 26, 2005.

2005 Michigan Forum on Telecommunications and Energy Regulatory Policy, Institute of Public Utilities, January 21, 2005.

Camp NARUC 2004: The 46th Annual NARUC Regulatory Studies Program, "Retail Electric Market Design and Performance" August 11, 2004; "Wholesale Electric Market Design and Performance" August 10, 2004; "Electric Transmission Markets" August 10, 2004; "Electricity: Economics, Structure, and Regulation, August 2, 2004; "Roundtable: The Public Utility Industries Compared, Electricity" August 2, 2004.

"Does Competition Hurt Reliability? An Economist's View On How to Avoid Another Major Blackout" (Keynote address), GasFair Power Summit 2004, 13th Annual North American Natural Gas & Electricity Market Conference & Trade Show, Presented by Canadian Enerdata Ltd., Toronto, Canada, May 18, 2004.

"What Conditions are Necessary for Competition to Provide Benefits to Illinois Customers?" Post 2006 Symposium, Panel: Developing Electric Competition in Illinois,
Chicago, Illinois, April 29, 2004.

"Developments in U.S. Retail Electric Markets," The Central Research Institute of Electric Power Industry, Tokyo, Japan, March 24, 2004.

"Unbundling Electric Services: U.S. Experience, Options, and Evaluation," Conference at Gakushuin University, Tokyo, Japan, March 22, 2004. (Paper presented also.)

"Updates and Summary of '2003 Performance Review of Electric Power Markets,'" IPU Online Webcast, October 9, 2003.

Camp NARUC 2003: The 45th Annual NARUC Regulatory Studies Program, "Energy Market Performance Monitoring and Assessment," August 12, 2003; "Market Design for Electricity," August 12, 2003; "Electricity: Economics, Structure, and Regulation," August 4, 2003; "Roundtable: The Public Utility Industries Compared," August 4, 2003.

"FERC Standard Market Design," Michigan Electric Power Conference, Gaylord, Michigan, July 11, 2003.

"PJM and Midwest Developments," American Association of Blacks in Energy 2003 Annual Conference, Philadelphia, Pennsylvania, April 23, 2003.

"Congestion Revenue Rights and FERC's Proposed Transmission Incentive Policy Staff," Subcommittee on Electricity, NARUC Winter Committee Meetings, Washington, D.C., February 23, 2003.

"Electric Restructuring Overview," The Michigan Forum 2003 On Telecommunications and Energy Regulatory Policy, East Lansing, Michigan, February 7, 2003.

"Wholesale Market Design -- Where are We and Where are We Headed?" presented at "Energy Markets at the Crossroads," The Institute for Regulatory Policy Studies, Illinois State University, Springfield, Illinois, December 12, 2002.

"The Evolving Regulatory Paradigm," panel: "Back in the Bottle: Is Re-Regulation a Reality?" presented at "Fiscal Fitness -- The Financial Condition of the Utility Industries and the Role of Regulation," Annual Regulatory Policy Conference, Institute of Public Utilities, Michigan State University, Tampa, Florida, December 10, 2002.

"Congestion Revenue Rights Workshop," NARUC 114th Annual Convention, Staff Subcommittee on Electricity, Chicago, Illinois, November 10, 2002.

"Measuring Market Power & Market Monitoring," 44th Annual NARUC Regulatory Studies Program, Michigan State University, East Lansing, Michigan, August 14, 2002.

"Retail Pricing Issues for Electricity," 44th Annual NARUC Regulatory Studies Program
Michigan State University, East Lansing, Michigan, August 8, 2002.

"Applied Marginal-Cost Pricing," 44th Annual NARUC Regulatory Studies Program
Michigan State University, East Lansing, Michigan, August 8, 2002.

"Overview of Wholesale Standard Market Design," Standard Market Design Workshop,
NARUC Summer Committee Meeting, July 28, 2002.

