

OCC/NOPEC 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 Provide     ) Case No. 14-1297-EL-SSO  
For A Standard Service Offer Pursuant To     )  
R.C. 4928.143, In The Form Of An Electric     )  
Security Plan     )

**SECOND SUPPLEMENTAL DIRECT TESTIMONY  
OF  
MATTHEW I. KAHAL**

**On Behalf of the  
The Office of the Ohio Consumers' Counsel**  
*10 West Broad Street, Suite 1800  
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**and**

**The Northeast Ohio Public Energy Council**  
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**DECEMBER 30, 2015**

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On Behalf of the Office of the Ohio Consumers' Counsel  
and The Northeast Ohio Public Energy Council  
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**I. OVERVIEW**

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

***A1.*** My name is Matthew I. Kahal. I am employed as an independent consultant retained by the Office of the Ohio Consumers' Counsel ("OCC") and the Northeast Ohio Public Energy Council ("NOPEC") to address certain issues in this docket. My business address is 1108 Pheasant Crossing, Charlottesville, VA 22901.

***Q2. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS CASE?***

***A2.*** Yes. On December 22, 2014, the OCC and NOPEC submitted direct testimony that I prepared that addresses the statutory test for the Electric Security Plan ("ESP") versus the Market Rate Offer ("MRO") alternative. That testimony includes a statement of my qualifications and listing of past testimony. On March 2, 2015, the OCC and NOPEC submitted supplemental testimony that I prepared that evaluated the first stipulation ("First Stipulation") submitted in this docket on December 22, 2014.

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

***A3.*** On December 1, 2015, the three FE Utilities (Ohio Edison Company, Cleveland Electric Illuminating Company, and the Toledo Edison Company) filed a

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1 proposed Third Supplemental Stipulation and Recommendation (“Stipulation”),  
2 supported by certain parties, intended to resolve all issues in this case. Earlier in  
3 2015 the FE Utilities submitted two supplemental Stipulations that amended the  
4 First (i.e., December 2014) Stipulation. For convenience, I reference the First  
5 Stipulation and the three supplemental Stipulations as (“the Stipulations”). The  
6 Third Supplemental Stipulation (which I refer to as the “New Stipulation”) is  
7 supported by the Fifth Supplemental Testimony of FE Utilities’ witness Eileen M.  
8 Mikkelsen. To my knowledge no other party has submitted supporting testimony  
9 pertaining to this new Stipulation.

10  
11 I have been asked by the OCC and NOPEC to evaluate the merits of the proposed  
12 Third Supplemental Stipulation and whether it should be approved as filed.

13  
14 ***Q4. BEFORE TURNING TO THE THIRD SUPPLEMENTAL STIPULATION,***  
15 ***PLEASE SUMMARIZE YOUR FINDINGS AND RECOMMENDATIONS IN***  
16 ***YOUR DIRECT TESTIMONY.***

17 ***A4.*** My direct testimony evaluated the FE Utilities’ assertion that the proposed ESP  
18 IV, in the aggregate, is superior to an MRO on both quantitative and qualitative  
19 grounds. FE Utilities’ witness Fanelli finds that over 15 years, ESP IV would  
20 provide customers about \$800 million (net present value) in rate savings, with  
21 nearly all savings associated with the FE Utilities’ proposed Retail Rate Stability  
22 Rider (“Rider RRS”). However, he does not conduct the test for the as-filed ESP

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1 IV time period of June 1, 2016 to May 31, 2019 but rather for the full 15-year life  
2 of the Rider RRS.

3  
4 Drawing in part on the analyses of other OCC and NOPEC witnesses, I find that  
5 the proposed ESP IV will harm customers as compared to an MRO. The  
6 quantified harm, in the form of higher customer rates, would be on the order of  
7 \$500 million to \$600 million during the June 1, 2016 to May 31, 2019 ESP IV  
8 time period. And that quantified harm to customers would possibly be as much as  
9 \$4 billion if the full 15-year time period associated with the term of Retail Rate  
10 Stability Rider ("Rider RRS") is considered.<sup>1</sup> The principal sources of the higher  
11 customer rates caused by the proposed ESP IV would be Rider RRS, the  
12 extension and concomitant rate increases associated with the Delivery Capital  
13 Recovery Rider ("Rider DCR") and the Government Directives Recovery Rider  
14 ("Rider GDR").

15  
16 An assertion of the FE Utilities is that Rider RRS, through some unexplained  
17 process, would help preserve employment at certain FirstEnergy Solutions  
18 ("FES")-owned merchant power plants, thereby benefitting the Ohio economy.  
19 My direct testimony presents a number of reasons for questioning this alleged  
20 benefit.

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<sup>1</sup> My quantified net harm estimate is about \$3.1 billion using OCC/NOPEC witness Wilson's midpoint gas/electric price escalation scenario. (Kahal direct testimony, p. 25).

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**Q5. DOES YOUR SECOND SUPPLEMENTAL TESTIMONY ALTER YOUR ESP  
VS. MRO TEST CONCLUSIONS?**

**A5.** No. The modifications to the First (i.e., December 2014) Stipulation would not materially alter my original direct testimony finding that an MRO is far more favorable to customers than the proposed ESP.

**Q6. YOU STATE IN YOUR DIRECT AND SUPPLEMENTAL TESTIMONY  
THAT THE OCC AND NOPEC OPPOSE, AS HARMFUL TO CUSTOMERS,  
VARIOUS KEY ASPECTS OF THE AS-FILED AND STIPULATION-  
MODIFIED ESP IV. DOES THE THIRD SUPPLEMENTAL STIPULATION  
SUCCEED IN IMPROVING ESP IV, THEREBY ADDRESSING THE  
OCC/NOPEC CONCERNS ABOUT HARMS TO CUSTOMERS?**

**A6.** No. The OCC and NOPEC presented a detailed critique of the most important elements of ESP IV—Riders RRS, DCR, and GDR.<sup>2</sup> The Stipulation fails to adequately address any of these criticisms, and even makes Riders DCR and GDR worse for customers by extending them to eight years. While the new Stipulation sets forth certain new provisions, the FE Utilities have not demonstrated that in the aggregate they are beneficial to customers, nor do they offset the potential for very substantial customer harm from imposing Riders RRS, DCR, and GDR.

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<sup>2</sup> Without question, another key component of ESP IV is the proposed competitive bidding process (“CBP”) for SSO supply acquisition. The OCC and NOPEC have not contested the CBP proposal, and the FE Utilities concede that the CBP would be essentially identical to their proposal under an MRO.

