

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Dayton Power & Light Company for)	Case No. 16-0395-EL-SSO
Approval of its Electric Security Plan.)	
 In the Matter of the Application of The)	
Dayton Power & Light Company for)	Case No. 16-0396-EL-ATA
Approval of Revised Tariffs.)	
 In the Matter of the Application of The)	
Dayton Power & Light Company for)	Case No. 16-0397-EL-AAM
Approval of Certain Accounting Authority)	
Pursuant to Ohio Rev. Code § 4905.13.)	

**REBUTTAL TESTIMONY
OF
WM ROSS WILLIS**

On Behalf of
The Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215-4213

April 9, 2019

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ATTACHMENTS

WRW Attachment A - List of Previous Testimony Filed at the PUCO by Wm Ross Willis

WRW Attachment B – Declaration of Kevin T. Warvell in support of FirstEnergy
Solutions Corp.

*Rebuttal Testimony of Wm. Ross Willis
On Behalf of the Office of the Ohio Consumers' Counsel
PUCO Case No. 16-0395-EL-SSO, et al.*

1 **I. INTRODUCTION**

2

3 ***Q1. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.***

4 ***A1.*** My name is Wm Ross Willis. My business address is 65 East State Street, 7th
5 Floor, Columbus, Ohio 43215.

6

7 ***Q2. BY WHOM ARE YOU EMPLOYED?***

8 ***A2.*** I am employed by the Office of the Ohio Consumers' Counsel ("OCC").

9

10 ***Q3. WHAT IS YOUR CURRENT POSITION WITH OCC AND WHAT ARE***
11 ***YOUR DUTIES?***

12 ***A3.*** I am a Senior Regulatory Analyst and Electric Industry Team Leader within the
13 Analytical Department. My duties include performing analysis of impacts on the
14 utility bills of residential consumers with respect to utility filings before the
15 Public Utilities Commission of Ohio ("PUCO") and PUCO-initiated
16 investigations. I examine utility financial and asset records to determine operating
17 income, rate base, and the revenue requirement, on behalf of residential
18 consumers.

19

20 ***Q4. WOULD YOU BRIEFLY STATE YOUR EDUCATIONAL BACKGROUND?***

21 ***A4.*** I earned a Bachelor of Business Administration degree that included a major in
22 finance and a minor in management from Ohio University in December 1983. In
23 November 1986, I attended the Academy of Military Science and received a

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1 commission in the Air National Guard. I have also attended various seminars and
2 rate case training programs sponsored by the PUCO.

3

4 **Q5. PLEASE OUTLINE YOUR WORK EXPERIENCE.**

5 **A5.** I joined the PUCO in February 1984 as a Utility Examiner in the Utilities
6 Department. I held several technical and managerial positions with the PUCO
7 over my 30-plus year career. I retired from the PUCO on December 1, 2014. My
8 last position with the PUCO was Chief, Rates Division within the Rates and
9 Analysis Department. In that position, my duties included developing, organizing,
10 and directing the PUCO staff during rate case investigations and other financial
11 audits of public utility companies subject to the jurisdiction of the PUCO. The
12 determination of revenue requirements in connection with rate case investigations
13 was under my purview. I joined OCC in October 2015.

14

15 My military career spans 27 honorable years of service with the Ohio National
16 Guard. I earned the rank of Lieutenant Colonel and I am a veteran of the war in
17 Afghanistan. I retired from the Air National Guard in March 2006.

18

19 **Q6. HAVE YOU PREVIOUSLY TESTIFIED IN CASES BEFORE THE PUCO?**

20 **A6.** Yes, WRW Attachment A includes a list of the cases in which I have presented
21 testimony before the PUCO.

1 **II. PURPOSE OF TESTIMONY**

2

3 ***Q7. WHAT IS THE PURPOSE OF YOUR TESTIMONY?***

4 **A7.** The purpose of my testimony is to rebut two aspects of the Supplemental Direct
5 Testimony of Matthew White on behalf of Interstate Gas Supply, Inc. (“IGS”).¹
6 In Mr. White’s testimony, he asks the PUCO to amend the Settlement it approved
7 (and amended) in two respects. (OCC opposed the Settlement and has appealed
8 the PUCO Order approving the Settlement.)

9

10 First, Mr. White urges the PUCO to change the utility’s proposed Reconciliation
11 Rider, under which Dayton Power & Light (“DP&L”) intends to charge
12 consumers for the costs to subsidize its share of the Ohio Valley Electric
13 Corporation (“OVEC”) coal power plants. DP&L would change the charge from a
14 nonbypassable charge to a bypassable charge. This means that customers served
15 by a marketer like IGS could avoid the charges. It also means that customers of
16 DP&L’s standard offer would have to pay the subsidy charges (and pay even
17 more subsidy to make up for what marketer customers would not be paying).
18 Second, Mr. White recommends that the PUCO establish a rider mechanism to
19 unbundle Standard Service Offer (“SSO”) related costs, which is yet another way
20 that IGS proposes to make DP&L’s standard offer customers pay more.

