

**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)	Case No. 14-1297-EL-SSO
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)	

SUPPLEMENTAL TESTIMONY OF MATTHEW WHITE

On behalf of Interstate Gas Supply, Inc.

March 2, 2015

1 **I. INTRODUCTION AND PURPOSE OF TESTIMONY**

2 **Q. Please introduce yourself.**

3 A. My name is Matthew White. I am employed by Interstate Gas Supply, Inc. (“IGS”
4 or “IGS Energy”) as General Counsel, Legislative and Regulatory Affairs. My
5 business address is 6100 Emerald Parkway, Dublin, Ohio 43016.

6 **Q. Are you the same Matthew White that filed testimony on behalf of IGS**
7 **earlier in this proceeding?**

8 A. Yes I am.

9 **Q. What is the purpose of your testimony?**

10 A. I testify that the Commission should reject the Stipulation and Recommendation
11 filed on December 22, 2014 in this proceeding (“Stipulation”) which recommends
12 approval of FirstEnergy’s deceptively named and unlawful retail rate stability rider
13 (“Rider RRS”) proposal. Rider RRS would require FirstEnergy customers to pay a
14 cost based rate to support nearly 3000 MW of FirstEnergy Solution’s (“FES”)
15 generation. As explained by the previously filed testimony of IGS witness
16 Haugen (as well as numerous other witnesses) the Rider RRS proposal would
17 require FirstEnergy customers to subsidize FES inefficient competitive
18 generation and otherwise would be harmful to FirstEnergy customers. Further,
19 the remaining provisions in the Stipulation directly financially benefit only a small-
20 subset of intervening parties while leaving the vast majority of FirstEnergy
21 customers worse-off. Rider RRS (and the entire Stipulation) would also violate
22 the Federal preemption statutes and Ohio law. Finally, adoption of the Stipulation

1 would move Ohio towards the return of the antiquated vertically integrated utility
2 monopoly model which the Ohio General Assembly and the Commission wisely
3 left behind years ago.

4 **Q. Does this testimony substantively change the previous direct testimony**
5 **you filed in this proceeding?**

6 A. No. I still support my previously filed direct testimony and the recommendations
7 made therein. This testimony is meant to supplement my previously filed direct
8 testimony. Thus, as noted in my previous testimony, I continue to recommend
9 that the Commission should:

- 10 • Modify FirstEnergy's proposed standard service offer ("SSO") to ensure that
11 it truly is a "comparable and unbundled" retail electric product in the market
12 as required by Ohio law;
- 13 • Deny FirstEnergy's anti-competitive proposal to require competitive retail
14 electric service ("CRES") providers to use the bill-ready function to bill for only
15 generation charges; rather, the Commission should affirm that CRES
16 providers are able to use the bill-ready function to bill for a more diverse
17 range of products as explained in my testimony. These measures are
18 particularly important because FirstEnergy is currently allowing select third-
19 party companies to bill for non-commodity charges on the EDU bill while
20 excluding all others.
- 21 • Direct FirstEnergy to begin taking steps necessary to implement supplier
22 consolidated billing as described in my testimony.

- Reject the RRS and investigate FirstEnergy's past dealings with FES because it appears that FirstEnergy's corporate separation plan is not working.

II. TESTIMONY

Q. Are you familiar with the standard of review for a Stipulation filed in a Commission proceeding?

A. Yes. The standard of review for considering the reasonableness of a Stipulation has been discussed in a number of prior Commission proceedings.¹ The ultimate issue for the Commission's consideration is whether the Stipulation is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission must consider:

(1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

(2) Does the settlement, as a package, benefit ratepayers and the public interest?

(3) Does the settlement package violate any important regulatory principle or practice?

¹ See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, *et al.*, Opinion and Order (Dec. 30, 1993); *Cleveland Electric Illumin. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985).

1 The Ohio Supreme Court has endorsed the Commission's analysis using these
2 criteria to resolve issues in a manner economical to customers and public
3 utilities.²

4 **Q. Does the Stipulation satisfy any of the prongs that are considered when**
5 **determining the reasonableness of a stipulation?**

6 A. No. The Stipulation does not satisfy any of the prongs that are considered under
7 the Commission's reasonableness test.

8 **Q. Is the settlement a product of serious bargaining among capable,**
9 **knowledgeable parties?**

10 A. No. The Stipulation amounts to an agreement entered into by a minority of
11 parties intervening in this proceeding. A majority of parties to this proceeding do
12 not support the Stipulation or Rider RRS. Further, many of the additional
13 provisions in the Stipulation are direct financial payments to the parties signing
14 the Stipulation. Even the provisions that effect rate design merely shift costs
15 from parties that signed the Stipulation onto all other FirstEnergy customers.
16 Thus, there is nothing in the Stipulation that would make FirstEnergy's otherwise
17 unreasonable Rider RRS more reasonable. Rather, the Stipulation appears to
18 be largely financial transfers to the few parties signing the Stipulation in
19 exchange for agreement to support Rider RRS.