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1   ***Q7. HAS THE PUBLIC UTILITIES COMMISSION OF OHIO (“PUCO” OR***  
2           ***“COMMISSION”) ESTABLISHED STANDARDS OF REVIEW FOR***  
3           ***EVALUATING PROPOSED SETTLEMENTS?***

4   ***A7.*** Yes, it has. The PUCO evaluates stipulations under the following standards:

5           1. Is the settlement a product of serious bargaining  
6                   among capable, knowledgeable parties where there  
7                   is a diversity of interests among the stipulating  
8                   parties?

9           2. Does the settlement package violate any important  
10                  regulatory principle or practice?

11          3. Does the settlement, as a package, benefit  
12                  ratepayers and the public interest?<sup>3</sup>

13          My Second Supplemental Testimony addresses the PUCO’s three criteria,  
14          although criterion (1) is discussed only very briefly. I am referencing the  
15          settlement standard because the PUCO uses it.

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<sup>3</sup> See, e.g., Case No. 12-1230-EL-SSO, *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide a Standard Service Offer Pursuant to Section 4928.143, Revised Code in the Form of an Electric Security Plan*, July 18, 2012, Opinion and Order, at p. 24.

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1    ***Q8.    IS IT APPROPRIATE TO APPLY THIS THREE-PRONG TEST TO THE***  
2           ***STIPULATION THAT WAS REACHED IN THIS PROCEEDING?***

3    ***A8.***    Not necessarily, for several reasons. First, bargaining with FE Utilities in this  
4           setting is not sufficiently serious because FE Utilities can unilaterally reject any  
5           modifications to their electric security plan. This problem is explained in the  
6           insightful opinion of Commissioner Roberto in FirstEnergy's initial ESP case  
7           filed in 2008:

8                   When parties are capable, knowledgeable and stand equal before  
9                   the Commission, a stipulation is a valuable indicator of the parties'  
10                  general satisfaction that the jointly recommended result will meet  
11                  private or collective needs. It is not a substitute, however, for the  
12                  Commission's judgment as to the public interest. The Commission  
13                  is obligated to exercise independent judgment based on the statutes  
14                  that it has been entrusted to implement, the record before it, and its  
15                  specialized expertise and discretion.

16  
17                  In the case of an ESP, the balance of power created by an electric  
18                  distribution utility's authority to withdraw a Commission-modified  
19                  and approved plan creates a dynamic that is impossible to ignore. I  
20                  have no reservation that the parties are indeed capable and  
21                  knowledgeable but, because of the utility's ability to withdraw, the  
22                  remaining parties certainly do not possess equal bargaining power  
23                  in an ESP action before the Commission. The Commission must  
24                  consider whether an agreed-upon stipulation arising under an ESP  
25                  represents what the parties truly view to be in their best interest -  
26                  or simply the best that they can hope to achieve when one party  
27                  has the singular authority to reject not only any and all  
28                  modifications proffered by the other parties but the Commission's  
29                  independent judgment as to what is just and reasonable. In light of  
30                  the Commission's fundamental lack of authority in the context of  
31                  an ESP application to serve as the binding arbiter of what is  
32                  reasonable, a party's willingness to agree with an electric  
33                  distribution utility application can not be afforded the same weight  
34                  due as when an agreement arises within the context of other



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1 regulatory frameworks. As such, the Commission must review  
2 carefully *all terms and conditions of this stipulation*.<sup>4</sup>  
3

4 Commissioners Centolella and Lemmie stated similar concerns.<sup>5</sup>

5 As reflected in Commissioner Roberto's opinion, the bargaining is tilted in favor  
6 of the utility, FE Utilities that has the ability to reject modifications to its ESP  
7 plan. The favoring of the utility in the negotiation process for a stipulation in an  
8 ESP case negates the serious bargaining required to meet the first prong.

9  
10 Second, the settlement should not be judged as a package, regarding the second  
11 and third prongs. The settlement is an amalgamation of terms, many of them  
12 unrelated to this case. It is not reasonable for the PUCO to defer to this  
13 Stipulation by treating it as a package.

14  
15 Under the third prong of the stipulation standard, the PUCO must determine  
16 whether the settlement, as a package, benefits ratepayers and the public interest.

17 But this settlement includes, as a result of the dealmaking, far-ranging  
18 provisions that are not logically connected to the ESP and should not be deferred  
19 to as a package. And various of those Stipulation provisions use other people's

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<sup>4</sup> *In re FirstEnergy's 2008 ESP Case*, Case No. 08-935-EL-SSO, Second Finding and Order, Opinion of Commissioner Cheryl L. Roberto Concurring in Part and Dissenting in Part at 1-2 (March 25, 2009) (citations omitted, emphasis added).

<sup>5</sup> Id., Opinion of Commissioners Paul A. Centolella and Valerie A. Lemmie, Concurring at 2 (March 25, 2009) ("The ability of an electric distribution utility to withdraw a Commission-modified and approved ESP...need to be taken into account when considering the weight to be given to this stipulation" and "The Commission must evaluate whether the stipulation represents a balanced and appropriate resolution of the issues.").

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1 money (consumers' money) to underwrite (subsidize) the  
2 dealmaking. This approach is not an appropriate way to conduct  
3 ratemaking and public policymaking.  
4

5 Recently, when reviewing a stipulation that directed payments to  
6 the stipulation's signatories, the PUCO noted that such provisions  
7 are "strongly disfavored."<sup>6</sup> And the PUCO warned that such  
8 provisions are likely to be stricken in future stipulations:

9  
10 The Commission notes that provision l.b. of the Stipulation  
11 includes direct payments to intervenors of funds to be refunded to  
12 ratepayers. Because of the unique circumstances of this case,  
13 including the hard work of the Signatory Parties in reaching the  
14 Stipulation and the lengthy procedural history of this case, the  
15 Commission will not disturb this provision and will approve the  
16 Stipulation without modification. However, the Signatory Parties  
17 to this Stipulation and parties to future stipulations should be  
18 forewarned that such provisions are strongly disfavored by this  
19 Commission and are highly likely to be stricken from any future  
20 stipulation submitted to the Commission for approval.<sup>7</sup>  
21  
22

23 It should be concerning in this case that certain of the intervenors agreeing to the  
24 stipulation will receive cash equivalents and other benefits that are to be paid by  
25 consumers who oppose the settlement. Examples of cash equivalents that are

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<sup>6</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Recover Cost Associated with the Ultimate Construction and Operation of an Integrated Gasification Combined Cycle Electric Generation Facility*, Case No. 05-376-EL:-UNC, Order on Remand at 12 (Feb. 11, 2015).

<sup>7</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Recover Costs Associated with the Ultimate Construction and Operation of an Integrated Gasification Combined Cycle Electric Generation Facility*, Case No. 05-376-EL-UNC Order on Remand at 11-12 (February 11, 2015).

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1 given to signatory parties but paid for by other customers are automaker credits,  
2 interruptible load credits, and other rate discounts or rate design concessions.