"A Reexamination of the Restructuring of the Electric Supply Industry," presented at the American Association for the Advancement of Science Annual Meeting and Science Innovation Exposition, Boston, Massachusetts, February 17, 2002 (conference paper also).

"Wholesale and Retail Market Overview," NARUC Winter Committee Meetings, Committee on Electricity, Washington, D.C., February 11, 2002.

"Developments in Electricity Policy, The View from the Public Utility Commissions in the Seventh District States," Federal Reserve Bank of Chicago, Electricity Policy in the Midwest, Chicago, Illinois, January 17, 2002 (presented and moderated the panel).

"Properly Structured Incentive Plans," Electric Roundtable Discussion Group, held by the Missouri Public Service Commission, Jefferson City, Missouri, December 17, 2001.

"End of the Road for Retail?" Energy Bar Association, Mid-Year Meeting, November 30, 2001.

"Opportunities for Cogeneration and On-site Generation in a Restructured Environment," Midwest Cogeneration Association, Fifteenth Annual Non-Utility Power Conference, September 25, 2001.

"Evaluating State Competition Retail Performance," Camp NARUC 2001, Institute of Public Utilities, Michigan State University, August 14, 2001.

"Monitoring Power Markets," Camp NARUC 2001, Institute of Public Utilities, Michigan State University, August 13, 2001.

"State of the Market Report to the Committee on Electricity," NARUC Summer Committee Meetings, Seattle, Washington, July 16, 2001.

"What is Market Power and Why Should We Care About It?," NRRI Market Power Conference, Columbus, Ohio, April 10, 2001.

"Competition In Wholesale Power Markets," National Governors Association, Center for Best Practices, Philadelphia, Pennsylvania, April 6, 2001.

"Retail Market Power Issues," 2001 NASUCA Capitol Hill Conference, "California Aftershocks: What Must Be Done to Make Restructuring Work?" Washington, DC, April 5, 2001.

"Electric Restructuring's Impact on Non-Restructuring States," "Current Issues Challenging The Utility Industry," Center for Public Utilities, New Mexico State University, Santa Fe, New Mexico, March 27, 2001.

"Market Monitoring and Detecting Market Power," NARUC Winter Committee Meetings Staff Subcommittee on Electricity, February 25, 2001.

"The California Electric Restructuring Meltdown and the Fallout in Other States," National Conference of State Legislatures, AFI/ASI Joint Winter Meeting, AFI Energy and Transportation Committee, December 13, 2000.

"Current Level of Electric Regulation: Summary of State Retail Access," Wisconsin Public Utility Institute, Fundamental Course: Energy Utility Basics, Madison, Wisconsin
November 15, 2000.

"Unbundling Experiences From Around the Country," Functional Unbundling, Infocast Conference, Chicago, Illinois, November 2, 2000.

"Open Access and Retail Choice Markets," Institute of Public Utilities, NARUC Advanced Regulatory Studies Program, Cincinnati, Ohio, October 10, 2000.

"Open Access Retail Models in Electricity," Camp NARUC 2000, NARUC Annual Regulatory Studies Program, August 7, 2000.

"Transmission Pricing Mechanisms and Implications," NARUC Summer Committee Meetings, Subcommittee On Strategic Issues, Los Angeles, July 24, 2000.

"Electric Retail Access: What Have We Learned From the Early States?," Electric Power Industry Special Institute, Sponsored by the Energy & Mineral Law Foundation,
Columbus, Ohio, June 22, 2000.

"A MARC Regional Transmission Organization: Your Worst Nightmare?," Mid-America Regulatory Commissioners Meeting, MARC 2000, St. Louis, Missouri, June 12, 2000.

"Market Power and Competition in the Electric Industry: Derailment Ahead?, 2000 NASUCA Capitol Hill Conference, "Retail Competition: Right Train, Wrong Track?"
March 20, 2000.

"Reliability Pressure Points of the Barton Bill and FERC Order 2000: Considerations for State Regulators," NARUC Winter Committee Meetings, Washington, D.C., March 6, 2000.