OCC EXHIBIT NO. ______

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Energy Efficiency and Peak Demand Reduction Program Portfolio of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company.	)	Case Nos. 09-580-EL-EEC 09-581-EL-EEC 09-582-EL-EEC
In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of Their Initial Benchmark Reports.	)	Case Nos. 09-1942-EL-EEC 09-1943-EL-EEC 09-1944-EL-EEC
In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2010 through 2012 and Associated Cost Recovery Mechanisms.	)	Case Nos. 09-1947-EL-POR 09-1948-EL-POR 09-1949-EL-POR

DIRECT TESTIMONY
of
DANIEL J. SAWMILLER

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February 17, 2010

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I. INTRODUCTION

Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION.

A1. My name is Daniel J. Sawmiller. My business address is 10 West Broad Street, Suite 1800, Columbus, Ohio, 43215. I am employed by the Office of the Ohio Consumers' Counsel ("OCC" or "Consumers' Counsel") as a Senior Regulatory Analyst in the Analytical Services Department.

Q2. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL QUALIFICATIONS.

A2. I have a Bachelor's of Science degree, in Finance, from Bowling Green State University. I began my employment with the OCC in July of 2007, as a Regulatory Analyst working on issues related to energy efficiency ("EE"), peak demand reduction ("PDR"), and renewable energy that affect Ohio consumers. My work on these issues related in part to OCC's participation in the legislative process for Amended Substitute Senate Bill No. 221 ("SB 221") and to OCC's participation in the rulemaking process at the Public Utilities Commission of Ohio ("PUCO") that followed the passage of SB 221. In October of 2009, I was promoted to Senior Regulatory Analyst.

As a Senior Regulatory Analyst, my duties principally relate to OCC's participation in regulatory and legislative processes involving resource planning for electric utilities. With regard to regulatory processes in PUCO cases, I (alone or with others) review utility filings to provide OCC with recommendations for consideration in litigation and settlements. With regard to legislative processes mentioned above, I have assisted in the preparation of testimony by the Ohio Consumers' Counsel, Ms. Janine L. Migden-Ostrander.

In addition, my involvement in regulatory processes includes participating for OCC in Demand Side Management ("DSM") and EE/PDR collaborative groups that exist under the auspices of the PUCO to assist utilities in developing cost-effective EE/PDR programs for all customer classes. The collaborative processes generally provide a forum for discussion of issues by parties and/or interested stakeholders, with opportunities for potential resolution of issues by settlement. My work regarding collaborative processes includes participating in collaborative meetings with utilities and other stakeholders. In this regard, I am involved in OCC's consideration of collaborative issues, and I provide recommendations for consideration by OCC in possible settlements and litigation that may relate to collaborative processes.

My participation in collaboratives includes the following:

- Columbia Gas of Ohio (Case No. 08-72-GA-AIR): This collaborative helped design and evaluate demand side management programs and continues to review the progress of those programs;

- Dominion East Ohio ("DEO") (Case No. 07-829-GA-AIR): This collaborative works with DEO to evaluate and propose conservation programs for DEO's customers;

- Vectren Energy Delivery of Ohio ("VEDO"): The VEDO collaborative meets to discuss DSM programs offered by VEDO and helped in creating a portfolio of programs for its customers;

- The Duke Energy Community Partnership Collaborative: In 2008, this group evaluated DSM programs contained in Duke Energy-Ohio's filing in Case No. 08-1227-EL-UNC and continues to monitor and provide feedback on programs used to meet SB 221 benchmarks;

- American Electric Power ("AEP") This collaborative provides input to AEP on proposed programs that will be used to meet benchmarks established by SB 221 for energy efficiency and peak load reduction;

- Dayton Power and Light ("DP&L"): DP&L also began a collaborative working group to discuss and comment on the EE/PDR programs and on the renewable energy programs offered by DP&L in an effort to meet the benchmarks required in SB 221.

- The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison ("FirstEnergy" or "Companies"): Following FirstEnergy's electric security plan, a collaborative group was formed to discuss and provide comments on EE/PDR programs and related issues. Sub-committees were also formed, including one for residential customers of which I am a regular participant.