3  
4 This concern was articulated by OMAEG witness Professor Hill earlier in this  
5 proceeding who stated:

6 Here, the Companies have assembled a coalition to promote a  
7 policy that benefits their affiliate, FirstEnergy Solutions, and the  
8 other coalition members. The benefit to the Companies consists of  
9 a subsidy to pay for its affiliated company's underperforming  
10 generation. This benefit to the Companies has been valued at \$3  
11 billion by one expert witness for a non-signatory party, the Office  
12 of the Ohio Consumers' Counsel.

13  
14 The large heterogeneous group that has to pay for the majority of  
15 this proposed policy, as well as the other costs embedded in the  
16 stipulations, consists of the remaining commercial, industrial, and  
17 residential ratepayers of northern Ohio who are not members of the  
18 redistributive coalition. This large ratepayer group would be very  
19 difficult and expensive to organize for purposes of advocating the  
20 group's interests.<sup>8</sup>

21  
22  
23 Instead of considering the settlement as a package, the PUCO should consider  
24 each individual Stipulation term on its own merit or lack of merit, under  
25 regulations applicable to it. Some provisions (such as the proposal to implement  
26 straight fixed variable rates for residential customers and the proposal to use other  
27 people's money to build renewable power plants) should not even be considered  
28 in the current proceeding, and instead should only be considered in a separate  
29 stand-alone case, if at all. Giving the stipulation deference as a "package" allows

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<sup>8</sup> Second Supplemental Testimony of Edward W. Hill at 19-20 (August 10, 2015).

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1 for terms that are unreasonable or even outrageous for consumers to be accepted  
2 by the PUCO, in the name of considering the package without items having to  
3 individually withstand PUCO scrutiny.  
4

5 ***Q9. HOW DOES THE THIRD SUPPLEMENTAL STIPULATION ALTER THE***  
6 ***STIPULATIONS PREVIOUSLY SUBMITTED IN THIS DOCKET?***

7 ***A9.*** It is substantially different from the previous Stipulations, as summarized by  
8 witness Mikkelsen on pages 3-6 of her December 1, 2015 Fifth Supplemental  
9 Testimony. The most fundamental change is that ESP IV will increase in term  
10 from three to eight years (extending to 2024), with the vast majority of the various  
11 provisions, rate design changes, and rate riders now extended for that full  
12 eight-year term. However, the term of Rider RRS is reduced from the originally  
13 proposed 15 years to the eight years. Second, various provisions in the new  
14 Stipulation increase shareholder contributions over the eight years to about \$51  
15 million (i.e., about \$6 million per year) for low income assistance, energy  
16 efficiency programs, advisory agency funding and economic development. Third,  
17 this new Stipulation contains numerous provisions addressing various policy  
18 issues including CO<sub>2</sub> reduction, energy efficiency, renewable resources, battery  
19 storage, moving to a fixed variable rate design for residential distribution  
20 customers, and grid modernization.

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1    ***Q10. DOES THIS NEW STIPULATION INCLUDE THE RETAIL RATE***  
2            ***STABILITY RIDER (“RIDER RRS”) AND THE DISTRIBUTION CAPITAL***  
3            ***RECOVERY RIDER (“RIDER DCR”)?***

4    ***A10.*** Yes, with some modification. These two riders have been among the most  
5            controversial (and costly) issues in this case. The new Stipulation reduces the  
6            term of Rider RRS and the underlying wholesale Purchase Power Agreement  
7            (“PPA”) from 15 to eight years, reduces the return on equity (“ROE”) in the  
8            FirstEnergy Solutions (“FES”) PPA cost of service formula, and provides up to  
9            \$100 million in rate credits in years five through eight if Rider RRS is “under  
10           water” for customers in those years. Rider DCR would now be extended from  
11           three to eight years but with the annual revenue cap increases after year (3) of  
12           ESP IV being \$15 to \$20 million rather than \$30 million each year in previous  
13           Stipulations and the as-filed case.

14  
15   ***Q11. HAS WITNESS MIKKELSEN UPDATED THE ESP VERSUS MRO TEST***  
16            ***FOR THE NEW STIPULATION?***

17   ***A11.*** Yes. At page 12 of her December 1, 2015 testimony, she finds that the ESP under  
18           the new Stipulation produces a net benefit of \$612.1 million (\$296 million net  
19           present value), with about 90 percent of this alleged benefit due to Rider RRS. It  
20           appears that the Rider RRS benefit is based on the PJM market price curves and  
21           generating unit cost data developed in mid-2014 for the FE Utilities’ as-filed case  
22           (other than the reduced FES’ ROE). The \$612.1 million quantified benefit is

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1 derived from the sum of a calculated Rider RRS benefit of \$561 million over  
2 eight years plus the approximately \$51 million in shareholder contributions for  
3 certain economic development, energy efficiency, agency funding and low  
4 income assistance.

5  
6 ***Q12. DO YOU AGREE THAT THE THIRD SUPPLEMENTAL STIPULATION***  
7 ***PROVIDES BENEFITS COMPARED TO THE AS-FILED ESP IV AND***  
8 ***PREVIOUS STIPULATIONS?***

9 ***A12.*** There are so many changes to this latest Stipulation (some being major new  
10 policy issues) compared to the as-filed ESP IV and previous Stipulations that it is  
11 difficult to determine if it is better or worse. On the positive side, Rider RRS (and  
12 the underlying PPA) has a reduced term from 15 to 8 years, there is a reduced  
13 FES' ROE, and a potential customer credit of up to \$100 million. All else held  
14 equal, these three changes could mitigate the expected customer harm from Rider  
15 RRS. (I later explain the significance of the "all else equal" qualification.) In  
16 addition, this latest Stipulation increases shareholder contributions to various  
17 programs.

18  
19 Unfortunately, the latest Stipulation increases the customer harm from various  
20 rate riders by increasing the term of ESP IV from three to eight years. The most  
21 obvious example is Rider DCR. The incremental or additional revenue cap for  
22 that rider would increase from \$180 million for the three years to \$915 million

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1 due to the new eight-year term. The FE Utilities have failed to justify any of this  
2 revenue cap increase. The Government Directives Rider ("Rider GDR") and the  
3 Economic Load Response Program Rider ("Rider ELR") and Rider EDR (b),  
4 which now would be extended from three to eight years, may be very costly for  
5 the FE Utilities' ratepayers who would bear responsibility for the costs. Notably,  
6 the FE Utilities' as-filed case did not even include Rider ELR.

7  
8 At the present time, there is insufficient evidence presented by the FE Utilities to  
9 evaluate the benefits and costs of the various new provisions, some of which raise  
10 important policy issues. The FE Utilities' testimony supporting the new  
11 Stipulation did little more than briefly mention the existence of these new  
12 provisions with no substantive explanation concerning why such policy initiatives  
13 or other provisions are in the public interest. I do have concerns regarding some  
14 of these provisions.