20 **Q. Does the settlement as a package benefit ratepayers?**

² *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm'n*, 68 Ohio St.3d 559, 563 (1994). The Court stated, "stipulations are considered merely as recommendations to the commission and, while entitled to substantial weight, they must be supported by the evidence of record to withstand scrutiny under the standard of review provided in R.C. 4903.13. *Id.*

1 A. No. The proposed Stipulation would largely approve FirstEnergy's filed ESP
2 Application. As noted in my previous testimony, and in testimony filed by Mr.
3 Haugen, FirstEnergy's ESP Application is unreasonable and would be harmful
4 FirstEnergy customers. The proposed provisions in the Stipulation do not
5 provide any additional benefit to the vast majority of FirstEnergy customers.

6 **Q. Does the settlement package violate any important regulatory principle or**
7 **practice?**

8 A. First Energy's Witness Mikkelson testifies that approval of Rider RRS does not
9 violate and regulatory principals. However, her conclusions are incorrect. The
10 Stipulation violates many important regulatory principals. The Stipulation violates
11 R.C. 4928.02(H) in that it provides anti-competitive subsidies to FirstEnergy
12 Solutions ("FES") which is a provider of competitive generation. It violates R.C.
13 4928.17(B)(2) and (3) Ohio's corporate separation rules in that it would endorse
14 FirstEnergy's unlawful use of customer funds to subsidize its competitive affiliate
15 FES. It violates the Federal Power Act which delegates to the Federal Energy
16 Regulatory Commission ("FERC") the authority to regulate wholesale energy
17 transactions. The Third and Fourth Circuit Courts have affirmed that "contract for
18 differences" (which is what the Stipulation would approve) is an encroachment of
19 FERC's regulatory authority and pre-empted by Federal law. The Stipulation
20 would also violate 4928.143(B)(2)(d) in that it approves a non-bypassable
21 generation related charge. Thus, even if approved the Stipulation is unlikely to
22 hold-up in the courts.

1 **Q. Given the controversial nature of Rider RRS, will approval of the Stipulation**
2 **create great uncertainty and legal expense for Ohio customers for years to**
3 **come?**

4 A. Yes. As I note above, the Stipulation violates many important legal and
5 regulatory principals. One can only look at the *PPL Energy Plus V. Nazarian* and
6 the *PPL Energy Plus v. Solomon* cases to see significant legal battles faced in
7 the Federal Courts when the states of Maryland and New Jersey tried to approve
8 similar schemes- not to mention the uphill battles Rider RRS will certainly face at
9 the Ohio Supreme Court. This litigation will come at a great cost to Ohio
10 customers and cause uncertainty in Ohio's wholesale and retail electric markets
11 for many years in the future. Thus the Commission should not subject customers
12 to this future uncertainty for a Stipulation that does not even provide a net benefit
13 to customers.

14 **Q. Will the Stipulation help stabilize retail rates and protect against increasing**
15 **market prices and volatility over the longer term?**

16 A. No. In testimony supporting the Stipulation FirstEnergy's witness Eileen
17 Mikkelson claims that the approval of the so called Economic Stability Program
18 (aka Rider RRS) will "help stabilize retail rates and protect against increasing
19 market prices and volatility over the longer term."³ However, this statement
20 directly contradicts what FirstEnergy's Executive Vice President, Markets and
21 Chief Legal Officer, Leila Vespoli testified in front of the Ohio House of

³ Supplemental Testimony of Eileen Mikkelson at 2 (Dec. 22, 2014).

1 Representatives. Specifically, Ms. Vespoli testified that “measures that restrict
2 customer shopping or subsidize one electric generator over another are throw-
3 backs to monopoly regulation. Such efforts that pick ‘winners’ and ‘losers’ in the
4 energy market would create obstacles to private investment in generation and
5 increase prices for customers.”⁴ Ms. Vespoli also stated:

6 We’re also concerned about any effort to subsidize certain
7 generating facilities. Much of the rhetoric around these efforts
8 involves a misguided notion of Ohio’s energy security –that our
9 state could experience outages if it doesn’t generate as much
10 energy as it consumes. This notion simply ignores how the electric
11 grid operates, and how competitive markets always secure
12 generation from the lowest-cost sources – no matter where they are
13 located.⁵

14 **Q. Has FirstEnergy also criticized other states for attempting to enter into the**
15 **very type of contracts that the Stipulation now seeks to approve?**

16 A. Yes. In testimony the Ohio House of Representatives Ms. Vespoli explained how
17 entering into regulated power purchase contracts with competitive generation has
18 significantly harmed customers in Pennsylvania and New Jersey. Specifically
19 Ms. Vespoli testified that:

20 The real problem with subsidized generation is that regulators
21 would be picking the “winners” and “losers” in the energy market.
22 We’ve been down that road before, and the results weren’t pretty.
23 For example, in the past our utilities in Pennsylvania and New
24 Jersey were required to purchase power from Non Utility
25 Generators, with contracts extending up to two or three decades. In
26 our Pennsylvania service area alone, customers have paid \$1.5
27 billion over market prices for this subsidized generation. At a time
28 when Ohio is exploring every opportunity to create jobs and grow

⁴ MW Ex. 1 at 2 (Testimony of Lela Vespoli, *Competitive Markets Work*, House Public Utilities Committee (Oct. 19, 2011)] (emphasis added).