In addition to my daily tasks described above, in August 2008 I attended the American Council for an Energy Efficient Economy summer study on Energy Efficiency in Buildings where leaders in the EE and DSM areas presented white papers on current and exemplary EE/PDR programs and technologies. In January 2010, I attended the Midwest Energy Efficiency Alliance's Midwest Energy Solutions Conference which examined current programs as well as future goals and opportunities for energy efficiency.

Q3. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO?

A3. Yes. I submitted testimony the electric security plan case for Dayton Power & Light, Case No. 08-1094-EL-SSO. My testimony was also filed in a complaint case initiated by distributed generation customers of FirstEnergy in Case No. 07-498-EL-CSS.

II. PURPOSE

Q4. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A4. The purpose of my testimony is to (A) provide recommendations to the Commission on the shared savings mechanism that FirstEnergy proposes for purposes of collecting a portion of the costs customers are avoiding by the implementation of the energy efficiency programs, (B) discuss various aspects of the proposed comprehensive residential retrofit program and the compact fluorescent light bulb program, and (C) present recommendations to improve the FirstEnergy collaborative process.

Q5. WHAT DOCUMENTS HAVE YOU REVIEWED IN PREPARATION OF YOUR TESTIMONY?

A5. In preparing this testimony, I have reviewed the Application and the Program Portfolio Plan that was filed by FirstEnergy. I have also reviewed the Stipulation in Case No. 09-935-EL-SSO as well as the Stipulations in Case Nos. 08-920-EL-SSO, 09-1089-EL-POR, 08-1094-EL-SSO, 08-833-GA-UNC, and 05-1125-EL-ATA. I attended the majority of the FirstEnergy Collaborative meetings, including the Residential subcommittee meetings and the deposition of FirstEnergy witnesses and other Black and Veatch employees. I have reviewed the meeting minutes from FirstEnergy Collaborative meetings (where minutes were recorded and provided to the Collaborative members), as well as any materials presented at Collaborative meetings. I have reviewed sections of the Portfolio Plan Template being developed in Case No. 09-714-EL-UNC. I have consulted the Opinion and Order in Case No. 07-829-GA-AIR, the Application in Case No. 09-283-EL-UNC, and the Commission Entry on Rehearing in Case No. 09-580-EL-EEC as well as other documents filed in this proceeding. Finally, I reviewed the National Action Plan for Energy Efficiency's document "A Vision for 2025: A framework for change."

III. FIRSTENERGY'S ENERGY EFFICIENCY AND DEMAND RESPONSE PROGRAM PROPOSAL

A. Shared Savings

Q6. PLEASE DESCRIBE THE CONCEPT OF SHARED SAVINGS.

A6. In the context of energy efficiency programs, shared savings is a performance-based mechanism developed to reward a utility for developing and implementing new and cost-effective energy efficiency programs that deliver high net benefits to customers. When an electric distribution utility exceeds the annual EE/PDR benchmarks provided in SB 221, a shared savings mechanism would allow that utility to collect from its customers, a portion of the costs of new generating capacity and energy that are avoided by the implementation of EE/PDR programs.

Q7. WHAT IS THE SHARED SAVINGS MECHANISM PROPOSED BY THE COMPANIES IN THEIR APPLICATION?

A7. In the direct testimony of Companies' witness Steve Oullette, the Companies propose a shared savings mechanism that would reward FirstEnergy if one or more of the operating companies achieve more reductions than what are needed to comply with the annual statutory energy efficiency and peak demand reduction benchmarks provided in SB 221. According to witness Ouellette's direct testimony[1], "…a Company will receive 15% of the net benefits as calculated by the Company utility cost test, net of taxes, for generating savings in excess of that Company's required benchmarks." The Companies provide no support for this proposal in Mr. Ouellette's testimony or in the remainder of the Application.

Q8. DID THE STIPULATION APPROVED IN CASE NO. 08-935-EL-SSO[2] PROPOSE A SHARED SAVINGS MECHANISM?