15  
16 For example, paragraph E(3)(d) increases the FE Utilities' energy efficiency  
17 shareholder savings cap from \$10 million to \$25 million per year, which  
18 potentially could accumulate to \$120 million over the eight years of ESP IV.  
19 Section F (1) provides for a major rate design change for residential distribution  
20 rates, i.e., moving over time to fixed variable rates. This provisions would  
21 mitigate utility business risk (by improving cost collection certainty), but with no

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1 corresponding reduction to the FE Utilities' authorized rate of return to reflect the  
2 lowered business risk. Again, there is no substantive supporting testimony.  
3 As my testimony discusses, this new Stipulation taken as a whole, does not  
4 provide a net benefit to customers, is not in the public interest, and should be  
5 rejected by the PUCO. If approved, it will likely saddle customers with over \$3.2  
6 billion of above market costs, propping up the profits of the FE Utilities' affiliate-  
7 owned unregulated power plants.

8  
9 ***Q13. DOES THE STIPULATION PASS THE STATUTORY ESP VERSUS MRO***  
10 ***TEST?***

11 ***A13.*** No, it does not. As noted above, I conclude in my direct testimony that the FE  
12 Utilities' proposed ESP IV would impose on customers, a net cost of about \$500  
13 to \$600 million over the three-year term.

14  
15 Under the proposed new Stipulations, with an eight-year ESP IV, I find even  
16 greater harm to ratepayers—in excess of \$3.2 billion. This estimate incorporates  
17 OCC/NOPEC witness James Wilson's updated market energy price projections as  
18 described in his supplemental testimony.

19  
20 Please note that my ESP versus MRO results do not reflect other possible  
21 customer costs from the new Stipulation such as Rider GDR, Rider ELR, Rider  
22 EDR (b) and the increase in shareholder shared savings for energy efficiency



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1 programs. These Stipulation provisions are difficult to quantify at this time, but  
2 potentially could be very costly to the FE Utilities' ratepayers. Hence, the  
3 updated ESP vs. MRO analysis that I am presenting in this testimony, which  
4 omits such items, should be viewed as conservative.

5  
6 ***Q14. BASED ON YOUR REVIEW OF THE STIPULATION, WHAT IS YOUR***  
7 ***RECOMMENDATION?***

8 ***A14.*** The Stipulation will harm customers and is not in the public interest primarily  
9 because it retains Riders RRS, DCR, and GDR. The change to eight years  
10 shortens Rider RRS which mitigates that rider's harm, but it lengthens the terms  
11 of Rider DCR and Rider GDR (as well as Rider ELR and others) from three to  
12 eight years which makes matters worse for customers. Additionally, at the present  
13 time, there is insufficient supporting testimony to evaluate the numerous new  
14 policy issues raised for the first time in the December 1, 2015 Stipulation. I  
15 therefore recommend rejection of both the Stipulation and the as-filed ESP IV.  
16 Instead, SSO customers should be served generation supply through an MRO.

17  
18 If the Commission is inclined to improve either the Stipulation or the as-filed  
19 case, I believe that it could be greatly improved with certain modifications. This  
20 would include a true shared savings mechanism for Rider RRS, as recommended  
21 by OCC/NOPEC witness Wilson and a base distribution rate case to be filed no  
22 later than 2016 to help address some concerns regarding Rider DCR.

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1    ***Q15. HOW IS THE REMAINDER OF YOUR TESTIMONY ORGANIZED?***

2    ***A15.*** The next section presents my application of the ESP versus MRO test to the new  
3       Stipulation, incorporating OCC/NOPEC witness Wilson's update for Rider RRS.  
4       In Section IV, I discuss why the new Stipulation does not pass the Commission's  
5       criteria for approval. I discuss this only in summary form since my March 2,  
6       2015 Supplement Testimony discussed this in great detail, and that discussion  
7       largely applies to this new Stipulation and therefore is incorporated by reference.

8  
9    **II. THE UPDATED ESP VS MRO TEST**

10  
11   ***Q16. HAS WITNESS MIKKELSEN EVALUATED THE ESP VS MRO TEST FOR***  
12   ***THE NEW STIPULATION?***

13   ***A16.*** Yes, she conducted the quantitative test, shown at pages 12 -14 of her testimony.  
14       Her analysis includes \$24.0 million for economic development funding, \$19.1  
15       million in low income assistance funding and \$8.0 million for customer advisory  
16       agency funding. All such funds are to be supplied by shareholders during the  
17       eight-year ESP IV and total to \$51.1 million (or about \$6 million per year).  
18       During the eight years of ESP IV, the FE Utilities projections show a net  
19       customer credit under Rider RRS of \$561 million. Thus, the total ESP IV benefits  
20       as calculated by FE Utilities total to \$612.1 million. As before, the ESP vs MRO  
21       test treats Rider DCR and the wholesale SSO generation supply auction as a  
22       “wash.” For Rider DCR, it is assumed that an MRO would produce the same

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1 price end result through the use of base rate cases. The FE Utilities' position is  
2 that the wholesale auctions for SSO would be the same under the ESP and an  
3 MRO. As best I can determine, the Rider RRS analysis continues to use the same  
4 projections of power plant costs and PJM market prices as employed in the as-  
5 filed Application (other than revising the FES' ROE and truncating the results  
6 after eight years).

7  
8 ***Q17. DOES WITNESS MIKKELSEN'S ESP VS MRO TEST ANALYSIS***  
9 ***INCORPORATE A QUALITATIVE ASSESSMENT OF THE***  
10 ***STIPULATION?***

11 ***A17.*** No, not in any meaningful way. Pages 3 – 6 of her testimony list in bullet point  
12 format no less than 18 separate provisions associated with the new Stipulation.  
13 But her testimony is little more than a brief summary description of those  
14 provisions. The claimed qualitative evaluation of the new provisions for purposes  
15 of the ESP vs MRO is merely one short paragraph on page 13. This is little more  
16 than a conclusory assertion that the various new provisions and initiatives are  
17 beneficial and consistent with public policy goals, with no supporting evidence.  
18 However, it seems clear that a number of these new initiatives are clearly intended  
19 to benefit shareholders rather than customers (e.g., the move to a fixed variable  
20 rate design, extensions of Riders DCR and GDR and a sharp increase in the  
21 energy efficiency shared savings).

