Kroger 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

KEVIN C. HIGGINS

On behalf of The Kroger Co.

DECEMBER 22, 2014

DIRECT TESTIMONY OF KEVIN C. HIGGINS

Introduction

Q. Please state your name and business address.

A. Kevin C. Higgins, 215 South State Street, Suite 200, Salt Lake City, Utah, 84111.

Q. By whom are you employed and in what capacity?

A. I am a Principal in the firm of Energy Strategies, LLC. Energy Strategies is a private consulting firm specializing in economic and policy analysis applicable to energy production, transportation, and consumption.

Q. On whose behalf are you testifying in this proceeding?

A. My testimony is being sponsored by The Kroger Co. ("Kroger"). Kroger is one of the largest grocers in the United States. Kroger receives distribution service from Ohio Edison Company ("Ohio Edison") and Toledo Edison Company ("Toledo Edison"), generally taking service pursuant to Rates GP and GS. All together, Kroger's Ohio facilities purchase more than 85 million kWh annually from Ohio Edison and Toledo Edison. Kroger is currently procuring generation service from a Competitive Retail Electric Service ("CRES") supplier. Kroger does not have significant load in the service territory of Cleveland Electric Illuminating Company ("CEI"). Collectively, I will refer to Ohio Edison, Toledo Edison, and CEI as "FirstEnergy" or the "Companies."

Q. Please describe your professional experience and qualifications.

A. My academic background is in economics, and I have completed all coursework and field examinations toward a Ph.D. in Economics at the University of Utah. In addition, I have served on the adjunct faculties of both the University of Utah and Westminster College, where I taught undergraduate and graduate courses in economics from 1981 to 1995. I joined Energy Strategies in 1995, where I assist private and public sector clients in the areas of energy-related economic and policy analysis, including evaluation of electric and gas utility rate matters.

Prior to joining Energy Strategies, I held policy positions in state and local government. From 1983 to 1990, I was economist, then assistant director, for the Utah Energy Office, where I helped develop and implement state energy policy. From 1991 to 1994, I was chief of staff to the chairman of the Salt Lake County Commission, where I was responsible for development and implementation of a broad spectrum of public policy at the local government level.

Q. Have you ever testified before this Commission?

A. Yes. Earlier this year, I filed testimony in Duke Energy Ohio's ("Duke") Electric Security Plan ("ESP") III proceeding, Case No. 14-841-EL-SSO, et al; the AEP Ohio ESP III proceeding, Case No. 13-2385-EL-SSO, et al.; Dayton Power & Light's ("DP&L") storm cost recovery rider proceeding, Case No. 12-3062-EL-RDR, et al. and the Republic Steel reasonable arrangements proceeding, Case No. 13-1913-EL-AEC. In 2013, I testified in DP&L's Revised ESP proceeding, Case No. 12-426-EL-SSO, et al. and in Duke's capacity charge proceeding, Case No. 12-2400-EL-UNC, et al. In 2012, I testified in the AEP

Ohio ESP II proceeding, Case No. 11-346-EL-SSO, et al. In 2011, I testified in the Duke Market Rate Offer ("MRO") proceeding, Case No. 10-2586-EL-SSO, and Duke's ESP II proceeding, Case No. 11-3549-EL-SSO, and in 2010, I filed testimony in Duke's storm damage cost recovery proceeding, Case No. 09-1946-EL-RDR.

In 2009, I testified in FirstEnergy's MRO proceeding, Case No. 09-906-EL-SSO, and in Duke's distribution rate case, Case No. 08-709-EL-AIR, et al.

In 2008, I testified in AEP Ohio's ESP I proceeding, Case No. 08-917-EL-SSO, et al.; FirstEnergy's MRO proceeding, Case No. 08-936-EL-SSO; FirstEnergy's ESP proceeding, Case No. 08-935-EL-SSO; and the FirstEnergy distribution rate case proceeding, Case No. 07-551-EL-AIR, et al.

In 2005, I testified in AEP Ohio's IGCC cost recovery proceeding, Case No. 05-376-EL-UNC, and in 2004, I testified in the FirstEnergy Rate Stabilization Plan proceeding, Case No. 03-2144-EL-ATA.