A8. No, FirstEnergy did not propose an EE/PDR incentive mechanism in its ESP filing and there is no EE/PDR shared savings incentive mechanism in the

[1] Direct testimony of Steve Ouellette at page 10.

[2] *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan*, et. al., Case No. 08-935-EL-SSO. Stipulation and Recommendation (February 19, 2009) ("Stipulation"). The abbreviation "Stipulation" also incorporates the Supplemental Stipulation that was filed on February 26, 2009.

Stipulation that resolved the ESP filing.[3] When discussing over-compliance, the Stipulation states that "Any and all over-compliance with R.C. 4928.66 in any calendar year or years will not be counted toward such calendar year, but rather counted and applied to the subsequent calendar year. Accordingly, any such over compliance will not reduce the baseline usage and/or demand."[4] This is a concept commonly referred to as "banking." It is important to note that, unlike the Companies' proposal, the two shared savings proposals that have been filed by other Ohio electric distribution utilities subsequent to the passage of SB 221 have only requested the collection of shared savings incentives if the utility exceeds the annual compliance benchmarks using utility-directed customer programs and not transmission and distribution upgrades or mercantile opt-out savings.[5]

Q9. DO YOU RECOMMEND THAT TRANSMISSION AND DISTRIBUTION UPGRADES OR MERCANTILE OPT-OUT SAVINGS BE EXCLUDED FROM THE SHARED SAVINGS CALCULATION?

A9. YES. Transmission and distribution upgrades and mercantile opt-out savings should be excluded because they are not consistent with the purpose of a shared savings incentive. As stated earlier, a shared savings incentive is a reward to a utility for its direct action (with the purpose of promoting energy efficiency) that

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[3] Unlike Duke (Case No. 08-920-EL-SSO) and DP&L (Case No. 08-1094-EL-SSO) who did include an incentive proposal in their applications where negotiations the weight of shared savings in the overall settlement position of the signatory parties.

[4] Stipulation at 25 paragraph g.

[5] Duke in Case No. 08-920-EL-SSO and AEP in Case No. 09-1089-EL-POR.

leads to electricity savings. In the case of transmission and distribution upgrades, those actions were undertaken to improve reliability or for other reasons, but not for energy efficiency purposes. The savings generated by mercantile opt-out customers had no material involvement by FirstEnergy so it should not be rewarded for those savings.

Q10. DO YOU HAVE ANY OTHER RECOMMENDATIONS ON THE SHARED SAVINGS PROPOSAL IN THE COMPANIES' APPLICATION?

A10. Yes. The Companies should become eligible for shared savings only when exceeding the annual benchmarks using utility-directed customer programs. Any banked savings should be counted only once for the purposes of triggering a shared savings mechanism. Banked savings also should be excluded from the calculation of net benefits in the year in which it is being used.

I would also note that in other recent examples, incentive mechanisms have been the result of discussions and negotiations between utilities and stakeholders prior to filing program portfolio plans.[6]

In summary, the Commission should exclude customer-sited programs and transmission and distribution infrastructure improvements when determining how

[6] The fact that FirstEnergy would be including a shared savings proposal in this Application was not presented to the Collaborative members until December 10, 2009 when the Companies stated that there would not be time to discuss until after the filing in a meeting scheduled for January 7, 2010. There have been no such discussions.

to appropriately structure an incentive mechanism that would properly encourage the utility to provide effective EE/PDR programs for its customers.

B. Comprehensive Residential Retrofit Program

Q11. HAS FIRSTENERGY OFFERED A HOME PERFORMANCE PROGRAM IN THE PAST?

A11. Yes. The Home Performance with Energy Star ("HPwES") program was developed following a prior settlement with FirstEnergy.[7] The program was suspended in August 2009. FirstEnergy representative Steve Ouellette reported at the December 10, 2009 Collaborative meeting that the costs related to that program were coming to an end and that FirstEnergy would continue to work with the residential sub-committee and with OCC on a similar program. Unfortunately, the Collaborative has not met since that meeting, other than for settlement discussions, and FirstEnergy has not yet made any effort to work with OCC regarding a similar program since that last Collaborative meeting.