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**Q18. AS A RESULT OF THE NEW STIPULATION, ARE YOU REVISING YOUR  
PREVIOUS ESP VS MRO STUDY?**

**A18.** Yes. I am revising my calculations for three principal reasons. First, I am provisionally (subject to further evidence) accepting witness Mikkelsen's assertions of \$51 million in shareholder funding for economic development efforts, low income assistance, advisory agency costs and energy efficiency as being a benefit of the ESP IV. Second, I modify and increase my earlier ratepayer cost for Rider DCR from a range of \$90 to \$180 million to \$240 to \$330 million. I have increased both ends of the range by \$150 million due to the five year extension of Rider DCR, with that extension adding \$30 million per year during those five years in costs that would not be incurred by customers under an MRO. Third, I incorporate OCC/NOPEC witness Wilson's updated study result (his middle scenario) of a net cost of Rider RRS of \$2,969 million. His lower market price case, which is based on observed futures market published prices, produces a customer cost penalty for Rider RRS of \$3,912 million, while his high market price scenario produces a net customer cost of \$50 million. All figures are nominal (not present value) dollars and cover the proposed eight years of ESP IV. Please note that witness Wilson has also incorporated the lowered FES' ROE (which provides a cost savings) and the up to \$100 million ratepayer credit, as provided in the new Stipulation.

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1 Using witness Wilson's middle market price scenario, ESP IV under the new  
2 Stipulation results in a cost to ratepayers (above and beyond costs under an MRO)  
3 of \$3,160 million to \$3,250 million.  
4

5 ***Q19. HOW WOULD YOUR ESP VS. MRO RESULTS CHANGE UNDER***  
6 ***WITNESS WILSON'S OTHER TWO MARKET PRICE PROJECTION***  
7 ***SCENARIOS?***

8 ***A19.*** Using witness Wilson's scenario with higher market prices, the cost premium to  
9 customers of ESP IV relative to the MRO becomes \$239 million to \$329 million.  
10 However, under witness Wilson's low market price scenario (which is based on  
11 recently published market forward prices), the cost premium to customers of the  
12 ESP IV versus the MRO alternative becomes \$4,102 million to \$4,192 million.  
13

14 ***Q20. ONE POSSIBLE CRITICISM THAT THE FE UTILITIES MAY RAISE***  
15 ***REGARDING WITNESS WILSON'S SCENARIO THAT USES PUBLISHED***  
16 ***FORWARD MARKET PRICES IS THAT SUCH INFORMATION MAY NOT***  
17 ***BE RELIABLE AFTER ABOUT THREE YEARS DUE TO A PAUCITY OF***  
18 ***ACTUAL TRANSACTIONS. IS THIS A PERSUASIVE ARGUMENT NOT***  
19 ***TO MAKE USE OF CURRENT PUBLISHED FUTURES PRICES?***

20 ***A20.*** No, it is not. Witness Wilson's futures market-based scenario for just partial year  
21 2016, calendar 2017 and calendar 2018 indicate a customer loss under Rider RRS

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1 of about \$1.5 billion. Please note that this scenario incorporates the reduced FES'  
2 ROE that is provided for in the new Stipulation.

3  
4 ***Q21. THE FE UTILITIES ARGUE THAT RIDER RRS MAY PROVIDE A LARGE***  
5 ***TRANSMISSION INVESTMENT COST SAVINGS BENEFIT FOR***  
6 ***CUSTOMERS. IS THAT AFFECTED BY THE DECISION TO REDUCE***  
7 ***THE TERM FROM 15 TO EIGHT YEARS IN THE NEW STIPULATION?***

8 ***A21.*** Yes, to some extent this change to eight years undermines the FE Utilities  
9 transmission argument. As noted earlier in this case, the alleged additional  
10 transmission costs identified by FE Utilities witnesses would only arise at all if  
11 the Sammis coal plant and/or Davis Besse nuclear plant were to be retired (due to  
12 the rejection of Rider RRS). This asserted benefit also assumes that the retired  
13 generation would not be replaced by new generation located in the general  
14 vicinity of these two plants. No such credible retirement evidence has been  
15 presented in this case, as the FE Utilities representatives have merely  
16 acknowledged that retirement is only a possibility.

17  
18 It is important to understand that truncating Rider RRS to eight years makes large  
19 transmission benefits even less likely. Assume for the sake of discussion that  
20 these two power plants are deemed to be so uneconomic that they could not cover  
21 their "to go" costs from market revenue and that absent the customer- provided  
22 subsidy under Rider RRS they would be retired. In that case (which is not

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1 supported by any analysis), Rider RRS only serves to delay the plant retirement  
2 decision for a few years. That is, after Rider RRS expires, then under this  
3 inadequate market price scenario the plants would be retired anyway but a few  
4 years later. Thus, even with Rider RRS (which merely delays the retirement  
5 decision), the same transmission must still be built, but just a few years later than  
6 it otherwise would be. Hence, the new transmission associated with power plant  
7 retirement is merely delayed, not avoided. Moreover, when the delayed new  
8 transmission is constructed, the installed cost will be greater due to inflationary  
9 effects.

10

11 While I nonetheless recognize that there may be some ratepayer benefit from  
12 delaying new transmission construction for a few years, it is a small fraction of  
13 the \$1.7 to \$4.1 billion<sup>9</sup> benefit identified in witness Mikkelsen and other FE  
14 Utilities witnesses' earlier testimony. I note that in Ms. Mikkelsen's December 1,  
15 2015 testimony on the ESP vs MRO test, no dollars were included for new  
16 transmission allegedly avoided by the Rider RRS.

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<sup>9</sup> Mikkelsen Second Supplemental Testimony dated May 4, 2015, page 8.

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**Q22. PLEASE EXPLAIN WHY YOUR COST PENALTY FOR RIDER DCR  
UNDER THE NEW STIPULATION HAS INCREASED COMPARED TO  
YOUR EARLIER STUDY.**

**A22.** Certainly. My original analysis in my direct testimony concluded that for the three-year ESP IV, Rider DCR would result in higher costs, as compared to the alternative of an MRO and base rate cases, of \$90 to \$180 million. There are two reasons why Rider DCR would result in higher costs for customers than under a base rate case regime alternative. The first reason is OCC witness Effron's analysis demonstrating that the FE Utilities have been experiencing substantial earnings on distribution service as compared to their Commission authorized rate of return. This suggests at least the possibility that additional Rider DCR revenue (which could total to as much as \$180 million over the three-year ESP IV) are simply not needed for the FE Utilities to earn their Commission authorized rate of return on distribution service.

A second reason is that the rate of return to be used in Rider DCR is the return set by the Commission in the last base rate base in 2008. This rate of return is quite stale and fails to reflect the changes (i.e., cost reductions) in capital market conditions in recent years. Rates of return authorized by state commissions in recent years for electric utilities (and particularly for delivery service only electric utilities) have been trending downward. The rate of return on rate base is updated to current market conditions as a matter of course in base rate cases. Hence, even



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1 if there is no actual overearnings (i.e., assuming that Mr. Effron's findings do not  
2 apply to the ESP IV time period), merely updating the rate of return in a rate case  
3 would still provide substantial customer savings. As I discuss on pages 30 -31 of  
4 my direct testimony, the rate of return update by itself would provide annual  
5 savings of at least \$30 million per year, or \$90 million over three years, as  
6 compared to the MRO alternative.