Q. Have you testified before utility regulatory commissions in other states?

A. Yes. I have testified in approximately 185 proceedings on the subjects of utility rates and regulatory policy before state utility regulators in Alaska, Arizona, Arkansas, Colorado, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nevada, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming. I have also prepared affidavits that have been filed with the Federal Energy Regulatory Commission.

Overview and Conclusions

Q. What is the purpose of your testimony in this proceeding?

A. My testimony addresses the following aspects of FirstEnergy's ESP IV proposal filed August 4, 2014, as modified in the errata filed November 14, 2014 where applicable.

(1) The Companies' proposed Economic Stability Program implemented through a new, non-bypassable Retail Rate Stability Rider ("Rider RRS"); and

(2) The Companies' proposal for a new, non-bypassable Government Directives Recovery Rider ("Rider GDR").

Relative to the wide scope of the issues addressed in FirstEnergy's filing, my recommendations are concentrated on a limited number of issues. Absence of comment on my part regarding a particular aspect of FirstEnergy's filing does not signify support (or opposition) toward the Companies' filing with respect to the non-discussed issue.

Q. What are your primary conclusions and recommendations?

A. (1) I recommend that the Commission reject the Companies' Economic Stability Program and Rider RRS proposal. Through the Companies' Rider RRS proposal, FirstEnergy Corp. is asking, in effect, for a cash infusion from customers to tide its subsidiary, FirstEnergy Solutions ("FES"), through an upcoming period of projected losses on certain assets. In addition, FES is asking customers to assume the financial risk of the long-term performance of these assets relative to the market, while FES enjoys the benefit of a healthy utility-type rate of return on the assets for the next fifteen years. Although the Companies'

Rider RRS proposal places emphasis on the potential customer benefits of the sharing arrangement, the cumulative net benefits in nominal terms are projected to be negative for approximately five years.

Notwithstanding my primary recommendation to reject this proposal, if the Commission approves some form of Rider RRS, the rider should be modified in two important ways. First, the overall deal should be restructured to better compensate customers for the critical funding they would be providing during the period of medium-term losses as well as for the risks they would be assuming by stepping into FES's shoes as the party exposed to the performance of the FES-owned plants relative to the market. Second, for demand-billed rate schedules, the design of Rider RRS should be changed from an energy charge (or credit) to a demand charge (or credit), consistent with the manner in which Rider RRS is proposed to be allocated to each Company and rate schedule.

(2) I recommend that the Commission reject the Companies' Rider GDR proposal. The proposed Rider GDR is vague and open-ended. Providing security for the distribution system is a fundamental responsibility for a utility distribution company. In carrying out this responsibility, the Companies are entitled to an opportunity to recover their prudently-incurred costs. However, a utility should not be granted a rider mechanism, such as the proposed Rider GDR, simply to do its job. Rather than adopting Rider GDR, the incremental costs that the Companies wish to recover through this proposed rider are best considered in the overall context of the utilities' total distribution revenues, expenses, and return on

distribution rate base. The best forum for such consideration is a distribution rate case.

<u>Economic Stability Program and Rider RRS</u>

Q. What are the Companies proposing with respect to an Economic Stability Program?

A. As described in the Direct Testimony of Jay A. Ruberto, the Companies propose to purchase the output of two generating plants operated by the Companies' affiliate, FES – Davis-Besse Nuclear Power Station, and the coal-fired W.H. Sammis Plant (the "Plants"). The Companies also propose to purchase FES's 4.85% entitlement to the output of two generating units owned and operated by Ohio Valley Electric Corporation ("OVEC"). The Companies would purchase all of the generation output from the Plants at cost, plus a return on investment, and would purchase FES's OVEC entitlement at FES's cost. The Companies propose to offer this generation into the PJM markets, and pass the difference between revenues and costs along to retail customers through the non-bypassable Rider RRS. FirstEnergy proposes that the term of the purchase agreement with FES continue until May 31, 2031.[1]

Q. Please describe the Companies' proposed Rider RRS.

A. As explained in the direct testimony of Joanne M. Savage, the Companies propose that Rider RRS go into effect June 1, 2016, to be updated and reconciled on an annual basis. The proposed Rider RRS revenue requirement will be based on the difference between the projected costs of the Plants and FES's OVEC

[1] Direct Testimony of Jay A. Ruberto, p. 3, lns 15-16.