¹ Supplemental Direct Testimony of Matthew White on Behalf of Interstate Gas Supply, Inc. (February 12, 2019) (“Mr. White’s Testimony”).

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PUCO Case No. 16-0395-EL-SSO, et al.*

1 ***Q8. WHAT STANDARD SHOULD BE APPLIED TO IGS'S PROPOSALS TO***
2 ***AMEND THE PUCO APPROVED SETTLEMENT?***

3 ***A8.*** Because IGS is proposing changes to a settlement, the PUCO should apply its
4 Settlement standard. The PUCO uses three criteria for evaluating the
5 reasonableness of a proposed settlement:

- 6 1. Is the settlement a product of serious bargaining among
7 capable, knowledgeable parties?
- 8 2. Does the settlement, as a package, benefit customers and
9 the public interest?
- 10 3. Does the settlement package violate any important
11 regulatory principle or practice?

12
13 The PUCO also routinely considers whether the parties represent a diversity of
14 interests.

15
16 ***Q9. WOULD MR. WHITE'S PROPOSALS VIOLATE THE PUCO'S***
17 ***ANALYSIS UNDER THE THREE-PRONG TEST?***

18 ***A9.*** Yes. Mr. White's proposals increase charges to SSO customers which harms
19 customers and is not in the public interest. Mr. White's proposals also violate the
20 regulatory principle of cost causation.

1 **III. RECOMMENDATIONS**

3 ***Q10. WHAT ARE YOUR RECOMMENDATIONS?***

4 ***A10.*** I recommend that the PUCO uphold the modifications to the Stipulation and
5 Recommendation (“Settlement”) made its in its October 20, 2017 Order ² There,
6 as part of DP&L’s approved electric security plan, the PUCO determined that the
7 Reconciliation Rider for subsidizing OVEC coal power plants should be paid by
8 all customers and not paid just by DP&L’s standard offer customers. Customers
9 should not have to subsidize OVEC coal plants at all, but IGS’s proposal to place
10 all the subsidy burden on just DP&L’s customers makes a bad situation worse.

11
12 I also recommend that DP&L’s standard service offer should not be unbundled
13 from one charge into two charges to customers, as IGS proposes. Therefore, I
14 recommend that both of Mr. White’s proposals be rejected by the PUCO because
15 his proposals harm consumers, are not in the public interest and violate regulatory
16 principles and practices, thus failing to meet the second and third prong of the
17 PUCO’s settlement criteria. IGS’s proposals, if implemented, would increase the
18 cost that customers pay for DP&L’s standard service offer. This harms
19 consumers by increasing the price of electricity generation they purchase with
20 DP&L’s standard service offer and it makes these customers pay even more to

² OCC’s position on the IGS proposals should not be taken as an endorsement of the PUCO’s Order accepting the Settlement, which OCC opposed. In this regard, OCC has pending before the Ohio Supreme Court an Appeal of the PUCO’s Orders. See Ohio S.Ct. Case No. 2019-0020.

1 make up for what customers of IGS and other marketers would not be paying.
2 Currently, DP&L's standard offer is generally among the lowest generation rates
3 available for customers. Further, IGS's proposals would benefit Marketers
4 generally, and IGS specifically (Mr. White's employer). By increasing DP&L's
5 rate against which IGS competes for customers, IGS's proposals would create
6 increased margins that make competing against DP&L's standard offer easier
7 (and more profitable) for the Marketers.

8

9 ***Q11. PLEASE BRIEFLY EXPLAIN DP&L's CURRENT RECONCILIATION***
10 ***RIDER***

11 ***A11.*** In its application, DP&L proposed a Reconciliation Rider to charge (or credit) all
12 distribution customers the difference between its OVEC expenses (revenue
13 requirement) and the amounts that DP&L receives from selling generation into
14 PJM's markets.³ In other words, DP&L is able to charge (or credit) customers its
15 cost of producing power from the OVEC coal plants, depending on the level of
16 revenues it receives from the grid manager's (PJM) competitive markets for
17 power plant production. Currently, this is a subsidy payment for the OVEC plants
18 (including a plant located in Indiana) funded by DP&L's captive customers.

³ Application at 4.

1 ***Q12. DID THE PUCO APPROVE DP&L'S RECONCILIATION RIDER AS A***
2 ***CHARGE TO ALL DISTRIBUTION CUSTOMERS?***

3 ***A12.*** Yes. The PUCO modified the March 14, 2017 Settlement and approved the
4 Reconciliation Rider over many objections, including OCC's objection to making
5 customers pay any subsidy charge for the OVEC coal plants. In modifying the
6 Settlement, the PUCO ordered DP&L to charge the rider to all customers
7 ("nonbypassable") instead of being charged only to DP&L's standard service
8 offer customers ("bypassable"). The PUCO ruled that under a bypassable
9 Reconciliation Rider there is a potential for escalating bill impacts to standard
10 service offer customers as shopping increases.⁴ Additionally, in its recent Entry
11 on Rehearing, the PUCO agreed with OCC Witness Kahal that making the
12 Reconciliation Rider bypassable would artificially inflate standard service offer
13 prices.⁵ This is harmful to consumers and against the public interest.

