

**FILE****OCC ESP EXHIBIT NO. \_\_**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio )  
 Edison Company, The Cleveland Electric )  
 Illuminating Company, and The Toledo )  
 Edison Company For Authority to ) Case No. 10-388-EL-SSO  
 Establish a Standard Service Offer )  
 Pursuant to R.C. § 4928.143 in the Form )  
 Of an Electric Security Plan. )

**SUPPLEMENTAL TESTIMONY  
OF  
WILSON GONZALEZ**

**On Behalf of  
The Office of the Ohio Consumers' Counsel  
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Columbus, Ohio 43215-3485  
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*July 27, 2010*

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1    **I.        INTRODUCTION**

2

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

4    ***A1.***    My name is Wilson Gonzalez. My business address is 10 West Broad Street,  
5           Suite 1800, Columbus, Ohio, 43215-3485. I am employed by the Office of the  
6           Ohio Consumers' Counsel ("OCC") as a Principal Regulatory Analyst.

7

8    ***Q2.    ARE YOU THE SAME MR. GONZALEZ WHO TESTIFIED EARLIER IN***  
9           ***THIS PROCEEDING?***

10   ***A2.***    Yes.

11

12   **II.       PURPOSE OF TESTIMONY**

13

14   ***Q3.    WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY?***

15   ***A3.***    My supplemental testimony addresses the contents of the Second Supplemental  
16           Stipulation filed on July 22, 2010 by the FirstEnergy electric distribution utilities  
17           ("FirstEnergy" or the "Companies").

1 **Q4. WHAT ARE YOUR CONCERNS WITH THE SECOND SUPPLEMENTAL**  
2 **STIPULATION?**

3 **A4.** I have the following concerns regarding the Second Supplemental Stipulation that  
4 will be successively addressed in my testimony:

- 5 1. The troublesome language used in the renewable energy credit ("REC")  
6 provision in paragraph 1 of the Second Supplemental Stipulation that provides  
7 for a new Section A.11 to the overall (partial) stipulation reached in this case.
- 8 2. The exclusionary review process for the amounts included in Rider DCR as  
9 stated in paragraph 3 of the Second Supplemental Stipulation.
- 10 3. The apparent redefinition of RTEP costs in paragraph 4 of the Second  
11 Supplemental Stipulation that provides for a new paragraph 5 to the overall  
12 stipulation.
- 13 4. The proposed modification of the Master SSO Supply Agreement in  
14 paragraph 7 of the Second Supplemental Stipulation that does not include  
15 desirable regulatory oversight.
- 16 5. The agreement for the withdrawal of testimony and briefs in paragraph 9 of  
17 the Second Supplemental Stipulation.

**III. EVALUATION OF THE SECOND SUPPLEMENTAL STIPULATION  
AND RECOMMENDATIONS**

**Q5. WHAT IS YOUR CONCERN REGARDING THE LANGUAGE REFERRED  
TO IN THE REC PROVISION, PARAGRAPH 1 OF THE SECOND  
SUPPLEMENTAL STIPULATION?**

A5. First, the parties to the Second Supplemental Stipulation apparently have not yet developed request for proposals ("RFP") for RECs, but instead the Second Stipulation provides in paragraph 1.a. that FirstEnergy will "work with any interested Signatory Parties or Non-Opposing Parties . . . to develop four RFPs . . . ." The language excludes stakeholders that may make contributions to the RFP process -- stakeholders such as the OCC that are parties to this case and stakeholders that may be interested in environmental issues that are not parties to this case. The purposeful exclusion of interested stakeholders from a collaborative process limits information and useful perspectives. Such exclusions are poor public policy, and should be rejected by the Commission.

Second, the language regarding RFP development for RECs includes the following: "However, if the Commission or a court *inhibits* the implementation of the ESP provided for in the Combined Stipulations, implementation of the RFP shall only occur after all rights to appeal in Case No. 10-388-EL-SSO have been exhausted and if after any appeal, an ESP agreed to by the Companies is

1 implemented.”<sup>1</sup> The word “inhibits” renders the agreement regarding the  
2 development of RFPs subject to various interpretations, which might render the  
3 provisions in paragraph 1 of the Second Supplemental Stipulation meaningless.  
4 This is a weakness in the Second Supplemental Stipulation.

5  
6 ***Q6. CAN YOU PROVIDE AN EXAMPLE OF HOW THE WORDING OF THE***  
7 ***PROVISION REGARDING RFP DEVELOPMENT FOR RECS MIGHT BE***  
8 ***PROBLEMATIC?***

9 ***A6.*** Yes. If the word “inhibits” means that any of the provisions in the overall  
10 stipulation is altered as the result of Commission or court action, then the  
11 provisions regarding RFP development for RECS are meaningless. The initial  
12 Stipulation, the Supplemental Stipulation, and the Second Supplemental  
13 Stipulation taken together (“Combined Stipulations”) retain an agreement by the  
14 stipulating parties for a July 2010 auction that even FirstEnergy Witness Ridmann  
15 seeks to alter as stated in his Supplemental Testimony filed on July 23, 2010.<sup>2</sup>  
16 Because the Combined Stipulations are outdated concerning the auction process,  
17 even as filed on July 22, 2010, the Commission must alter the Combined  
18 Stipulations. For the provisions regarding RFP development for RECs to provide  
19 any benefit, they must not be invalidated by any Commission alteration of the  
20 Combined Stipulations.