entitlement, and the projected revenues the Companies expect to receive for selling the related energy, capacity and ancillary services into the PJM market. Any monthly under or over collection will be recorded as a regulatory asset or liability for future recovery or return to customers, accruing carrying costs at FirstEnergy's after-tax weighted average cost of capital from the most recent base distribution rate case,[2] currently 8.48%.[3]

FirstEnergy proposes to allocate Rider RRS to each Company and rate schedule based on demand, using the average of the four monthly coincident peaks for June through September of the prior year. Then FirstEnergy proposes to convert each rate schedule's allocated revenue requirement into an energy charge or credit based on projected kWh sales.[4]

Q. What is the rationale offered by FirstEnergy in support of its proposal?

A. FirstEnergy offers two basic rationales, which, taken together, I find to be somewhat contradictory. The first rationale is that this arrangement will provide customers a valuable long-term hedge against future market price increases.[5] Indeed, using the cost and price projections prepared by the Companies and its consultants, FirstEnergy projects that the Rider RRS arrangement will produce net savings to customers over the lifetime of the deal of $2.02 billion on a nominal basis, or $769.6 million on a net present value basis.[6] The second rationale is that absent the proposed Rider RRS arrangement, the FES-owned facilities are in danger of being shut down due to their uneconomic operation expected in the next

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[2] Case No. 07-551-EL-AIR.
[3] Direct Testimony of Joanne M. Savage, pp. 2-4.
[4] Ibid, p. 4, lns. 13-21.
[5] Direct Testimony of Steven E. Strah, p. 4, lns. 16-21.
[6] Data Source: Attachment JAR-1 (Revised).

several years. If the plants are shut down, jobs and capacity will be lost, and new transmission likely would have to be built.[7]

Q. Why do you find these two rationales to be somewhat contradictory?

A. On the one hand, FirstEnergy depicts the long-term economics of the operations of the FES facilities to be strongly positive, while at the same time warning that the plants may be shut down due to poor medium-term economics. The obvious question here is: if the long-term economics are so good why isn't the current owner simply planning to weather the near-term losses in order to reap the projected long-term gains that FirstEnergy is projecting will accrue to customers in this case? In evaluating the Rider RRS proposal from FirstEnergy in this case, the Commission needs to take a hard look at this question.

Q. Do you have any observations regarding this question?

A. Yes, I do. From the perspective of customers who are being asked to pay for Rider RRS, the Companies' depiction of an owner that is threatening to shut the plants down is an important market signal. It strikes me that the threat to shut down the plants absent the Rider RRS deal is an indication that the plants' owner, FES, is not sufficiently confident in the long-term economic benefits forecasted in this case to accept the risk of absorbing medium-term losses in order to reap the projected long-term gains. And if FES is wary of the risks of continuing to operate these plants, the Commission should be equally wary of placing customers in FES's shoes to absorb the very risks that FES appears eager to avoid.

[7] Direct Testimony of Donald Moul (Policy overview), pp. 3-5, Direct Testimony of Gavin L. Cunningham (Transmission), Direct Testimony of Sarah Murley (Economic Impact).

Q. Do you have any observations regarding the projection of costs and benefits presented by FirstEnergy in this proceeding?

A. Yes. Even if we accept the Companies' projections at face value, the proposal will result in a net negative proposition for customers for quite a few years. Notably, the proposition is projected to lose money for customers each year through 2018 – largely covering the entire span of the proposed ESP IV term. By the end of 2018, the cumulative losses to customers total $465.3 million in nominal dollars.[8] Furthermore, although the arrangement is projected by FirstEnergy to produce annual benefits to customers starting in 2019, the *cumulative* net benefit does not turn positive in nominal terms until 2021, after taking into account the cumulative costs to customers racked up during the initial years of the proposed arrangement. Placing customers into a net negative position for approximately five years does not strike me as being an attractive proposition. It is even less attractive when taking into account the risk that the price and cost projections that FirstEnergy is using to forecast the long-term benefits could turn out to be overly optimistic.

Q. What is your recommendation to the Commission concerning the Companies' Rider RRS proposal?

A. I recommend that the Commission reject the Rider RRS proposal. The proposed Rider RRS would unreasonably require all customers, including shopping customers, to absorb the losses anticipated over the next several years from FES's continued ownership of the Plants and its OVEC entitlement, while providing FES with cost recovery and a utility-type rate of return. Although the

[8] Data Source: Attachment JMS-2 (Revised), includes CAT.