14
15 ***Q13. WHY DOES MR. WHITE BELIEVE THE RECONCILIATION RIDER***
16 ***SHOULD BE BYPASSABLE?***

17 ***A13.*** According to Mr. White's testimony, he believes that the PUCO should not
18 charge the Reconciliation Rider to all customers because it would allow DP&L to
19 receive generation-related revenue that it cannot otherwise recover from the
20 competitive market. Mr. White also testifies that the Reconciliation Rider is not a
21 hedge and there is little chance of it providing a credit to customers. Mr. White

⁴ PUCO Opinion and Order at 35 (Oct. 20, 2017).

⁵ Third Entry on Rehearing at ¶51 (Sept. 19, 2018).

1 further testifies that making any cost recovery under the Reconciliation Rider
2 bypassable would prevent shopping customers from paying an anticompetitive
3 subsidy for generation costs through distribution charges.⁶
4

5 ***Q14. DO YOU AGREE WITH MR. WHITE THAT THE RECONCILIATION***
6 ***RIDER SHOULD NOT BE CHARGED TO CUSTOMERS OF MARKETERS?***

7 ***A14.*** No. But it is my opinion that charging DP&L's consumers and Marketer
8 consumers for any of the costs of OVEC's coal plants harms consumers and is
9 against the public interest. It is an anti-competitive subsidy for any consumers to
10 be made to pay it. The Reconciliation Rider is not a hedge but a payment from
11 customers for old uneconomic coal plants. This charge is also contrary to the
12 General Assembly's vision in 1999 to deregulate the electric industry and
13 introduce power plant competition as a way to lower electric prices for consumers
14 and deliver higher technology. The charge wrongly allows DP&L to receive
15 captive customer-funded generation subsidies for old, dirty coal plants that are
16 uneconomic in today's competitive market. OCC does not support imposing the
17 Reconciliation Rider on any customers.

⁶ Mr. White's Testimony at 4-5.

1 ***Q15. DO YOU AGREE WITH MR. WHITE THAT THE RECONCILIATION***
2 ***RIDER WILL LIKELY HAVE LITTLE CHANCE OF BENEFITTING***
3 ***CUSTOMERS?***

4 ***A15.*** Yes. The cost of the power supplied by the two coal-fired plants is above market
5 and the source of significant financial losses for the OVEC owners (if not
6 subsidized by the utilities' captive customers). One need only review the filings
7 that the Ohio utilities have made over the past two years to charge customers for
8 OVEC costs.⁷ Since the charges were initiated by several utilities, customers
9 have paid millions upon millions of dollars in OVEC subsidy costs with no
10 credits. I am also aware that in testimony submitted by Kevin Warvell on behalf
11 of FirstEnergy Solutions ("FES") in its bankruptcy proceeding, Mr. Warvell
12 testified that FES's share of power generated by the OVEC plants would result in
13 an undiscounted loss of \$268 million through June 2040, the current end of the
14 OVEC contract.⁸ FES' share of OVEC is 4.85%.⁹ Moreover, on March 26, 2018,
15 the other OVEC owners --- which includes AEP, Duke, and DP&L-- filed a
16 complaint at the Federal Energy Regulatory Commission ("FERC") to prevent
17 FirstEnergy Solutions from withdrawing from its financial obligations under the
18 OVEC agreement for joint operation of the two 1950s era coal plants. OVEC
19 expressed concern that FirstEnergy Solutions' financial commitments to OVEC

⁷ The PUCO should note that the other riders under which utilities charge consumers for OVEC costs, Duke's and AEP's, are both nonbypassable. Making the Reconciliation Rider would depart from the PUCO's normal course of business in treating utilities alike to the extent possible.

⁸ See WRW Attachment B, at Par. 18.

⁹ This means that the total unfunded liability for all owners of the OVEC facility could exceed \$5.5 billion though the 2040 term of the OVEC contract ($[100\% / 4.85\%] * \$268 \text{ million} = \$5.525773195 \text{ billion}$).

amounts to “hundreds of millions of dollars,” which will result in increased costs to OVEC’s other customers over the remaining life of the contract.¹⁰

Q16. DO YOU AGREE WITH MR. WHITE THAT IF THE RECONCILIATION RIDER IS BYPASSABLE IT WILL AVOID AN ANTI-COMPETITIVE SUBSIDY?