⁵ *Id.* at 4-5 (Emphasis added).

1 our economy, we simply cannot afford similar missteps that would
2 saddle our customers with higher-than-market prices for electricity.⁶
3

4 **Q. Does approval of the Stipulation promote reliability in Ohio?**

5 A. No. In her testimony Ms. Mikkelson claims that approval of the Rider RRS
6 addresses “reliability challenges” faced by Ohio. However, this testimony directly
7 contradicts recent testimony of Ms. Vespoli explaining how subsidizing
8 generation through long term power purchase contracts would discourage the
9 development of new generation. Specifically Ms. Vespoli stated:

10 FirstEnergy Solutions is currently reviewing a plan to
11 transform an old limestone mine in Norton, Ohio, into a
12 Compressed Air Energy Storage, or CAES, facility. With the
13 volume of nine Empire State Buildings, the site was
14 identified by a leading developer of natural gas storage
15 facilities as the best among more than 70 potential sites in
16 the nation for supporting CAES technology. It would be
17 scalable – from approximately 270 megawatts all the way up
18 to 2,700 megawatts – and, more important, would support
19 the operation of intermittent renewable sources such as wind
20 by compressing air at night and standing ready to serve load
21 on peak. However, it is highly unlikely that we would
22 consider moving forward with this project if the plant would
23 have to compete against subsidized generation in Ohio.⁷
24

25 The entire transcript of Ms. Vespoli’s testimony is attached to my testimony as
26 MW Ex. 1.

27
28 **Q. Are fear of plant closures valid reasons to approve the Stipulation?**

29 A. No. The Stipulation cites the claim that that “3,600 MWs of generation will retire
30 by 2016” as justification to approve Rider RRS.⁸ However, in previous testimony

⁶ MW Ex. 1 at 5 (emphasis added).

⁷ *Id.* at 6 (emphasis added).

⁸ Stipulation at 2.

1 of Tony Alexander (the former CEO of FirstEnergy) submitted to the Ohio
2 Senate, Mr. Alexander explained that fear of plant closures should not dictate
3 Ohio's Energy policy. Specifically, Mr. Alexander stated:

4 Rather than relying on regulation and government mandates to
5 meet state energy objectives, FirstEnergy believes that the
6 competitive market will deliver better products and prices and drive
7 innovation and efficiency improvements

8 This push to change Ohio law should be driven by facts not fear . . .

- 9 • Fear about price increases
- 10 • Fear about lack of new generation construction
- 11 • Fear that competitive markets don't exist for electricity,
12 which is simply not true.⁹

13 However, FirstEnergy is now relying on fear to try to convince the Commission
14 that without Rider RRS, generation plants will close, and Ohio will not have
15 enough electricity to meet the needs of customers. The entire transcript of Mr.
16 Alexander's testimony is attached to my testimony as MW Ex. 2.

17 **Q. Should the statements made in the Stipulation regarding promoting**
18 **reliability and price stability be given any credibility given the previous**
19 **statements made by FirstEnergy?**

20 **A.** By approving Rider RRS, the Commission would have FirstEnergy enter into long
21 term contracts that would require FirstEnergy customers to pay above market
22 prices for competitive generation owned by FES. This is the very type of subsidy
23 of competitive generation that FirstEnergy has previously strongly opposed. As is
24 abundantly clear when comparing the Stipulation with FirstEnergy's previous
25

⁹ MW Ex. 2 at 4 (Testimony for Anthony J. Alexander for Senate Bill 221, Ohio Senate (Oct. 4, 2007)).

1 statements, FirstEnergy does not support subsidies to competitive generation
2 unless those subsidies are provided to generation owned by its affiliate
3 FirstEnergy Solution. In testimony to the Ohio General Assembly FirstEnergy has
4 articulately explained why subsidizing competitive generation is harmful the
5 customers. For these reasons the Commission should listen to the advice of
6 Tony Alexander and Lela Vespoli and reject subsidies to competitive generation
7 by rejecting the Stipulation.

8 **Q. Does this conclude your supplemental testimony?**

9 A. Yes, it does. But I reserve the right to supplement my testimony.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Supplemental Testimony of Matthew White* was served this the 2nd day of March 2015 via electronic mail upon the following:

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/s/Joseph Olier
Counsel for IGS Energy

House Public Utilities Committee

Competitive Markets Work

Submitted by:

Leila L. Vespoli
Executive Vice President and
General Counsel
FirstEnergy

October 19, 2011

Chairman Stautberg, Ranking Minority Member DeGeeter, members of the Committee – good morning. I’m Leila Vespoli, Executive Vice President and General Counsel of FirstEnergy, which is the parent company of three electric distribution utilities in Ohio – Ohio Edison, The Illuminating Company and Toledo Edison – and of our competitive subsidiary, FirstEnergy Solutions.