Q12. DID THE COMPANIES PURSUE THE DEVELOPMENT OF A JOINT HOME PERFORMANCE PROGRAM?

A12. Yes. On page 28 in Section 3.0 of the Application, reference is made to discussions with a natural gas company regarding a joint home performance program. The Application mischaracterizes these discussions as "preliminary"

[7] See Supplemental Stipulation in Case No. 05-1125-EL-ATA.

and presents this as the reason for not including the program in this plan. In reality, these discussions were taking place in both the FirstEnergy and the Dominion East Ohio Collaborative working groups since early 2009 and a program design was nearing completion. According to information shared with the Collaborative, FirstEnergy decided to no longer pursue the development of the joint home performance with Energy Star program. It is my understanding that FirstEnergy's decision was based in part on the FirstEnergy Collaborative's inability to agree on FirstEnergy's proposal that the group support the conversion of savings from natural gas BTU's to kWh's for electric EE/PDDR compliance purposes. Under this proposal, FirstEnergy would have been able to convert gas savings into electric units and apply these savings towards EE benchmark compliance. However, in Case No. 09-512-GE-UNC, the Commission recognized that the savings required under SB 221 must be achieved in the electric industry.[8] Therefore, upon receiving guidance that this conversion was not allowed, FirstEnergy decided to discontinue this program's development.

Conversations on the joint home performance program have not resumed. Instead, the Application includes a "Comprehensive Residential Retrofit Program." This program was not discussed in any detail at the residential

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[8] Staffs Provisional Recommendation # 18a in this docket touches upon, and supports, the Commission's recognition that the provisions of R.C. 4928.64 require savings in kilowatt-hours. In pertinent part, it states that "[t]hese co-benefits . . . should not be included in the UCT/PAC test results of an electric utility. While natural gas co-benefits . . . should be included in cost-effectiveness, the program impacts should be measured strictly in terms of electric energy and capacity saved." October Order, Appendix C at 21. Impacts of utility programs on water resources and carbon dioxide emissions are also mentioned in the PUCO Staff's recommendations, but without a hint that they would count towards the measurement of savings required under R.C. 4928.66.

subcommittee meetings or during the FirstEnergy full collaborative meetings. The basis for the proposed incentive amounts and program design is not included in the Application.

Q13. WHAT DO YOU RECOMMEND AS AN APPROPRIATE HOME PERFORMANCE PROGRAM?

A13. I recommend that a comprehensive joint home performance program should be revisited by the Collaborative and continue to be evaluated for cost-effectiveness. This comprehensive program would be available to residential customers of FirstEnergy whose income exceeds the eligibility requirements (200% of the federal poverty guideline and below) of a similar program offered by FirstEnergy to low income customers known as the Community Connections program. First, the Commission's directives regarding natural gas programs in the most recent DEO gas rate case Opinion and Order also should be considered in the design of this electric program since those directives provide needed benefits to consumers.[9] This home performance program should make an effort to "minimize unnecessary and undue ratepayer impacts, minimize non-participant impacts and minimize 'free-ridership.'"[10] Second, I recommend that FirstEnergy work cooperatively with DEO, the gas utility within the majority of FirstEnergy's service territory, to develop a more comprehensive, cost-effective, gas <u>and</u> electric home performance program where program participants would be able to

[9] October 15, 2008 Opinion and Order in Case No. 07-829-GA-AIR pages 22-23.

[10] Id at pages 22-23.

receive whole-house weatherization through one program. A joint program ensures that auditors do not visit the same home twice, once for an electric program and once more for a gas program. Such a program would be more efficient by avoiding duplication of effort, thus saving customers money. At the same time, it would make more dollars available to provide a greater number of audits. This would also provide one stop shopping for customers, which will make program delivery simpler and more convenient. Finally, this program should also target high-use consumers, especially all-electric homes in an effort to mitigate monthly bill concerns being currently raised by FirstEnergy's all electric customers.