A16. No. While there should be no OVEC coal subsidy charge to be paid by consumers, the charge should be paid by all customers (nonbypassable) if the PUCO approves such a charge. Denying IGS’s proposal to spare only Marketer customers from paying the charge would allow for a competitively neutral, non-discriminatory outcome. In addition to my points already made above, note that, under a bypassable rider, the subsidy charge will increase for the remaining customers as more SSO customers leave to avoid it. This results in anti-competitive consequences.

In addition, OVEC’s generation is not dedicated to DP&L’s standard offer customers. The OVEC-produced generation is liquidated into PJM’s markets and consequently the so-called “hedge” will benefit Marketer and DP&L standard offer customers alike if the power plants become profitable. Consequently, Marketer customers are not singled out as Mr. White implies. Keeping the rider

¹⁰ (Docket No. EL18-135-000, OVEC v. FirstEnergy Solutions at pages 2, 23, 24, and 28.) Online at: https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14653369.

1 nonbypassable would have no distorting effect on shopping decisions for
2 generation supply and would not impede a customer's decision regarding the
3 selection of a supplier. Under a nonbypassable rider DP&L's standard offer
4 customers and Marketer customers are impacted in the same manner. On the
5 other hand, making the rider bypassable would be anticompetitive. Marketer
6 customers would not have to pay it – only DP&L's standard service offer
7 customers would pay, giving Marketers an advantage.

8

9 ***Q17. PLEASE DISCRIBE MR. WHITE'S PROPOSAL TO UNBUNDLE COSTS***
10 ***ASSOCIATED WITH STANDARD SERVICE OFFER RATES?***

11 ***A17.*** Mr. White claims that IGS and the Retail Energy Supply Association ("RESA")
12 identified approximately \$12 million in SSO-related costs included in the most
13 recent base distribution rate case (Case No. 15-1830-EL-AIR) that are allegedly
14 borne by Marketer customers. Mr. White proposes to create two new riders. The
15 first rider would be a credit rider allowing all customers to avoid distribution costs
16 that Mr. White claims are related solely to DP&L's standard offer. The second
17 rider would be paid only by standard offer customers.¹¹ The total negative
18 revenue requirement under the first rider would be the same as the total positive
19 revenue requirement under the second rider. The net effect is that millions of
20 dollars per year would be shifted from Marketer customers (lowering their electric

¹¹ White Testimony at 10.

1 bills) to DP&L standard offer customers (raising their electric bills). This is
2 harmful to customers paying the standard offer and is not in the public interest.

3

4 ***Q18. ARE ELECTRIC DISTRIBUTION UTILITIES REQUIRED TO PROVIDE A***
5 ***STANDARD SERVICE?***

6 ***A18.*** Yes. All electric distribution utilities are required to provide a standard service
7 offer to consumers.¹²

8

9 ***Q19. DOES THE EXISTENCE OF DP&L'S STANDARD SERVICE OFFER***
10 ***BENEFIT ALL CUSTOMERS, INCLUDING MARKETER CUSTOMERS?***

11 ***A19.*** Yes. The standard service offer is available to all customers, all the time, no
12 matter what. It provides a safety net for all customers. If a customer's supplier
13 fails to provide service, the customer receives the standard service offer as a
14 default service from the electric distribution utility in that service territory. The
15 distribution utility's obligation to stand ready to serve in the event of a supplier
16 default has been characterized as a provider of last resort ("POLR").

¹² R.C. 4928.141 ("Beginning January 1, 2009, an electric distribution utility shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service.").

1 **Q20. MR. WHITE RECOMMENDS A COST ALLOCATION METHODOLOGY TO**
2 **SHIFT ALL STANDARD SERVICE COSTS AWAY FROM MARKETER**
3 **CUSTOMERS AND TO REASSIGN THE COSTS TO ONLY DP&L'S**
4 **STANDAD OFFER CUSTOMERS. SHOULD THE PUCO ADOPT HIS**
5 **PROPOSAL?**

6 **A20.** No. All costs that DP&L incurs to provide services to or on behalf of Marketer
7 customers and DP&L standard offer customers are appropriately assigned to the
8 distribution function of DP&L.

9
10 DP&L's competitively bid standard service offer is a benefit to both Marketer and
11 DP&L customers. DP&L customers can receive electric service that is
12 competitively bid (i.e., the standard service offer) without needing to engage in
13 the time-consuming and sometimes confusing process of selecting an alternative
14 supplier. Marketer customers can receive that same benefit when they consider
15 other choices. And Marketer customers benefit from the standard service offer
16 because they have a safety net in case the supplier they have chosen defaults. The
17 standard service offer also provides the benefit of a competitive price-to-compare
18 that all customers can use to evaluate Marketer offers when deciding whether to
19 shop for their generation. In other words, all customers (Marketer and DP&L)
20 benefit from the standard service offer. As such, all customers should share in the
21 costs of providing and administering the standard service offer. That
22 nonbypassable approach would limit the harm to customers from a bypassable

1 charge and be more in the public interest if there is to be a charge at all. The
2 PUCO should not approve the IGS recommendation for the unbundling of costs.