I’m pleased to be here today to talk about what Ohio has done right in creating an effective structure for providing customers with lower prices for electric generation, and where we can do more to maintain and expand competitive markets for electricity in the years ahead.

Specifically, my testimony will focus on three key points:

- First, with respect to electric generation, competitive markets work. They deliver the lowest price over the long-term to customers, and the proof is undeniable. Moreover, they will continue to ensure adequate and affordable supplies of generation for Ohio’s future – which, in my mind, is the only meaningful definition of Ohio’s energy security.
- Second, measures that restrict customer shopping or subsidize one electric generator over another are throw-backs to monopoly regulation. Such efforts that pick “winners” and “losers” in the energy market would create obstacles to private investment in generation and increase prices for customers.
- Third, governmental aggregation is the jewel of Senate Bill 3 – a proven way to deliver significant savings on electric generation to large numbers of residential and small business customers. Toward that end, we should pursue every effort to extend this channel to more Ohioans.

Keep Competitive Markets Working

Regarding competitive markets for electric generation, we already know that they work because these markets have resulted in lower electric generation prices and less risk for Ohio customers. That's good news for businesses and homeowners looking for every opportunity to stretch their limited resources.

Today, every customer of FirstEnergy's Ohio utilities is getting the benefits of competition for electric generation. Our utilities conduct wholesale auctions in which many suppliers compete to provide generation at the lowest price for customers who choose not to shop. In addition, customers are free to shop with competitive suppliers and get an even better price – and many customers are choosing to do that. These customers saved an estimated \$100 million in 2010 through competitive markets for electric generation. Right now, 2.3 million Ohioans – including more than 200,000 businesses – are saving money through electric competition. In addition, competitive suppliers are lining up to do more, with more than 40 registered suppliers in Ohio standing ready to bring additional savings to customers.

These and other benefits validate the good judgment of Ohio's legislators when they established competitive markets for electricity in our state – first in 1999 through Senate Bill 3, and then again in 2008 through changes made with Senate Bill 221.

This first display illustrates how our industry was restructured by Senate Bill 3, making generation a competitive business. The idea was that competitive markets for electric generation, instead of utility monopolies, would drive innovation, efficiency and investment – and, most important, deliver the lowest price to customers over time.

At FirstEnergy, we made every effort to meet the letter and spirit of the new law – devoting significant resources to prepare our company, employees and customers for competitive markets.

Among other changes, we structurally separated our regulated and unregulated operations so our power plants are no longer owned by our electric distribution companies. But

more important, all of our generation-related investments – including the risks that accompany them – are now borne by our shareholders, not by customers. This includes the significant investments we’ve made in environmental controls at our generating plants. This change has made us better – leaner, more efficient, and more customer-focused.

Since 1999, our competitive subsidiary, FirstEnergy Solutions, has invested nearly \$6.4 billion in its generating fleet while adding more than 900 megawatts of power. That’s the equivalent of a large, baseload power plant – and, once again, we’ve brought that additional capacity online *at no risk to customers*.

These are just a few of the many benefits that competitive markets for electricity are bringing to Ohio. Unfortunately, several ill-conceived proposals such as restrictions that effectively cap shopping have the potential to undermine these markets and drive up prices for certain effectively captive customers.

Eliminate Shopping Caps and Other Obstacles

For example, there is one proposal wherein a utility is seeking to be allowed to effectively cap shopping by limiting the amount of market-priced capacity available to suppliers over the next three years. Once these caps are reached, third-party suppliers would be forced to buy capacity from the company at prices that would be more than four times the market value. This is simply an attempt to restrict shopping and to force customers to pay the utility’s above-market rate. The stated rationale for imposing this servitude on customers is that the utility needs time to “transition” to market – a transition the company has had more than 10 years to make.

The price tag for this protectionist approach would be significant – especially when you consider how the arbitrary shopping cap would negatively impact governmental aggregation.

We’re also concerned about any effort to subsidize certain generating facilities. Much of the rhetoric around these efforts involves a misguided notion of Ohio’s energy security –

that our state could experience outages if it doesn't generate as much energy as it consumes. This notion simply ignores how the electric grid operates, and how competitive markets always secure generation from the lowest-cost sources – no matter where they are located.

The second display highlights PJM and MISO – regional transmission organizations that are charged with maintaining adequate supplies of wholesale power to serve the energy needs of nearly 100 million customers within their footprints. As you can see, these footprints extend far outside Ohio – so a power plant in one state can serve customers in any number of other states if it is economical to do so.

Even when utilities were vertically integrated – with centralized control of distribution, transmission and generation – new siting decisions involving power plants were always based on key factors such as available water, space and fuel sources. That's why even under the previous regulated model, power plants formerly regulated by the PUCO weren't necessarily built in Ohio. Some were built in Pennsylvania or West Virginia to serve customers in Ohio.