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<sup>1</sup> Emphasis added.

<sup>2</sup> Supplemental Testimony of William Ridmann, page 6.

1       The Combined Stipulations otherwise provide for the situation where the  
2       agreement between parties to this case are altered.<sup>3</sup> For the new provisions  
3       regarding RFP development for RECs to provide public benefits, the word  
4       “inhibits” should not mean anything more than is provided for in the remainder of  
5       the Combined Stipulations regarding the adoption or alteration of the Combined  
6       Stipulations.<sup>4</sup>

7  
8       ***Q7. DO YOU HAVE ANY ADDITIONAL COMMENTS ON THE SOLAR REC***  
9       ***PROVISION?***

10      ***A7.*** In the event that the Commission approves an ESP, the existing FirstEnergy  
11      Residential REC Program (i.e. approved in Case No. 09-551-EL-UNC) should be  
12      extended into the next ESP period to help promote residential distributed  
13      generation and help FirstEnergy further comply with Ohio’s renewable energy  
14      requirements. In addition to extending the program, the Companies should be  
15      required to work with interested stakeholders who may have suggestions to  
16      modify the program to improve participation.

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<sup>3</sup> Stipulation, page 34.

<sup>4</sup> The Stipulation filed on March 23, 2010 provides that “if the Commission or court does not, on rehearing or reconsideration, accept the Stipulation without material modification . . . the adversely affected Signatory Party may terminate its Signatory Status . . .” Stipulation, page 34.

**Q8. WHAT IS YOUR CONCERN REGARDING THE PROVISIONS THAT  
ADDRESS THE REVIEW PROCESS FOR RIDER DCR?**

**A8.** My concern is similar to that stated previously regarding the exclusion of stakeholders from participation in activities related to the regulatory process. Paragraph 3 of the Second Supplemental Stipulation provides a more detailed Rider DCR review process than was provided in the Stipulation filed on March 23, 2010, but that process depends upon “recommendations and/or objections [which must be] filed within 120 days after the filing of the application [by FirstEnergy].”<sup>5</sup> According to the Second Supplemental Stipulation, Rider DCR remains unaltered in the absence of objections but those objections may only be submitted by “Staff and Signatory Parties.”<sup>6</sup> Non-opposing and opposing parties are excluded from this critical portion of the Rider DCR review process as well as any interested stakeholder who is not a party to this case. The purposeful exclusion of any stakeholder party and/or the exclusion of a party that represents the interest of a group of customers that are materially impacted by the increased Rider DCR costs is poor public policy, and should be rejected by the Commission.

This provision in the Second Supplemental Stipulation would silence the OCC, the statutory representative of the residential class that has by far the largest number of the Companies’ customers and whose rates would be increased from

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<sup>5</sup> Second Supplemental Stipulation, page 4, paragraph 3.

<sup>6</sup> Id.



1 changes in the DCR Rider. The Commission should reject any limitation on the  
2 participation of the OCC and other stakeholders in the Rider DCR review process.

3  
4 **Q9. WHAT IS YOUR CONCERN REGARDING THE TREATMENT OF RTEP**  
5 **COSTS IN THE SECOND SUPPLEMENTAL STIPULATION?**

6 **A9.** RTEP costs as used in the Second Supplemental Stipulation appear to only apply  
7 to expenditures for transmission upgrades of 500 kV and greater.<sup>7</sup> This appears to  
8 be the case since, in the Second Supplemental Stipulation, the definition of  
9 “Legacy RTEP Costs” appears after a phrase that includes the limiting term “for  
10 500 kV and above RTEP projects.”<sup>8</sup> The original Stipulation provided that “[t]he  
11 Companies agree to not seek recovery through retail rates for the costs billed by  
12 PJM during the period June1, 2011 through May 31, 2016 for RTEP projects  
13 which are approved by the PJM Board prior to June 1, 2011.”<sup>9</sup> No mention was  
14 made in the original Stipulation regarding a threshold kV level.

15  
16 **Q10. WHAT IS THE IMPORTANCE OF THE APPARENT REDEFINITION OF**  
17 **RTEP COSTS FROM THE ORIGINAL STIPULATION?**

18 **A10.** The importance is that any claim of public benefits for the new RTEP provisions  
19 in the Combined Stipulation are muddled by the potential that FirstEnergy would  
20 immediately charge customers for lower voltage RTEP projects in the event that

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<sup>7</sup> Second Supplemental Stipulation, page 5, paragraph 4 (new paragraph 5 for the Combined Stipulations).