3

4 **IV. CONCLUSION**

5

6 ***Q21. DOES THIS CONCLUDE YOUR TESTIMONY?***

7 ***A21.*** Yes. However, I reserve the right to incorporate new information that may
8 subsequently become available. I also reserve the right to supplement my
9 testimony if DP&L, the PUCO Staff, or other parties submit new or corrected
10 information in connection with this proceeding.

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Rebuttal Testimony of Wm. Ross Willis on Behalf of the Office of the Ohio Consumers' Counsel* was served via electronic transmission to the persons listed below this 9th day of April 2019.

/s/ William J. Michael
William J. Michael
Assistant Consumers' Counsel

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Testimony before The Public Utilities Commission of Ohio

Suburban Natural Gas – Case No. 18-1205-GA-AIR

*Ohio Edison Company, The Cleveland Electric Illuminating Company
and The Toledo Edison Company - Case No. 16-481-EL-UNC, et al.*

Aqua Ohio, Inc. – Case No. 18-337-WW-SIC

Columbia Gas of Ohio, Inc. – Case No. 17-2202-GA-ALT

Ohio Power Company – Case No. 18-1007-EL-UNC

Dayton Power & Light Company – Case No. 15-1830-EL-AIR

Commission Ordered Investigation (TCJA) – Case No. 18-47-AU-COI

Ohio Gas Company – Case No. 17-1139-GA-AIR

Aqua Ohio, Inc. – Case No. 16-907-WW-AIR

Globe Metallurgical, Inc. - Case No. 16-737-EL-AEC

Ohio Power Company - Case No. 13-2385-EL-SSO

Aqua Ohio, Inc. – Case No. 13-2124-WW-AIR

Camplands Water LLC. - Case No. 13-1690-WW-AIR

Duke Energy Ohio, Inc. - Case No. 12-1685-GA-AIR

Duke Energy Ohio, Inc. - Case No. 12-1682-EL-AIR

Ohio American Water Company - Case No. 11-4161-WS-AIR

Water and Sewer LLC. - Case No. 11-4509-ST-AIR

Aqua Ohio, Inc. - Case No. 09-1044-WW-AIR

Duke Energy Ohio, Inc. - Case No. 08-709-EL-AIR

*Ohio Edison Company, The Cleveland Electric Illuminating Company
and The Toledo Edison Company - Case No. 07-551-EL-AIR*

Northeast Ohio Natural Gas Corp. - Case No. 03-2170-GA-AIR

Water and Sewer LLC. – Case No. 03-318-WS-AIR

Southeast Natural Gas Company – Case No. 01-140-GA-AEM

Masury Water Company - Case No. 00-713-WW-AIR

Akron Thermal, Limited Partnership - Case No. 00-2260-HT-AEM

GTE North, Inc. - Case No. 87-1307-TP-AIR

The Cleveland Electric Illuminating Company - Case No. 85-675-EL-AIR

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:)	Chapter 11
)	
FIRSTENERGY SOLUTIONS CORP., <i>et al.</i> , ¹)	Case No. 18-50757
)	(Request for Joint Administration
Debtors.)	Pending)
)	
)	Hon. Judge Alan M. Koschik
)	

DECLARATION OF KEVIN T. WARVELL IN SUPPORT OF: (1) THE MOTION OF FIRSTENERGY SOLUTIONS CORP. AND FIRSTENERGY GENERATION, LLC FOR PRELIMINARY AND PERMANENT INJUNCTION AND *EX PARTE* TEMPORARY RESTRAINING ORDER AGAINST THE FEDERAL ENERGY REGULATORY COMMISSION; AND (2) THE MOTION FOR ENTRY OF AN ORDER AUTHORIZING FIRSTENERGY SOLUTIONS CORP. AND FIRSTENERGY GENERATION, LLC TO REJECT CERTAIN ENERGY CONTRACTS; AND (3) THE MOTION FOR ENTRY OF AN ORDER AUTHORIZING FIRSTENERGY SOLUTIONS CORP. AND FIRSTENERGY GENERATION, LLC TO REJECT A CERTAIN MULTI-PARTY INTERCOMPANY POWER PURCHASE AGREEMENT WITH THE OHIO VALLEY ELECTRIC CORPORATION

I, Kevin T. Warvell, hereby declare under penalty of perjury:

1. I am the Vice President, Chief Financial Officer, Treasurer and Corporate Secretary for FirstEnergy Solutions Corp. ("FES"). I have been employed by the Debtors since 2001, initially as a Manager of Business Services, and I subsequently served as Director of Planning Analysis, Director of Wholesale Power/Transmission Utilization, and Director of Rate Strategy. I was promoted to my current position in January 2011. I am familiar with the Debtors' day-to-day operations and business affairs, and I am specifically familiar with the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: FE Aircraft Leasing Corp. (9245), case no. 18-50759; FirstEnergy Generation, LLC (0561), case no. 18-50762; FirstEnergy Generation Mansfield Unit 1 Corp. (5914), case no. 18-50763; FirstEnergy Nuclear Generation, LLC (6394), case no. 18-50760; FirstEnergy Nuclear Operating Company (1483), case no. 18-50761; FirstEnergy Solutions Corp. (0186); and Norton Energy Storage L.L.C. (6928), case no. 18-50764. The Debtors' address is: 341 White Pond Dr., Akron, OH 44320.