Even if Ohio's energy security were an issue – which it is not – our state imports less electricity today than it did under the previous regulated model, largely due to the significant amount of generation that has been added since competitive markets were established in Ohio. From 2005 to 2009, Ohio imported an average of 10 percent of its total electricity needs, compared with 17 percent in 1990.

The real problem with subsidized generation is that regulators would be picking the “winners” and “losers” in the energy market. We've been down that road before, and the results weren't pretty. For example, in the past our utilities in Pennsylvania and New Jersey were required to purchase power from Non Utility Generators, with contracts extending up to two or three decades. In our Pennsylvania service area alone, customers have paid \$1.5 billion over market prices for this subsidized generation. At a time when Ohio is exploring every opportunity to create jobs and grow our economy, we simply

cannot afford similar missteps that would saddle our customers with higher-than-market prices for electricity.

Let me offer a final example of the unintended consequences of subsidized generation. FirstEnergy Solutions is currently reviewing a plan to transform an old limestone mine in Norton, Ohio, into a Compressed Air Energy Storage, or CAES, facility. With the volume of nine Empire State Buildings, the site was identified by a leading developer of natural gas storage facilities as the best among more than 70 potential sites in the nation for supporting CAES technology. It would be scalable – from approximately 270 megawatts all the way up to 2,700 megawatts – and, more important, would support the operation of intermittent renewable sources such as wind by compressing air at night and standing ready to serve load on peak. However, it is highly unlikely that we would consider moving forward with this project if the plant would have to compete against subsidized generation in Ohio.

Extend Governmental Aggregation to More Ohioans

Rather than creating new obstacles to competitive markets, I believe lawmakers and regulators should build on efforts such as governmental aggregation that already are delivering lower prices for electric generation to Ohioans.

As you may know, governmental aggregation is an effective way for local communities to combine their residents and small businesses into a single, large buying group. With this significant buying power, municipalities can then shop for the best deal on electric generation on behalf of all its citizens. This process is currently providing savings on electricity to nearly 1.2 million Ohioans. In addition, ballots scheduled for the upcoming election in November would authorize governmental aggregation for more than 100 additional communities representing 450,000 residential and 15,000 small commercial customers.

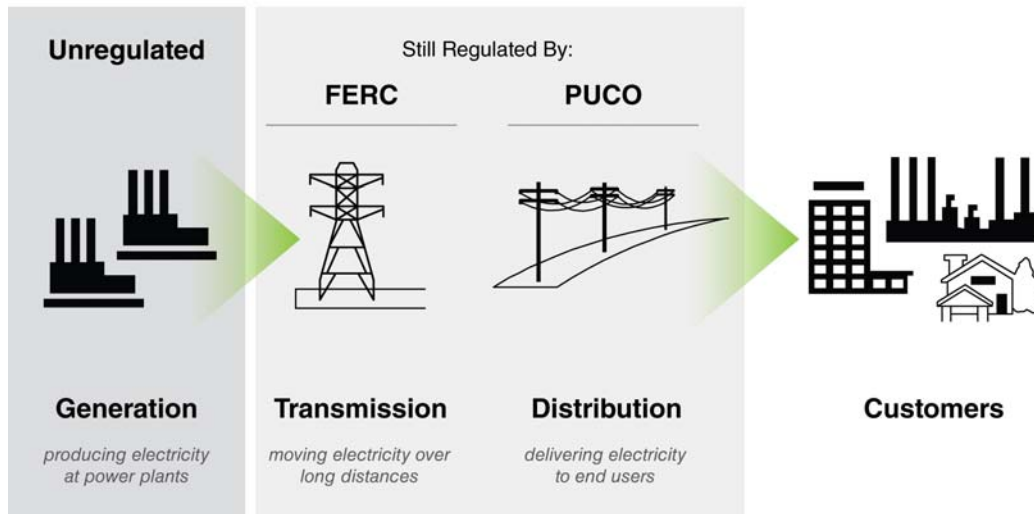
However, because of the way one utility plan is contrived, there will be limited – if any – opportunities for residential customers and no opportunities for small business customers to benefit from governmental aggregation.

The fact is, these and other restrictions can only undermine competitive markets that already are bringing significant savings to customers throughout Ohio. Simply put, we have the right structure in place. We just need to keep those markets working to continue delivering real savings to homes and businesses throughout our state. That's one of the best strategies I can think of to create jobs and promote economic development in Ohio.

As always, FirstEnergy remains committed to working with the Committee and the Ohio General Assembly. Thank you again for allowing me to address you today. I would be pleased to answer your questions.