7  
8 For ESP IV years (4) through (8), as provided in the new Stipulation, I continue to  
9 assume the annual savings of \$30 million per year under the MRO alternative due  
10 to avoiding Rider DCR. If anything this \$30 million per year figure is likely to be  
11 conservative because rate base over time is likely to grow making the rate of  
12 return used for ratemaking even more important. For these five years of Rider  
13 DCR under the new Stipulation, my \$30 million per year becomes \$150 million of  
14 additional savings over and above my original range for a three-year ESP of \$90  
15 to \$180 million (five years multiplied by \$30 million per year equals \$150  
16 million). Hence, the total savings from an MRO relative to ESP IV under the new  
17 Stipulation become \$240 million to \$330 million.

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**Q23. HOW DOES YOUR RANGE OF \$240 MILLION TO \$330 MILLION FOR  
RIDER DCR ADDITIONAL COSTS COMPARE TO THE TOTAL REVENUE  
COST INCREASE CAP THAT WOULD BE PERMITTED UNDER THE  
NEW STIPULATION?**

**A23.** I calculate that the new Stipulation increases the Rider DCR revenue cap from \$180 million for a three-year ESP to \$915 million for the eight year ESP. Thus, my calculations identify the costs of Rider DCR as compared to the MRO alternative as being 26 percent to 36 percent of the total revenue cap increase. In that sense my estimate of the Rider DCR cost penalty for customers is conservatively low.

**Q24. WOULD THE REQUIREMENT FOR A PROMPT BASE RATE CASE  
REDUCE THE HARM FROM RIDER DCR?**

**A24.** Yes, very much so. A base rate case initiated in 2016 would provide an opportunity to adjust base rates to their proper level to ensure that those rates produce reasonable revenue and earnings levels for the FE Utilities. In other words, if Rider DCR is to continue going forward, then it is important that the initial rates be set to the proper level, i.e., the correct starting point rates. In that regard, I note that Staff testimony in this case supports the notion of requiring a base rate case to accompany Rider DCR.<sup>10</sup> In addition, the base rate case would provide an opportunity to update rate of return to levels reflecting current

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<sup>10</sup> See Staff Witness McCarter Testimony at 13-14 (Sept. 18, 2015).

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1 requirements in capital markets. This update to rate of return would undoubtedly  
2 provide large savings in all eight years of ESP IV and Rider DCR under the new  
3 Stipulation as compared to the proposal of not having any base rate case and  
4 allowing the FE Utilities to retain for Rider DCR the out-of-date and excessive  
5 rate of return.

6

7 A base rate case investigation is long overdue for the FE Utilities. The new  
8 Stipulation means that there will be no detailed rate case-type review of cost of  
9 service and rate of return for at least 16 years, i.e., 2008 to 2024. Such a delay in  
10 examining the reasonableness of distribution rates and rate of return is an  
11 improper departure from cost-based ratemaking and is unfair to customers.

12

13 ***Q25. DOES THIS MEAN THAT YOU WOULD SUPPORT RIDER DCR IF IT***  
14 ***WERE TO BE ACCOMPANIED BY A 2016 RATE CASE?***

15 ***A25.*** No, I continue to believe that this rider is improper as discussed in the testimony  
16 of OCC witnesses Efron and Williams. However, a prompt base rate case could  
17 greatly mitigate the harm to customers in the form of excessive rates from Rider  
18 DCR as compared to the MRO alternative and would serve as an important  
19 customer protection.

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1    ***Q26. HAVE YOU EVALUATED THE QUALITATIVE BENEFITS AND***  
2    ***DETRIMENTS FROM THE NEW STIPULATION?***

3    ***A26.*** No, not in a systematic fashion due in part to the highly expedited procedural  
4       schedule for review of the new Stipulation. That said, there are a number of new  
5       provisions in the new Stipulation that appear to cause considerable harm to or  
6       otherwise would be adverse to ratepayers. This would include the extension from  
7       three to eight years of the very expensive Rider ELR, Rider EDR (b) and Rider  
8       EDR (h); the increase in the energy efficiency shared savings from \$10 million  
9       per year to \$25 million per year; and the movement to a fixed variable rate design  
10      for residential distribution service with no corresponding rate of return reduction  
11      in recognition of lowered business risk. Further, I note that the FE Utilities in  
12      testimony supporting the new Stipulation provide no substantive analysis or even  
13      discussion demonstrating that on balance the new Stipulation provides qualitative  
14      benefits.

15  
16   ***Q27. PLEASE SUMMARIZE YOUR ESP VS. MRO TEST QUANTITATIVE***  
17   ***ANALYSIS.***

18   ***A27.*** I have concluded that the ESP IV under the new Stipulation will increase  
19       customer rates as followed as compared to the alternative of an MRO as follows  
20       (in millions of dollars):

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1	(1)	Economic Development Funding:	\$(24)
2	(2)	Low Income Funding:	(19)
3	(3)	Customer Advisory Funding:	(8)
4	(4)	Rider RRS (Wilson middle case)	+2,969
5	(5)	Rider DCR:	<u>+240 to +330</u>
6		TOTAL	+\$3,260 to \$3,350

7

8 **III. DISCUSSION OF STIPULATION APPROVAL CRITERIA**

9

10 ***Q28. WHAT IS THE PUCO'S FIRST CRITERION FOR EVALUATION OF A***  
11 ***STIPULATION?***

12 ***A28.*** The first criterion addresses the negotiation process among adverse parties, and  
13 may be stated as follows:

14

15 **Is the settlement a product of serious bargaining among**  
16 **capable, knowledgeable parties where there is a diversity of**  
17 **interests among the stipulating parties?**

18

19 ***Q29. DOES WITNESS MIKKELSEN ADDRESS THIS FIRST CRITERION IN***  
20 ***HER DECEMBER 1, 2015 TESTIMONY?***

21 ***A29.*** Yes, she does at pages 7 – 9. She states that the new Stipulation was reached by a  
22 diverse group of parties, representing a range of customer classes, and that these

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1 parties (and counsel representing these parties) are knowledgeable and  
2 experienced concerning ESP issues.

3

4 ***Q30. DO YOU ACCEPT WITNESS MIKKELSEN'S CONCLUSION REGARDING***  
5 ***THE FIRST APPROVAL CRITERION?***

6 ***A30.*** No, not entirely, for the reasons discussed below and earlier in my testimony.