Debtors' negotiation, execution and performance of its wholesale energy contracts, including the Executory PPAs, defined below.

2. I submit this declaration in Support of (i) the *Motion of FES and FirstEnergy Generation, LLC* ("FG") *for Permanent and Preliminary Injunction and Ex Parte Temporary Restraining Order Against the Federal Energy Regulatory Commission* ("FERC") in the above captioned adversary proceeding; and (ii) the *Motion of FES and FG for Entry of an Order Authorizing FES and FG to Reject Certain Energy Contracts* (the "Rejection Motion"); and (iii) the *Motion of FES and FG for Entry of an Order Authorizing FES and FG to Reject a Certain Multi-Party Intercompany Power Purchase Agreement with the Ohio Valley Electric Corporation* (the "OVEC ICPA Rejection Motion", collectively, with the Rejection Motion, the "Rejection Motions").

3. By the Rejection Motions, the Debtors are seeking to reject certain long-term power purchase agreements (the "Executory PPAs"). As explained below, the Executory PPAs are executory contracts, running many years into the future, and are wholly unnecessary to the Debtors' business. The Executory PPAs constitute a very small and insignificant part of the Debtors' overall business, but impose a very significant financial burden that threatens the Debtors' ability to restructure. The Executory PPAs comprise the PPAs (defined in Paragraph 6) and the OVEC ICPA (defined in Paragraph 17).

The Renewable Power Purchase Agreements

4. Renewable portfolio standards ("RPS") obligate *retail* sellers of electricity to obtain a certain percentage or amount of their power supply from renewable energy sources. States develop their RPS programs individually, and each RPS mandate has its own parameters, rules, and requirements, especially with respect to qualifying generation sources, renewable

resource goals (usually expressed as a percentage of total load), and target dates for compliance. RPS requirements may be met by obtaining renewable energy credits (“RECs”) that provide evidence that power has been generated by a qualifying renewable resource.

5. RECs provide evidence of the generation of electricity from a qualifying renewable facility. Typically, one REC is created for every megawatt-hour (MWh) of energy produced from a qualifying facility. The RECs may be sold with the power or separately. The ability to realize income from the sale of RECs is a contributor to the economics of a renewable facility.

6. FES presently sells power to retail customers in Illinois, Maryland, Michigan, New Jersey, Ohio, and Pennsylvania. Historically, FES obtained the necessary RECs through eight power purchase agreements that Plaintiffs entered with various counterparties between 2003 and 2011 (collectively, the “PPAs”),² each of which obligates FES to purchase renewable energy and the accompanying RECs at specified prices during the term of the agreement. These PPAs have remaining terms running to various end dates between 2024 and 2033. The counterparties supply their power directly to the grid; under the terms of the PPAs it is deemed as a financial matter to have been bought by Plaintiffs (at the contract price) and re-wholesaled back into the local Regional Transmission Organization at current market prices.

7. The contract price in each of the PPAs is a “bundled” price that includes the cost of power, RECs, capacity and ancillary services. The PPAs together represent a very small portion of the aggregate energy (less than 3%) the Debtors generate and/or acquire from others.

8. The PPAs and a summary of their material terms is below:

² Also included in the definition of “PPAs” as used herein is a certain power purchase agreement with Forked River Power, LLC, a dual-fuel fired cycle combustion turbine power producer.

- a. Wind Power Purchase Agreements between FES and Allegheny Ridge Wind Farm, LLC (Phase 1 and Phase 2)
Contract Date: March 21, 2006
Termination Date: December 31, 2030
Contract Price: \$65.00/MWh
- b. Power Purchase Agreement between FES and Blue Creek Wind Farm LLC³
Contract Date: February 8, 2011
Termination Date: December 31, 2032
Contract Price: \$61.91-88.08/MWh⁴
- c. Wholesale Purchase and Sale Agreement for Wind Energy between FES and Casselman Windpower LLC
Contract Date: November 30, 2006
Termination Date: 23rd Anniversary of Delivery Commencement Date
Contract Price: \$72.49-94.72/MWh⁵
- d. Renewable Resource Power Purchase Agreement between FES and High Trail Wind Farm, LLC

³ Blue Creek Wind Farm is presently in default on this agreement. FES reserves all rights under this agreement, including the right to terminate the contract per its terms, rendering rejection unnecessary.