Companies' Rider RRS proposal places emphasis on the potential long-term customer benefits of the sharing arrangement, as I discussed above, the cumulative net benefits are projected to be negative for approximately five years.

Q. If, despite your recommendation to reject it, Rider RRS is adopted by the Commission, are there any changes you would recommend to make it less objectionable?

A. Yes. If the Commission approves some form of Rider RRS, the rider should be modified in two important ways. First, the overall deal should be restructured to better compensate customers for the critical funding they would be providing during the period of medium-term losses as well as for the risks they would be assuming by stepping into FES's shoes as the party exposed to the performance of the Plants relative to the market. Second, for demand-billed rate schedules, the design of Rider RRS should be changed from an energy charge (or credit) to a demand charge (or credit), consistent with the manner in which Rider RRS is proposed to be allocated to each Company and rate schedule.

Q. Please elaborate on your assertion that the deal should be restructured to better compensate customers for the funding they would be providing as well as for the risks they would be assuming.

A. Through the Companies' RRS proposal, FirstEnergy Corp. is asking, in effect, for a cash infusion from customers to tide FES through the upcoming period of projected losses. In addition, FES is asking customers to assume the financial risk of the long-term performance of the Plants relative to the market, while FES enjoys the benefit of a healthy utility-type rate of return on the assets for the next fifteen years. In light of the Companies' warnings that the Plants may be shut down if Rider RRS is not approved, the cash infusion requested from customers would apparently play the role of salvaging FES's investment in the Plants. If customers are indeed put in the position of providing this cash infusion to FES, the role and importance of this "investment" should be recognized by allowing customers to realize an effective return on the upfront cash customers would be providing. Under my alternative approach, the cash infusion would be recorded during the first two years and seven months of the Rider RRS arrangement as customers incurred charges for the Plants in excess of market prices. Then, starting in 2019, the annual return on this cash infusion would be credited to customers and the accrued principal would be amortized over the remaining twelve years and five months of the arrangement. These credits would be in *addition* to the "difference between cost and market" credits proposed by FirstEnergy for the period that Plant costs are projected to be less than market prices.

Q. What rate of return do you recommend be applied to the cash infusion provided by customers?

A. I recommend that the carrying charges earned by customers on the cash infusion while it is accruing for the first two years and seven months be the same rate of return used by FES in calculating its cost of capital for the Plants, which FirstEnergy is proposing to recover through the Rider RRS. According to Attachment JAR-1, FES is proposing an after-tax rate of return of 7.85%, which is equivalent to a pretax rate of return of 11.18%. Then, once the cash infusion has started being repaid to customers in 2019, I propose that the return on the unamortized balance be set at 8.54%, which would produce an approximately equal rate of return for customers as for FES on its investment in the Plants during the 2019 through May 2031 period, after accounting for the repayment to customers included in my proposal, and using the cost and price projections provided by FirstEnergy in this case. Looked at another way, my proposal is equivalent to reducing the rate of return paid to FES for the Plants to 8.54% on a pretax basis, rather than the 11.18% return proposed by the Companies, which I believe is appropriate in light of the role that customers are being asked to play in supporting the economic viability of FES's assets.

Q. Mechanically, how would your proposal work with respect to timing and amortization of the cash infusion?

A. The mechanics of my alternative proposal are shown in Confidential Attachment KCH-1. Under my proposal, the cash infusion to be amortized would be the cumulative balance of customer payments made in support of the Plants between June 1, 2016 and December 31, 2018, plus interest. The customer payments that accrue to this balance would be those that occur over this time period pursuant to FirstEnergy's proposal in this case. The amortization would begin in January 2019 irrespective of whether the going forward difference between PJM market sales and Plant cost-of-service in 2019 continues to produce a charge for customers or produces a credit as predicted by FirstEnergy. The amortization shown in line 21 in Confidential Attachment KCH-1 is calculated to produce an equal annual payment of principal and interest to customers, similar to a mortgage, although this feature is optional. In the alternative, the amortization of the principal could occur on a straight-line basis.

Q. Have you estimated the incremental benefit to customers from adopting your recommendation?

A. Yes. As shown in lines 20-21 of Confidential Attachment KCH-1, over the term of the proposed arrangement, my recommendation would increase the benefit to customers by $884 million on a nominal basis, or $440 million on a present value basis, based on an estimated cash infusion over two years and seven months of $459 million.[9]

Q. If customers would receive the incremental benefit of your proposed alternative arrangement, why should customers also receive the potential benefit of any difference between the annual cost of producing power from the Plants and the revenues received by FES for selling the power into the PJM market, as proposed by FirstEnergy?