7

8 First, as discussed earlier, bargaining with FE Utilities in this setting is not  
9 sufficiently serious because FE Utilities can unilaterally reject any modifications  
10 to electric security plan.

11

12 I offer no opinion on the capabilities and expertise of the supporting (non-utility)  
13 parties and their counsel. That said, I do recognize that the Commission Staff is  
14 now a signatory to the new Stipulation whereas it had not been a signatory to the  
15 previous stipulations submitted in this docket.

16

17 On the other hand, there are still reasons for the PUCO to be cautious in finding  
18 that the Stipulation fully meets this first criterion. First, although there are a  
19 number of non-utility settling parties, there are also numerous active parties not  
20 supporting the Stipulation, representing a range of interests and customer groups  
21 as well as public policy perspectives.

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1       Second, this latest Stipulation is still actively and vigorously opposed by the OCC  
2       – a governmental agency charged with representing and protecting the interests of  
3       residential customers --, NOPEC and other parties representing commercial  
4       customers (e.g. Ohio Manufacturer's Association), environmental interests (Sierra  
5       Club, Environmental Defense Fund, Environmental Law & Policy Center), and  
6       CRES suppliers (PJM Power Providers, The Electric Power Supply Association,  
7       RESA). I urge the Commission to consider such widespread opposition to the new  
8       Stipulation in evaluating the first criterion.

9  
10       Third, it is my understanding that no non-utility party has filed testimony in  
11       support of the new Stipulation even though the procedural schedule allows for  
12       such testimony. While such testimony is optional and not required of a  
13       supporting party, it does go to the weight the PUCO should accord to the support  
14       of the non-utility parties in determining whether approval is appropriate.

15  
16       ***Q31. WHAT DO YOU CONCLUDE REGARDING THE APPLICATION OF THE***  
17       ***FIRST CRITERION?***

18       ***A31.*** I recognize that there are numerous signatory parties to this new Stipulation  
19       (including now the Commission Staff), but at the same time there is also  
20       extensive, vigorous opposition by diverse, capable parties as well. Thus, the  
21       support of certain parties is not sufficient, by itself, or even a persuasive reason  
22       for the PUCO to approve the Stipulation. At the same time, I am not asserting

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1           that opposition (or non-endorsement) by numerous parties is, by itself, a “fatal  
2           flaw” that automatically requires rejection by the PUCO of the Stipulation.

3

4           At best, the evaluation of this first criterion is inconclusive and the PUCO should  
5           view claims of support with caution. This would be appropriate especially in light  
6           of the parties' inability to bargain with FirstEnergy Utilities.<sup>11</sup> In response to  
7           witness Mikkelsen’s assertions concerning this criterion, I urge the PUCO to give  
8           considerable weight to the positions of the opposing parties that also represent a  
9           diversity of customer groups, are highly capable, and reflect a range of policy  
10          interests.

11

12   ***Q32. WHAT IS THE SECOND CRITERION?***

13   ***A32.*** The PUCO’s second evaluation criterion may be stated as follows:

14

15                   **Does the settlement package violate any important regulatory**  
16                   **principles or practices?**

---

<sup>11</sup>See, *In re FirstEnergy’s 2008 ESP Case*, Case No. 08-935-EL-SSO, Second Finding and Order, Opinion of Commissioner Cheryl L. Roberto Concurring in Part and Dissenting in Part at 1-2 (March 25, 2009) (citations omitted, emphasis added).



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**Q33. DOES WITNESS MIKKELSEN'S SUPPLEMENTAL TESTIMONY OF  
DECEMBER 1, 2015 ASSERT THAT THE STIPULATION MEETS THIS  
SECOND CRITERION?**

**A33.** Yes, it does at page 9 of her testimony. Her testimony on this topic is merely one short paragraph and is quite conclusory. It addresses specifically only one aspect of the Stipulation, namely Rider RRS, noting that this rider is non bypassable and that it does not directly disrupt or adversely affect the wholesale generation auctions for SSO supply. She also asserts in a very general way that other Stipulation provisions are consistent with state public policy goals.

**Q34. DO YOU FIND THAT HER CLAIM THAT THE STIPULATION  
CONFORMS TO THIS SECOND CRITERION TO BE PERSUASIVE?**

**A34.** No, I do not. With respect to this second criterion, my concern is not so much with the new provisions appearing for the first time in the December 1, 2015 filing (although I am troubled by some of these new provisions as stated earlier in my testimony), but rather with the retaining of as-filed Riders RRS, DCR and GDR with only limited changes. I recognize that the new Stipulation makes some changes to these riders, but those changes either fail to mitigate customer harm or even make the riders worse than in the original as-filed case. Even as modified, these proposed riders are simply not consistent with accepted and proper regulatory practice, principles and/or policies. Such inconsistencies are discussed

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1 in the direct testimony of OCC witnesses Kenneth Rose, David Effron and James  
2 Williams.

3  
4 I previously covered this topic in depth on pages 15 – 25 of my March 2, 2015  
5 supplemental testimony, and there is no need to repeat that detailed discussion  
6 here. Rather, I will summarize some of the main points along with some concerns  
7 associated with changes set forth in the new Stipulation.

8  
9 ***Q35. WHAT ARE SOME OF THE MAIN POINTS STRESSED IN YOUR***  
10 ***EARLIER TESTIMONY THAT CONTINUE TO BE CONCERNS WITH THE***  
11 ***NEW STIPULATION?***

12 ***A35.*** I will identify such points very briefly. Witness Mikkelsen defends Rider RRS as  
13 being consistent with regulatory practices and policy as it is non-bypassable and  
14 will not directly disrupt or interfere with the SSO generation auction processes.  
15 While I accept those two narrow observations, Rider RRS is hardly consistent  
16 with what the state of Ohio and this Commission have been trying to accomplish  
17 for at least the past decade – namely the orderly deregulation of the generation  
18 supply function and assets. Rider RRS is effectively the “reregulation” of  
19 generation assets, reversing Ohio’s long-standing regulatory principles, policy and  
20 practice. To make matters worse, it moves generation back toward regulation  
21 with the PUCO having inadequate authority to protect customers from bearing the  
22 burden of improper or imprudent costs. The changes to Rider RRS in the New

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1 Stipulation (i.e., reducing the term to eight years, a lower but still excessive ROE  
2 for FES and the provision of possible customer credits) do not cause these  
3 inconsistencies with accepted regulatory practice and policies to disappear. Rider  
4 RRS remains under the new Stipulation a form of reregulation giving FirstEnergy  
5 Utilities a second bite at the stranded cost apple, contrary to the laws of Ohio. As  
6 noted in previous OCC/NOPEC testimony, Rider RRS is a blatant attempt to  
7 force utility customers to subsidize the Sammis and Davis Besse power plants, for  
8 the benefit of FE shareholders. This is a further violation of regulatory principles,  
9 practice and policy.