⁴ Contract Price escalates during each year of the term as follows: January 1, 2018 through December 31, 2018: \$61.91/MWh; January 1, 2019 through December 31, 2019: \$63.49/MWh; January 1, 2020 through December 31, 2020: \$65.11/MWh; January 1, 2021 through December 31, 2021: \$66.77/MWh; January 1, 2022 through December 31, 2022: \$68.48/MWh; January 1, 2023 through December 31, 2023: \$70.22/MWh; January 1, 2024 through December 31, 2024: \$72.01/MWh; January 1, 2025 through December 31, 2025: \$73.85/MWh; January 1, 2026 through December 31, 2026: \$75.73/MWh; January 1, 2027 through December 31, 2027: \$77.67/MWh; January 1, 2028 through December 31, 2028: \$79.64/MWh; January 1, 2029 through December 31, 2029: \$81.67/MWh; January 1, 2030 through December 31, 2030: \$83.76/MWh; January 1, 2031 through December 31, 2031: \$85.89/MWh; January 1, 2032 through December 31, 2032: \$88.08/MWh.

⁵ Contract Price escalates during each year of the term as follows: December 1, 2017 through November 30, 2018: \$72.49/MWh; December 1, 2018 through November 30, 2019: \$74.00/MWh; December 1, 2019 through November 30, 2020: \$75.53/MWh; December 1, 2020 through November 30, 2021: \$77.10/MWh; December 1, 2021 through November 30, 2022: \$78.71/MWh; December 1, 2022 through November 30, 2023: \$80.35/MWh; December 1, 2023 through November 30, 2024: \$82.00/MWh; December 1, 2024 through November 30, 2025: \$83.70/MWh; December 1, 2025 through November 30, 2026: \$85.50/MWh; December 1, 2026 through November 30, 2027: \$87.30/MWh; December 1, 2027 through November 30, 2028: \$89.10/MWh; December 1, 2028 through November 30, 2029: \$91.0/MWh; December 1, 2029 through November 30, 2030: \$92.90/MWh; December 1, 2030 through end of Term: \$94.72/MWh.

Contract Date: September 14, 2007
Termination Date: 18th Anniversary of Facilities Completion
Date/Facilities Completion Termination Deadline
Contract Price: varies by year, month and hour; average annual price is approximately \$70.8/MWh

- e. Power Purchase Agreement between FES and Krayn Wind LLC
Contract Date: August 20, 2008
Termination Date: December 31, 2030
Contract Price: \$91.02-105.13/MWh⁶
- f. Power Purchase Agreement between FES and Maryland Solar LLC
Contract Date: October 14, 2011
Termination Date: 20th Anniversary of Commercial Operation Date
Contract Price: \$230.00/MWh
- g. Master Power Purchase and Sale Agreement between FES and Meyersdale Windpower LLC
Contract Date: April 21, 2003
Termination Date: 20 year anniversary of Commercial Operation Date
Contract Price: \$39.60/MWh
- h. Wind Power Purchase Agreements between FES and North Allegheny Wind LLC (Phase 3 and Phase 4)
Contract Date: September 18, 2006
Termination Date: 23rd Anniversary of Commercial Operation Date
Contract Price: \$74.00/MWh for years 1-12, \$68.00/MWh thereafter
- i. Master Power Purchase & Sale Agreement between FES and Forked River Power, LLC⁷
Contract Date: April 17, 2008
Termination Date: April 17, 2018
Contract Price: Variable based upon specified ratio

9. At the time the PPAs were entered between 2003-2011, they were necessary and appropriate for FES's business because: (a) FES's actual and projected retail sales were greater

⁶ Contract Price escalates during each year of the term as follow: 2018: \$91.90/MWh; 2019: \$92.08/MWh; 2020: \$93.74/MWh; 2021: \$94.71/MWh; 2022: \$95.72/MWh; 2023: \$96.76/MWh; 2024: \$97.83/MWh; 2025: \$98.95/MWh; 2026: \$100.10/MWh; 2027: \$101.29/MWh; 2028: \$102.53/MWh; 2029: \$103.81/MWh; 2030: \$105.13/MWh.

⁷ The damages calculations discussed in this declaration do not include those associated with the Master Power Purchase & Sale Agreement between FES and Forked River Power, LLC. This contract will terminate by its own terms on April 17, 2018.

than they are today; (b) market prices and outlook for power and RECs were materially greater than the current environment; (c) RPS mandates were more demanding than today; and (d) the supply of RECs was more limited. At that time, a bundled PPA was typically the only way to contract for RECs in the long-term at a fixed price. Additionally, many states had requirements that a certain percentage of the RECs had to be generated in-state.

10. However, many state-specific RPS mandates have since been relaxed and there are now an abundance of RECs available for purchase. While the PPAs made sense to FES at the time they were entered into, a dramatic downturn in the energy market and prices of RECs now renders these contracts extremely burdensome and uneconomic to FES.