<sup>8</sup> Id.

<sup>9</sup> Stipulation, page 18.

1 the Federal Energy Regulatory Commission permits ATSI (FirstEnergy's  
2 transmission affiliate) to pass legacy RTEP costs through to customers. This was  
3 not the case under the original Stipulation. The consequences of the change in  
4 definition (and its existence) are not revealed in Mr. Ridmann's Supplemental  
5 Testimony filed on July 23, 2010. Instead, Mr. Ridmann claims that, "customers  
6 receive greater certainty that they will not pay for at least the first \$360 million of  
7 Legacy RTEP costs billed to the Companies."<sup>10</sup> Unless the Commission assures  
8 that "Legacy RTEP Costs" are not refined, it is unclear how the net present value  
9 analysis comparing the electric security plan ("ESP") with a market rate offer  
10 ("MRO") is affected by the Second Supplemental Stipulation.

11  
12 ***Q11. WHAT IS YOUR CONCERN REGARDING THE TREATMENT OF THE***  
13 ***MASTER SSO SUPPLY AGREEMENT IN THE SECOND SUPPLEMENTAL***  
14 ***STIPULATION?***

15 ***A11.*** My main concern is that FirstEnergy proposes a change in the Master SSO Supply  
16 Agreement (i.e. related to Duke Energy Ohio's proposal to move some of its  
17 transmission operations from MISO to PJM)<sup>11</sup> without any mention of regulatory  
18 oversight. Unilateral changes in any procedure that affects the competitive  
19 bidding process ("CBP") is undesirable, and especially so under circumstances  
20 where FirstEnergy's affiliate (i.e. FirstEnergy Solutions) may be a major  
21 participant in the CBP. In its efforts to encourage an intensively competitive

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<sup>10</sup> Supplemental Testimony of William Ridmann, page 4.

<sup>11</sup> Second Supplemental Stipulation, page 6-7, paragraph 7.1.

1 bidding process, the Commission should not permit any such unilateral changes.

2 The Commission should require FirstEnergy to obtain approval for all changes to  
3 the Master SSO Supply Agreement.

4  
5 ***Q12. WHAT IS YOUR CONCERN REGARDING THE PROVISIONS IN THE***  
6 ***SECOND SUPPLEMENTAL STIPUATION REGARDING THE***  
7 ***WITHDRAWAL OF TESTIMONY AND BRIEFS?***

8 ***A12.*** I will not address the legal process, but the agreement by stipulating and non-  
9 opposing parties to the Combined Stipulations to withdraw testimony and briefs  
10 has pitfalls. Briefs were jointly filed between such parties and the OCC, and the  
11 OCC has not agreed to withdraw its briefs. The OCC's briefs cite to the  
12 testimony of other parties, and alteration of the record in this case (if that is what  
13 is meant by "withdrawal") would again effectively nullify a portion of the OCC's  
14 briefs.

15  
16 Also, the testimony and briefs of parties that have been added to the Combined  
17 Stipulations inform the Commission regarding problems with the Companies'  
18 proposals, including problems that parties believe are addressed by the Second  
19 Supplemental Stipulation. A less informed regulatory process -- purposeful  
20 ignorance as proposed in the Second Supplemental Stipulation -- is not a good  
21 regulatory process.

1    **IV.    CONCLUSION**

2

3    ***Q13.    WHAT IS YOUR CONCLUSION REGARDING THE CONTENTS OF THE***  
4    ***SECOND SUPPLEMENTAL STIPULATION?***

5    ***A13.*** I conclude that troublesome wording contained in the Second Supplemental  
6    Stipulation threatens to impair the claimed benefits that the new provisions could  
7    bring to FirstEnergy's proposed ESP. In the event that the Commission approves  
8    an ESP for FirstEnergy, the Commission should modify the provisions contained  
9    in the Second Supplemental Stipulation as stated in my Supplemental Testimony  
10    to better ensure that the public receives the benefits from the provisions of the  
11    Second Supplemental Stipulation.

12

13    ***Q14.    DO THE CHANGES TO FIRSTENERGY'S PROPOSED ESP STATED IN***  
14    ***THE SECOND SUPPLEMENTAL STIPULATION CHANGE YOUR***  
15    ***OPINION REGARDING WHETHER THE PROPOSED ESP IS MORE***  
16    ***FAVORABLE IN THE AGGREGATE THAN A MARKET RATE OFFER?***

17    ***A14.*** No. The proposed ESP remains less favorable in the aggregate than a MRO.

18

19    ***Q15.    DOES THIS CONCLUDE YOUR SUPPLEMENTAL TESTIMONY?***

20    ***A15.*** Yes. However, I reserve the right to incorporate new information and/or  
21    discovery responses that may subsequently become available.

## CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing the *Supplemental Testimony of Wilson Gonzalez on Behalf of the Office of the Ohio Consumers' Counsel* has been served electronically this 27<sup>th</sup> day of July, 2010.

  
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