10

11 Riders DCR and GDR violate regulatory principles for the reasons stated by  
12 witnesses Effron and Williams. This is improper single issue ratemaking and is a  
13 departure from cost of service regulation for a monopoly and vital service. I  
14 recognize that the PUCO in the past has approved the use of Rider DCR, but that  
15 was under the assumption or understanding that this rider would achieve  
16 substantially the same pricing end result as conventional rate cases (just more  
17 promptly). The OCC in this case, however, has provided convincing evidence  
18 that this understanding no longer holds. The FE Utilities have been and are likely  
19 to be overearning on distribution service relative to their authorized rate of return,  
20 and that authorized rate of return has become woefully out of date due to the  
21 passage of time and changes in financial markets. The declining cost of capital  
22 over time has been convincingly documented by OCC witness Dr. Woolridge.

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1    ***Q36. DOES THE NEW STIPULATION CREATE FURTHER INCONSISTENCIES***  
2           ***WITH ACCEPTED REGULATORY PRACTICE?***

3    ***A36.*** Yes, it does in a couple of ways. First and foremost, the extension of ESP IV  
4           from three to eight years is unprecedented and serves to effectively reduce this  
5           Commission's regulatory oversight. For example, it implies that there will be no  
6           detailed base rate case type investigation of the FE Utilities' earnings and  
7           distribution cost of service for at least 16 years, i.e., until after 2024, including no  
8           review of the appropriate rate of return and cost of capital.

9  
10          The new Stipulation attempts to address PUCO oversight of Rider RRS-related  
11          costs, but it does so inadequately. In particular, it is very unclear whether the  
12          PUCO would have any authority to disallow rate recovery through Rider RRS of  
13          FES' power plant costs charged to the FE Utilities that the PUCO finds to be  
14          improper or imprudent. The PUCO should find that the lack of clarity over its  
15          Rider RRS regulatory authority to be an unacceptable violation of regulatory  
16          principles.

17  
18          As I have discussed earlier, the new Stipulation introduces into this case at the  
19          11<sup>th</sup> hour numerous new provisions, some of which may be or implicate very  
20          important policy issues. I note that important examples include whether to retain  
21          Riders ELR and EDR (h) for another eight years without any interim review until  
22          2024 at the earliest; the aggressive movement to a new fixed variable residential

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1 rate design; and the drastic increase by up to \$15 million per year in the energy  
2 efficiency shared savings for FE shareholders. The new Stipulation would rush  
3 through approval of these and many other vitally important (and in some cases  
4 expensive) provisions without providing for a full airing, analysis and regulatory  
5 review that is normally the hallmark of accepted regulatory practice for utility  
6 commissions including the PUCO. This is reason by itself to reject the new  
7 Stipulation as violating this second criterion.

8

9 ***Q37. WHAT IS THE PUCO'S THIRD CRITERION FOR EVALUATION OF A***  
10 ***SETTLEMENT?***

11 ***A37.*** The third criterion for the evaluation of a settlement may be stated as follows:

12

13 **Does the settlement, as a package, benefit customers and the**  
14 **public interest?**

15

16 ***Q38. DOES WITNESS MIKKELSEN'S DECEMBER 1, 2015 TESTIMONY***  
17 ***CONTEND THAT THE NEW STIPULATION BENEFITS CUSTOMERS***  
18 ***AND SERVES THE PUBLIC INTEREST?***

19 ***A38.*** Yes, her testimony addresses the third criterion at page 10, claiming that the new  
20 Stipulation is beneficial and in the public interest because it properly incorporates  
21 numerous policy goals. She further supports the Stipulation through the ESP  
22 versus MRO test (at page 12) that I previously discussed.

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**Q39. DO YOU AGREE THAT THE STIPULATION MEETS THIS THIRD  
APPROVAL CRITERION OF BENEFITING CUSTOMERS AND SERVING  
THE PUBLIC INTEREST?**

**A39.** No, I do not. Again, this criterion was thoroughly explored in my March 2, 2015 testimony on the first Stipulation, and there is no need to repeat that detailed discussion. The most important evidence on benefits to customers is my ESP versus MRO test. Under that test, the expected harm to customers over this eight year period exceeds \$3.2 billion, a cost premium that clearly is intended to benefit FE shareholders at the expense of customers. While it is true that there are numerous additional provisions -- some of which may be positive and others negative for the public interest and customer impacts -- those new provisions have not been properly evaluated due to their 11<sup>th</sup> hour nature.

Moreover, these new provisions, even if positive, cannot overcome the harm to customers of the \$3.2 billion (and perhaps as high as \$4 billion) cost from Riders RRS and DCR. To the extent that there are favorable provisions in the new Stipulation (and that finding can only be determined through additional and careful regulatory review), it is not clear that either ESP IV or this Stipulation is necessary to pursue those policy goals. They can be addressed in other forums outside of an ESP.

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1 My conclusion is that the new Stipulation does not come close to meeting the  
2 PUCO's public interest and customer benefit criterion for approval of a  
3 settlement. I urge the PUCO to reject this settlement package as being improper  
4 and harmful to customers.

5  
6 ***Q40 DO YOU HAVE ANY FURTHER COMMENTS ON THIS NEW***  
7 ***STIPULATION?***

8 ***A40.*** Yes, there are two caveats that I briefly mentioned earlier that warrant emphasis  
9 in my evaluation.

10

11 First, due to the extensive and complex nature of this stipulation and the limited  
12 time for review, there simply has not been sufficient time to conduct multiple  
13 rounds of discovery and conduct a detailed analysis of every provision in the  
14 Stipulation. Thus, to the extent that I did not address a provision (or did so only  
15 very briefly) it should not be interpreted as my concurrence or non-opposition to  
16 such provision.

17

18 Second, I am concerned with the notion of an ESP extending eight years, with  
19 many key and very expensive provisions, including rate riders, on "automatic  
20 pilot" for at least eight years with limited or no detailed regulatory review and  
21 oversight by the PUCO. For this and many other reasons presented in my

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1 testimony and other OCC witnesses' testimony, OCC recommends that an MRO  
2 be adopted.

3

4 ***Q41. DOES THIS CONCLUDE YOUR SECOND SUPPLEMENTAL***  
5 ***TESTIMONY?***

6 ***A41.*** Yes, it does at this time. However, I reserve the right to supplement or amend my  
7 testimony on the basis of new information that may become available through the  
8 discovery process or the record in this case.



### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Second Supplemental Direct Testimony of Matthew I. Kahal was served via electronic service upon the parties this 30th day of December 2015.

/s/ Larry Sauer

Larry Sauer  
Assistant Consumers' Counsel

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