C. Compact Fluorescent Light Bulb Program

Q14. DO YOU HAVE ANY RECOMMENDATIONS REGARDING THE REVISED COMPACT FLUORESCENT LIGHT BULB PROGRAM IN THE APPLICATION?

A14. Yes. There are a number of sunk costs for marketing and management expense included in this revised program proposal that are related to the initial design that was not recommended by the collaborative process. These sunk costs, along with ongoing warehousing costs that are directly related to the Companies' unilateral decision to delay implementation, should not be recovered from residential and small business customers.

Q15. WHY SHOULD FIRSTENERGY BE PRECLUDED FROM COLLECTING THESE COSTS FROM ITS RESIDENTIAL AND SMALL BUSINESS CUSTOMERS?

A15. On November 4th, the Commission required the initial Compact Fluorescent Light Bulb ("CFL") program go back to the Collaborative for redesign and required that the revised program be filed no later than November 30, 2009.[11] The Collaborative worked diligently throughout the month of November, meeting a total of five times and at least once a week, to redesign the distribution and marketing components of the CFL program in a way that Collaborative members felt would benefit FirstEnergy's residential and small business customers. The Collaborative process worked very hard to find a method to distribute the 3.75 million light bulbs in a way that was acceptable to the parties – under the auspicious circumstances of having the 3.75 million light bulbs in FirstEnergy's possession.

Despite the fact that the Collaborative had reached consensus on the program distribution design, and the warehousing of the light bulbs was costing FirstEnergy, and potentially its residential and small business customers, $30,000 per month, FirstEnergy requested approval to delay the re-filing of the CFL program as modified within the Collaborative to December 30th when the

[11] Commission Entry on Rehearing in Case No. 09-580-EL-EEC filed on November 4, 2009.

immediate application was originally due.[12] FirstEnergy subsequently requested in its Application to fast track this CFL program for an implementation date of April 1, 2010. This four-month delay (from December 2009 through March 2010) results in additional warehousing costs of approximately $120,000 which FirstEnergy proposes will be collected from its residential and small business customers. This cost was incurred because of FirstEnergy's decision to request the delay of the filing of the revised CFL program with the full portfolio. This requested delay was FirstEnergy's decision, and the associated costs attributable to this delay should be borne solely by the FirstEnergy Companies.

Q16. WHY SHOULD FIRSTENERGY BE PRECLUDED FROM COLLECTING THE SUNK MARKETING COSTS FROM THE CFL PROGRAM?

A16. The plan approved by the Commission included a $1.8 million expense for marketing the program. However, FirstEnergy only spent a mere $427,000 of the $1.8 million costs allocated for marketing. The failure of FirstEnergy to adequately pre-market the program played a significant role in its failure to adequately educate its customers on the benefits of CFLs and energy efficiency in general, resulting in a widespread consumer outcry.

Spending less than 24% of the Companies' allocated marketing costs produced a campaign that provided insufficient marketing of this program. In addition, the Commission addressed this concern by ordering by FirstEnergy to re-file this

[12] The Commission granted extending this program's filing to December 15th to be included with the remainder of the portfolio.

program and to include a detailed marketing approach, which is not found in this filing (and is also required by the portfolio template for each program).[13] These marketing costs are part of an insufficient campaign that accompanies a program launched without Collaborative approval. These costs should not be collected from FirstEnergy's customers.

Q17. WHY SHOULD FIRSTENERGY BE PRECLUDED FROM COLLECTING THE SUNK MANAGMENT COSTS FROM THE CFL PROGRAM?

A17. The revised program includes sunk costs labeled as "Management Costs." OCC has requested information related to these costs at more than one Collaborative meeting and on other separate occasions and has not received any kind of response sufficient to justify the collection of these costs from customers. In addition, there is no justification for the collection of these sunk costs elsewhere in the filing.

D. FirstEnergy Collaborative Process

Q18. DO YOU HAVE ANY RECOMMENDATIONS ON HOW TO IMPROVE THE FIRST ENERGY COLLABORATIVE WORKING GROUP?