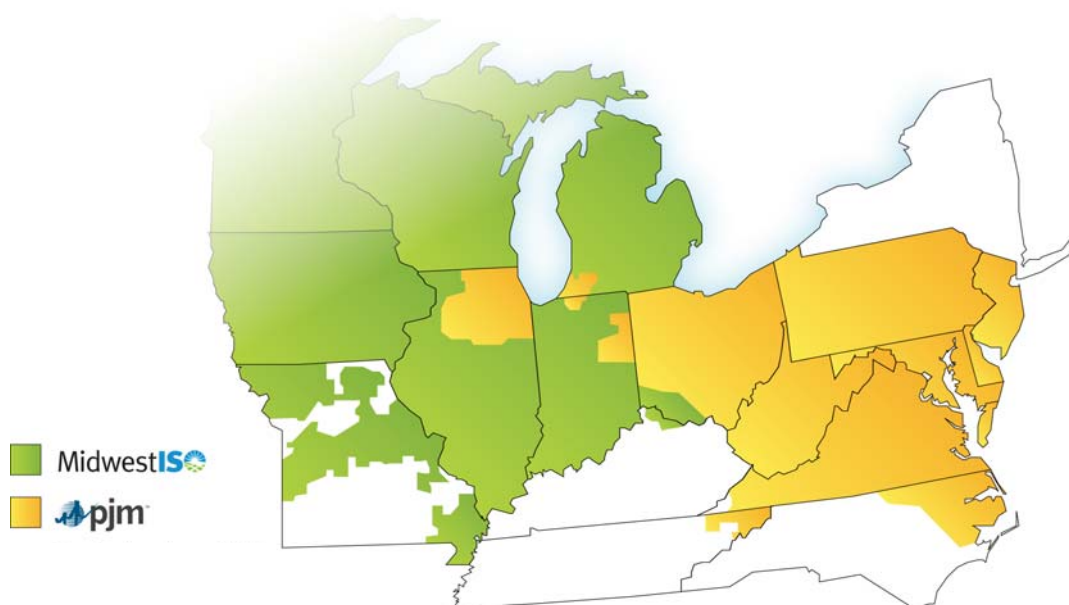
Attachment A:

Generation is a competitive business; transmission and distribution remain regulated



MISO and PJM – FERC Regulated

Large, regional transmission organizations coordinate movement of wholesale electricity



Testimony for Anthony J. Alexander
Senate Bill 221
Thursday, October 4, 2007

Good afternoon, Chairman Schuler and Senators. I'm Tony Alexander, president and chief executive officer of FirstEnergy.

I appreciate the opportunity to share my thoughts on the changes taking place in Ohio's electricity market – and, more specifically, on some of the features of Senate Bill 221.

First, let me give you some background on FirstEnergy. We're a diversified energy company headquartered in Akron that owns seven electric utility operating companies. Our three Ohio utilities – Ohio Edison, The Illuminating Company and Toledo Edison – serve 2.1 million customers within a 10,900-square-mile service area. In fact, we serve nearly 45% of the state's investor-owned utility customers.

We have about 8,000 employees in Ohio and own \$12 billion in assets here – including 89,000 miles of transmission and distribution lines, 643 substations, and more than one million square feet of office space.

We're also one of the state's largest taxpayers – with a total state and local tax bill of some \$455 million last year. And, we spend nearly \$700 million on goods and services with Ohio businesses each year.

Like any business, we face a wide array of challenges – but none bigger than what seems to be an ever-changing regulatory landscape that is making it even more difficult for us to continue to meet the energy needs of our customers.

As a company, we didn't spend a lot of time second-guessing Senate Bill 3 after it was signed into law in 1999. After all, it was what our customers demanded, because they know that competitive markets for electricity – like any other market – drive innovation, efficiency and investment and, over time, produce the lowest prices. Instead, we focused on preparing our business for the challenges of competitive markets described in the law.

For example, we doubled the size of our regulated wires business through a merger with GPU in 2001, and restructured our company to make it more adaptive and capable of competing. We separated our regulated and unregulated operations, and our generating plants are no longer owned by our utilities. Our competitive generation subsidiary increased the capacity of its fleet through investments in new generating facilities, upgrades at existing plants, and a generation swap with Duquesne Light Company. And it took steps to enhance the productivity and efficiency of our generating assets. In fact, since 1999, FirstEnergy has improved the productivity of its generating fleet by

27% and added about 1,600 megawatts of capacity. When major environmental upgrades are completed, our subsidiary will have invested about \$6 billion through 2010 in its generating assets.

After spending billions of dollars restructuring our company and positioning it to be a successful competitor, we're now faced with legislation that would turn back the clock on competition and return Ohio to the failed policies of regulated generation rates.

Ironically, Ohio's largest manufacturers, who led the charge for electric competition back in the 1990s, are now strong advocates for a return to regulation. A decade ago, they claimed that regulated electricity prices created a competitive disadvantage for manufacturers. They now claim that, without a return to regulation, they will again be at a competitive disadvantage.

It doesn't make sense to change public policy every time large manufacturers, who already enjoy special privileges and subsidies, think "the grass is greener" on the other side of the regulatory fence... especially when electricity prices in Ohio haven't changed in years.

You've all heard the stories about price increases in Maryland and Illinois that followed about 10 years of price freezes. But what you haven't heard about are the increases in regulated states since 1997 – the 45% increase in Florida or 53% increase in Washington or 57% increase in Wisconsin or other double-digit increases that have occurred in regulated states throughout that period.