11. For example, pursuant to its PPA with Krayn Wind LLC for 2018, FES is obligated to pay a fixed amount of \$91.02 per MWh (and associated REC), escalating to \$105.13 per MWh (and associated REC) by 2030. This is nearly three times today's market value of \$36.00 for such power and REC. Based on current expectations, FES will lose approximately \$103 million over the remaining term of this one PPA alone.

12. The PPAs are all the more burdensome to the Debtors because FES does not have any business or regulatory need for the power, the RECs or the standby capacity that the Debtors receive under the PPAs. FES previously made the determination to phase out its retail business, and currently sells substantially less power in the retail market than it did just four years ago. In 2013, FES sold more than 110 terawatt hours ("TWh") of power. This year, FES expects to sell less than half of that amount. Crucially, FES's need for RECs is tied directly to its retail business, and such need will be eliminated entirely once FES has fully exited that business (at the conclusion of a successful bankruptcy process.)⁸

⁸ FES is in the process of marketing its retail business for sale (the "Retail Book Sale").

13. Today, FES has enough of a surplus of RECs in inventory to engage in its retail business for three years. In fact, FES has such an excess of RECs in its inventory that it is currently selling those excess RECs in the open market. However, as FES expects to sell its entire retail business in the near term, it does not need to purchase additional RECs. Nor does FES have any other need for the power or capacity provided by the PPAs.

14. In 2016, FES determined that the PPAs were burdensome and began to attempt to quantify the losses to FES associated with these agreements over the near term. We estimated that such losses would be approximately \$40 million to \$50 million per year. In April 2017, Debtors' counsel retained ICF to perform more exacting calculations and to conduct such analysis through the end date of the PPAs, *i.e.* 2024-2033. I am familiar with ICF and believe they are well qualified to perform these calculations.

15. The power bought and sold under the PPAs constituted approximately less than 3% of FES's total wholesale business in 2017, yet the PPAs impose enormous losses. ICF has projected that FES will lose approximately \$500 million on an undiscounted basis if FES is required to perform under the PPAs through the end of the contract terms. Those calculations are summarized in the accompanying Declaration of Judah Rose. I have reviewed that declaration and the attached calculations and I concur with ICF's assumptions, methodology and conclusions.

16. Because losses of this magnitude would impose an unsustainable financial burden on the Debtors, and because FES no longer has a need for the RECs which justified its entry into the PPAs in the first place, I concluded that the PPAs should be rejected.

The OVEC Intercompany Power Purchase Agreement

17. FG is a party to a multi-party intercompany power purchase agreement (the “OVEC ICPA”) pursuant to which it and several other power companies “sponsor” and purchase power generated by fossil fuel from the Ohio Valley Electric Corporation (“OVEC”).⁹ The OVEC ICPA obligates FG to purchase 4.85% of the power that OVEC’s fossil-fuel plants generate at an uneconomic rate until either the year 2040 or until OVEC ceases to operate. Last year, this resulted in FG purchasing approximately 0.6 TWh.

18. In 2017, the OVEC ICPA accounted for roughly 1.1% of the power FES sold at wholesale, yet the losses associated with this contract are enormous. ICF has calculated that FG would lose \$268 million on an undiscounted basis if FG was required to perform under the OVEC ICPA through the end of the contract term.

19. As with the PPAs, losses of this magnitude would impose an unsustainable financial burden on the Debtors. Accordingly, I concluded the OVEC ICPA should be rejected.

No Effect on Power Supply

20. FES and FG conduct all of their business operations within the regional transmission organizations (“RTOs”) overseen by PJM Interconnection LLC (“PJM”), which is a regional transmission organization that covers all or parts of Ohio, Pennsylvania, Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia. PJM coordinates, controls, and monitors

⁹ OVEC is owned jointly by: American Electric Power; Buckeye Power Generating; Dayton Power and Light Company; Duke Energy Ohio; LG&E and KU Energy; FirstEnergy; Vectren South; and Peninsula Generating Cooperative.

multi-state electricity grids, and controls generation and transmission operations 24 hours a day, providing instructions to producers to ensure that the electric grid performs as desired.

21. The total amount of energy bid/sold into PJM during 2017 was approximately 767 TWh. The power that FES and FG purchased under the Executory PPAs during 2017 was just 1.9 TWh, or 0.2% of the available energy in PJM. Further, the energy, capacity and RECs previously purchased by FES or FG will remain available for sale by the producers to PJM or to other wholesale suppliers because all such counterparties are connected directly to the PJM grid.

22. Given the foregoing, I cannot conceive how the rejection of the Executory PPAs will cause any disruption to the continued supply of wholesale electricity within our areas of operation, or impact the reliability of the transmission grid.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated:

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kevin T. Warvell", written over a horizontal line.

Kevin T. Warvell
Vice President, Chief Financial Officer,
Treasurer and Corporate Secretary,
FirstEnergy Solutions Corp.

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Summary: Testimony Rebuttal Testimony of WM. Ross Willis on Behalf of The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Michael, William Mr.