A18. Yes. In Item E.6.a., on page 23, the Stipulation provides that it is essential that EE/PDR programs are "…based on sound program evaluation, garner general support from *stakeholders*, and are pre-approved for statutory compliance and

[13] Section 3.2 of the portfolio template in Case. No. 09-714-EL-UNC.

cost recovery from the Commission." In addition, page 24, paragraph c. of the Stipulation provides that "The Companies will commence a collaborative process with *Signatory parties and third party administrator(s)*…" This Stipulation does not discuss membership within the collaborative on a going forward basis. It simply states how the Companies would "*commence*" the collaborative process.

In November 2008, the National Action Plan for Energy Efficiency ("NAPEE") published a study titled "Vision for 2025: A Framework for Change." In this document, NAPEE notes the importance of engaging all stakeholders when trying to realize long-term goals of achieving energy efficiency in saying:

> To achieve the full potential for energy savings and the related societal benefits, many parties need to work together toward the Vision. Energy efficiency policies and programs affect numerous parties, including local, state, and federal governments; utilities; customers; energy efficiency product and service providers; manufacturers; builders; architects; environmental groups; energy system operators; labor advocates; the financial community; and economic development groups. Educating and soliciting input from all key parties, either through local, state, and regional collaboratives or through other outreach efforts, will greatly

> increase the economic and environmental benefits achieved through energy efficiency.[14]

The FirstEnergy Collaborative process should allow a method for interested stakeholders to participate. Although the stipulation simply states how the collaborative process will commence, it does not limit ongoing participation in any way. FirstEnergy has however, denied participation from an interested stakeholder, the Environmental Law and Policy Center ("ELPC"). FirstEnergy's stand-alone decision to deny ELPC participation in the Collaborative was made without consulting input from other Collaborative members, other stakeholders, or signatory parties from the stipulation.

Since ELPC is an interested stakeholder in this case, and Collaborative meetings provide an opportunity for stakeholders to address concerns and potentially avoid lengthy litigation on issues, ELPC should be added to the FirstEnergy collaborative working group and I recommend the Commission determine a mechanism for other interested stakeholders to become involved in the Collaborative on a going forward basis. The Duke Energy Community Partnership and the Columbia Gas of Ohio Demand Side Management

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[14] National Action Plan for Energy Efficiency – A Vision for 2025: A Framework for Change, November 2008, page 5-3. http://www.epa.gov/cleanenergy/energy-programs/napee/resources/vision2025.html.

Collaborative both allow any interested stakeholders to participate in their collaborative meetings.[15]

In addition, the FirstEnergy Collaborative was consistently given little to no time to review information, making it difficult to provide constructive feedback and/or recommendations to FirstEnergy. The short review time also does not allow time for Collaborative members to consider the feedback and recommendations provided by other collaborative members.[16]

As a final note, FirstEnergy's performance in working in the collaborative has been disappointing. Failing to provide adequate time and information to evaluate proposed programs and then ignoring recommendations and requests for information from the stakeholders is not helpful towards advancing the best portfolio of cost effective programs. Therefore, I recommend that the Commission consider appointing an independent facilitator to manage the FirstEnergy Collaborative going forward and a time limit of two weeks be added to provide information to the Collaborative that is expected to generate feedback or recommendations on any of the aspects of any program. This would help to protect customers by ensuring that they have input on and access to cost effective programs.

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[15] See COH Application in Case No. 08-833-GA-UNC, pages 22-24; also see the Duke Application in Case No. 09-283-EL-UNC pages 2-4.

[16] See the direct Testimony of Company Witness John Paganie at page 8 and Section 3.1.5 of the Application at page 28 where it states "Due to the timing of the filing of this Plan, the Collaborative Group did not review the Plan in detail."

IV. CONCLUSION

Q19. DOES THIS CONCLUDE YOUR TESTIMONY?

A19. Yes, it does. However, I reserve the right to incorporate new information that may subsequently become available. I also reserve the right to supplement my testimony in response to positions taken by the PUCO Staff.

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Testimony of Daniel J. Sawmill on behalf of the Office of the Ohio Consumers' Counsel was served electronically (hard copy available upon request) to the below-listed Service List this 17th day of February, 2010.

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