A. In my opinion, the Rider RRS proposal advanced by the Companies is not in the best interests of customers and should be rejected. The proposal the Companies are advancing for customers is one that apparently may not be attractive enough for FES to embrace for itself, otherwise FirstEnergy would not be warning that the Plants might be shut down absent a cash infusion from customers. My alternative proposal should be viewed as a feature that is "layered on top of" FirstEnergy's proposal to make the Companies' proposal less objectionable for customers. Moreover, the potential benefits included in the

[9] Although the detail in Confidential Attachment KCH-1 is derived from confidential sources provided by FirstEnergy, the aggregate benefits identified in my testimony do not reveal this confidential information.

Companies' proposal are based on the Companies' cost and market projections and thus are not assured. These potential benefits from the Companies' proposal are very much at risk. My alternative proposal mitigates that risk by providing customers with a return on their cash contribution that is directly comparable to the return that FES would receive on the Plants from this arrangement.

Q. Please explain your rate design recommendation.

A. If some form of Rider RRS is approved, I recommend that it be designed as a demand charge or credit for demand-billed rate schedules, consistent with the manner in which Rider RRS is proposed to be allocated to each Company and rate schedule. FirstEnergy proposes to allocate Rider RRS to each Company and rate schedule on the basis of demand, using the four monthly coincident peaks, but inexplicably proposes to convert the allocated revenue requirement to an energy charge or credit for all rate schedules.[10] If costs are allocated to classes on the basis of demand, it makes no sense to convert these costs to an energy charge for recovery from demand-billed customers. If the Commission approves Rider RRS, I recommend it be designed as a demand charge (or credit) for demand-billed rate schedules (i.e. Rates GS, GP, GSU, and GT).

<u>Government Directives Recovery Rider ("Rider GDR")</u>

Q. What are the Companies proposing with respect to Rider GDR?

A. As described in the Direct Testimony of Eileen M. Mikkelsen, the Companies are proposing Rider GDR to recover costs that may be incurred in the future related to legislative or governmental directives. The Companies anticipate

[10] Direct Testimony of Joanne M. Savage, p. 4, lns. 13-21.

that Rider GDR may include costs associated with Manufactured Gas Plant remediation, the Retail Market Investigation (establishing a supplier web portal and bill format changes), and state and federal distribution infrastructure protection from physical and cyber security threats.

According to the Direct Testimony of Brandon S. McMillen, the Companies recommend that Rider GDR go into effect June 1, 2016, and be updated and reconciled semiannually. The proposed Rider GDR revenue requirement will be based on actual costs incurred but not yet recovered, including capital costs, non-capital costs and taxes. The Companies propose to recover a return on and of plant in service and accumulated deferred income tax, based on the weighted average cost of capital from the most recent base distribution rate case. Carrying costs will accrue on any under or over collection of Rider GDR using the current embedded cost of long-term debt.

The Companies propose that Rider GDR be a non-bypassable rider recovered on a per customer basis, allocated to rate schedules based on the stipulated revenue distribution from the most recent distribution rate case.[11]

Q. What is your recommendation to the Commission with respect to this proposed rider?

A. I recommend that this proposed rider be rejected. It is not necessary or desirable for ratemaking to be reduced to a long menu of riders. The proposed Rider GDR is vague and open-ended.

Providing security for the distribution system is a fundamental responsibility for a utility distribution company. In carrying out this

[11] Direct Testimony of Brandon S. McMillen, p. 3, lns. 12-18.

responsibility, the Companies are entitled to an opportunity to recover their prudently-incurred costs. However, a utility should not be granted a rider mechanism, such as the proposed Rider GDR, simply to do its job. Rather than adopting Rider GDR, the incremental costs that the Companies wish to recover through this proposed rider are best considered in the overall context of the utilities' total distribution revenues, expenses, and return on distribution rate base. The best forum for such consideration is a distribution rate case.

Q. Does this conclude your direct testimony?

A. Yes, it does.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Direct Testimony of Kevin Higgins* was served this 22nd day of December, 2014 upon the following via electronic mail.

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