Customers in Ohio literally have already saved billions because their rates haven't changed – and future price adjustments will simply catch up with cost increases for fuel, environmental protection and other expenses that others have been paying all along.

While price increases affect both regulated and competitive states, it's clear that competitive markets, over time, will produce the lowest price for customers. This basic economic theory applies to all markets, it applies to electricity – and it is almost universally accepted among the nation's leading economists.

In fact, only two years ago, even the Ohio Manufacturers Association supported competitive markets for electricity in its official position on electric restructuring, and I quote: "Electric restructuring should be given additional time to develop because competition still provides the best long-term opportunity to obtain low-cost, reliable electricity."

And, a recent poll released by a coalition of commercial customers shows 84% of Ohioans supporting choice and competitive markets for electricity.

It's easy to understand why customers prefer competitive markets when you consider the ratemaking process under regulation.

In regulated environments, the process for setting rates is fairly straightforward: Utilities build costly new power plants or add environmental controls, and then prices are set to reflect the substantially higher costs of service created by these new investments. As a result, rates typically jump up significantly as utilities enter cycles of new construction, whether the costs of these investments result in prices higher than market prices or not.

I've been in this business now for some 35 years, starting as a tax accountant for Ohio Edison after graduating from The University of Akron. I worked my way up the ranks after earning my law degree at night school... and as the company's counsel I saw firsthand the impact of this cycle of new investments on rates.

And, we're in that cycle right now. For example, owners of generation in Ohio are spending, and will continue to spend, billions of dollars to meet new, more stringent environmental standards. At FirstEnergy alone, we'll be spending \$1.8 billion over the next several years to meet these standards, and virtually every cost associated with our business – from coal and nuclear fuel to wire, poles and trucks – continues to increase dramatically. Also, other companies in the state, including AEP and Duke, have discussed plans to build new generating plants – and, of course, they have their own costly environmental additions to make.

In a regulated environment, these substantial new investments will significantly impact prices, as they did in the past. And instead of having shareholders bear the risks associated with these investments, those risks would be borne by customers on a utility-by-utility basis through the higher prices they pay.

In fact, the more an individual company has to spend because of its unique assets or the timing of its investments, the greater the price impact on that company's customers alone – and, of course, the greater the differences in prices within the state. It has happened in the past, and regulation will continue to create that disparity within Ohio. Only through competitive markets will prices essentially be the same throughout the state.

Re-regulation may sound like a good idea, when regulated rates appear to be lower than market prices – if for no other reason than current rate stabilization plans are holding prices essentially at 1990's levels. But if re-regulation becomes a reality in Ohio, we should expect significant increases in regulated rates to reflect the major investments all of the state's power producers have made and will be making to add new generation and to meet future environmental standards. And, in a couple of years, we will be back here again talking about how customers can avoid paying for these new investments, just as we were 10 years ago.

Reregulation and government mandates, controls and preferences are not the answer to Ohio's energy future. They failed in the past, and have been challenged in virtually every aspect since the early 1970s. Back then, the industry was faced with higher coal prices resulting from the Federal Coal Mine Health and Safety Act of 1969, the oil embargoes and double-digit inflation and interest rates that impacted the costs of generation plants then under construction, and all the other costs of providing utility services. The

resulting changes in utility rates to reflect these costs led to demands for co-generation, "anyone but utility" construction for new plants, and customer choice.

Rather than relying on regulation and government mandates to meet our state's energy objectives, FirstEnergy believes that the competitive marketplace will deliver better products and prices and drive innovation and efficiency improvements. And customers should not be denied the opportunity to receive those benefits.

This push to change Ohio law should be driven by facts, not fear...

- Fear about price increases, which are inevitable under either a regulated or competitive system;
- Fear about a lack of new generation construction, even though Ohio has added 7,500 megawatts of new generation facilities since 1999, with little or no increase in price to customers; and
- Fear that competitive markets don't exist for electricity, which is simply not true.

In our region -- which is overseen by the Midwest Independent System Operator -- some 310 market participants clear more than \$2.4 billion in wholesale energy transactions every month. I'd call that a fairly robust and mature market. In fact, a 2005 study by Cambridge Energy Research Associates found that wholesale competition has produced \$34 billion in savings over a seven-year period for the nation's residential customers alone. And, retail markets will develop, as they have in every other area, when prices are no longer capped at artificially low rates.

At the same time, we know that "one size doesn't fit all." That's why we also believe the Public Utilities Commission of Ohio should have the flexibility and broader authority to approve, extend and expand upon rate plans developed by utilities if they offer a better opportunity for short-term price stability.

In addition, we support market-driven programs that encourage energy efficiency, demand response and the use of advanced energy resources. And, we support programs that encourage greater investment in Ohio's aging utility infrastructure.

You might think that, given this position, FirstEnergy would support Senate Bill 221 -- but we don't.

The problem is that virtually every facet of this legislation offers very few details on how Ohio's utilities will be able to achieve the bill's stated goals, and it lacks the clarity needed to support the billions of dollars in investments our industry will require in the years ahead.

The bill's proponents would have us believe that the state's policy primarily supports competitive markets and customer choice. But the reality is, we simply can't get there the way the bill is currently written.

For example, Senate Bill 221 claims to offer a workable process that would enable utilities to use the competitive market to establish generation prices for customers who do not select alternative suppliers. But it is solely up to the PUCO to subjectively determine whether competitive markets exist – and whether customers can take advantage of them.

Also, the bill does not provide any context in which to establish prices, again leaving that up to the sole discretion of the Commission. Since the PUCO Chairman testified before you last week that the bill is “not necessarily cost-based,” there is no basis upon which to determine what is just and reasonable. The bill also is silent as to how prices would be determined for utilities that don't own generation or must purchase power in the competitive market to meet all or part of their customers' loads.

In addition, the bill mandates efficiency and renewable measures, but excludes over 20% of the state's customers from participating – those served by municipal electric companies or RECs – and allows state and other governmental facilities and industrials to bypass the costs of these mandates. In fact, after these new costs are embedded in rates, only the customers who choose not to use or are denied access to the competitive market will be left to pay for the entire costs of these mandates.

Further, industrials can cut special deals, get “optimal cost” electricity from the state, obtain subsidies for distributed generation, avoid the cost of any new generation, and continue to enjoy the subsidies provided under regulated ratemaking. And, the costs of providing these options will be borne by the remaining residential and commercial customers.

The bill also proposes that all Ohio customers have access to so-called “smart meters” – also known as Advanced Metering Infrastructure or AMI. The problem with this proposal is two-fold. First, statewide deployment of AMI would cost more than \$1 billion and result in the loss of more than 500 jobs. Second, the full benefits of these meters are only realized in truly competitive markets – not in a regulated environment that limits the options available to most customers.

Another costly proposal involves a target that, by 2025, 25% of the electricity sold under the standard service offer by electric distribution companies must come from advanced energy sources. In other words, only customers who are denied access to competitive markets would be required to pay for this mandate, and only electric distribution companies would be required to satisfy it.

Further, the bill narrowly defines advanced energy resources to include only certain types of nuclear and coal generation, and includes a mandate that at least half – or about 4,500 megawatts – must be from renewables, such as wind and solar power.

In Ohio, the wind doesn't always blow and the sun doesn't always shine. In fact, renewable sources of energy may be available less than one-third of the time, so the state may need to actually add more reliable forms of generation to support these renewable resources. The bill also misses a key advancement that must accompany any push for renewable resources, and that is energy storage. Without it, many of these options would make the overall electric system less reliable and more complex and costly to manage.

And, the cost of these renewable systems is significant. For example, the New Jersey Board of Public Utilities recently conducted an analysis of a renewable standard for solar power in that state. The BPU found that the state's 2% requirement for solar power – which would total nearly 2 million megawatt-hours per year – could cost as much as \$11 billion by 2020. To put this into perspective, a similar 2% requirement in Ohio could cost about twice as much, based on our state's higher usage.

Further, in order to qualify as advanced energy sources, new coal-fired plants would be required to capture at least 80 percent of their carbon-dioxide emissions. However, most industry experts – including the ones we're working with at our Burger Plant to test carbon capture and sequestration – believe these technologies won't be commercially viable until 2025 or later. As a result, the bill would actually require an even greater investment in renewable energy, or substantially more nuclear capacity within Ohio.

This legislation raises serious constitutional and statutory issues involving the taking of private property by government, due process and the state claiming supremacy over generating assets that are under federal jurisdiction and involved in interstate commerce. I won't go through legal arguments point-by-point, because you'll be getting our perspective on these issues from other FirstEnergy representatives at future hearings. But my sense is the same as the Governor's, that there are "considerable legal obstacles to a full return to a regulated system" – yet that is what this legislation is attempting to do.

In closing, I don't think the road to lower prices and better service for Ohio's customers requires yet another major overhaul of our industry, with a price tag that could reach billions of dollars. Instead, I believe there is a common-sense path that addresses the concerns of the Governor, and is based upon essentially the same criteria that have been relied upon to deliver rate stabilization throughout Ohio.

- First, I recommend that the PUCO have the clear statutory authority to negotiate rate plans with utilities in ways that won't be overturned by the Ohio Supreme Court;
- Second, consistent with existing law, if these negotiations don't result in rate plan agreements, a competitive bid process for delivering the best generation price possible through the competitive marketplace for electricity should be used to establish the generation rate for customers who do not choose an alternative supplier; and

- Finally, to address the other components of the Governor's plan, the PUCO's statutory authority should be broadened to promote energy efficiency, demand response, renewable power and infrastructure improvements through variable rate mechanisms that provide adequate recovery for these and other societal programs.

We strongly believe these three recommendations would better serve our customers, and your constituents. Thank you for inviting me here today to share my thoughts on Senate Bill 221 and other key issues affecting Ohio's energy future. I will be pleased to answer your questions.

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Summary: Testimony of Matthew White in Opposition to Stipulation electronically filed by Mr. Joseph E. Olikier on behalf of IGS Energy