

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company and The Toledo)
Edison Company for Authority to Provide)
for a Standard Service Offer Pursuant to)
R.C. 4928.143 in the Form of an Electric)
Security Plan)

Case No. 14-1297-EL-SSO

**STIPULATION DIRECT TESTIMONY OF
STEPHEN E. BENNETT ON BEHALF OF THE
THE RETAIL ENERGY SUPPLY ASSOCIATION**

December 30, 2015

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1 **INTRODUCTION**

2 **Q1. Please state your name and business address.**

3 **A1.** My name is Stephen E. Bennett. My business address is 164 Chaps Lane, West Chester, PA
4 19352.

5
6 **Q2. On whose behalf do you appear today?**

7 **A2.** I have been retained by the Retail Energy Supply Association to review the Third Supplemental
8 Stipulation and Recommendation ("Stipulation") filed on December 1, 2015, from the
9 prospective of a competitive retail electric service provider, and to comment on the provisions
10 that will harm the existing competitive market in the Ohio Edison Company, Cleveland Electric
11 Illuminating Company, and Toledo Edison Company ("FE Ohio") service areas.
12

13 **Q3. Please provide your educational training and work experience in the competitive energy
14 supply industry.**

15 **A3.** I earned a Bachelor of Science in Civil Engineering from the University of Maryland-College
16 Park in 1996. I have almost 15 years of experience in the competitive wholesale and retail
17 energy industry with a focus on retail market policy and structure, compliance, and RTO/ISO
18 market rules and settlements. Currently, I am a consultant on wholesale and retail energy
19 matters. Prior to that I served as Senior Manager, Markets & Regulatory Policy for PPL/Talen
20 Energy, and prior to that I served as the Retail Policy Manager – East for Exelon Energy where
21 I was responsible for directing and implementing Exelon Energy's regulatory policies for the
22 competitive retail market in Ohio, Illinois, Pennsylvania, Michigan, New Jersey, and Maryland.
23

24 **Q4. Have you testified before the Public Utilities Commission of Ohio before?**

25 **A4.** Yes, I previously testified in this proceeding, as well as in several electric security plan
26 proceedings, including FirstEnergy ESP III proceeding Case No. 12-1230-EL-SSO and DP&L
27 ESP II proceeding Case No. 12-426-EL-SSO. I also testified in the prior AEP Ohio ESP
28 proceeding (Case No. 13-2385-EL-SSO) which addressed purchase power agreements
29 ("PPAs") and the related PPA Rider.

1 **PURPOSE OF TESTIMONY**

2 **Q5. What is the purpose of your testimony?**

3 **A5.** The purpose of my testimony is to address the shortcomings in the Stipulation filed on
4 December 1, 2015 in this proceeding. The Stipulation, as proposed, undermines the
5 fundamentals of the competitive market for electricity by transitioning the risk of generation
6 ownership and operation from FirstEnergy shareholders to the FirstEnergy utilities' ("FE")
7 Ohio captive customers. In addition, it is unclear as to whether the Stipulation provides real
8 benefit to more than just FirstEnergy Corporation and an intentionally selected and limited
9 coalition of entities that will receive special dispensations for their support of the Rider RRS,
10 the ratepayer guaranty provision.
11

12 **STIPULATION ERODES COMPETITIVE MARKET FUNDAMENTALS**

13 **Q6. Do you believe that the Stipulation filed in this proceeding supports the fundamentals of a**
14 **properly-structured competitive market for electricity in Ohio?**

15 **A6.** No. As pointed out in RESA's prior testimony in the record, the Stipulation is anticompetitive.
16 The stated purpose of the "Economic Stability Program," the associated PPAs, and Rider RRS
17 is to provide ratepayer financial support for FirstEnergy Solution's ("FES") Davis-Besse
18 Nuclear Power Station ("Davis-Besse") and the W.H. Sammis Plant ("Sammis") and FES's
19 share of the output of two generating plants owned and operated by Ohio Valley Electric
20 Corporation ("OVEC") (collectively, the "PPA Units"). FES is a nonregulated, merchant
21 affiliate of FE Ohio. The PPA Units currently operate in the competitive wholesale electricity
22 market administered by PJM Interconnection, LLC ("PJM"). FES witness Moul testified that
23 PJM market revenues are not covering the cost of operating the PPA Units¹. Ostensibly, the
24 PPA Units are having difficulty competing profitably in the market. To that end, witness Moul
25 testified that without direct financial support from FE Ohio's customers, FES may not make
26 sufficient investments to keep these PPA Units operating. This is, however, how competitive
27 markets work. Assets that operate reliably, efficiently, and at a profitable price point are
28 rewarded. Those that cannot compete are not rewarded. Over time, only the most efficient
29 assets remain. In a competitive market, customers reap the benefits of that long-term efficiency
30 without bearing the direct risk associated with asset ownership. In the Application, FE Ohio
31 and FES are effectively asking the Public Utilities Commission of Ohio ("Commission") to

¹ See Direct Testimony of Donald Moul at 2

transfer the risk associated with owning and operating the PPA Units, units that are not regulated by the Commission, from FirstEnergy's shareholders to FE Ohio's captive customers.

Q7. Why do you believe that the Stipulation transfers competitive risk from FirstEnergy Shareholders to FE Ohio's captive customers?

A7. The mechanics of providing financial assistance to the PPA Units consists of a purchase power agreement between FE Ohio and its affiliate FES under which FE Ohio will sell the output from FES' share of the PPA Units into the wholesale market. FE Ohio would then pay FES all its reasonable operational costs including a return on FES' equity investment in the PPA units. This is true even if the PPA Units are operating at a loss. If the plants are operated at a loss, then FE Ohio will charge all retail customers a pro-rata share of the loss via the non-bypassable Rider RRS. Under the Stipulation, FES is guaranteed to receive a profitable return on its assets regardless of how efficiently it operates those assets or whether those assets are the least cost option to provide reliable electricity service. FES has removed its risk and placed it squarely on FE Ohio's customers. The Stipulation did not address this important flaw in the application; it only limited the impact from 15 years to 8 years. The losses during those 8 years to the rate payers could total in the billions of dollars and that damage will be compounded by higher prices as the subsidies FES units push out more efficient generation units from the Ohio market.

Another stark and troubling aspect of the risk that is being transferred from FE to its customers has to do with the PJM Capacity Performance reliability mechanism. One of the components of Capacity Performance is a significant penalty assessment for non-performance. The penalty, which was intentionally structured to provide a strong, punitive incentive for generation assets to perform when called upon by PJM, can quickly accrue to a multi-million dollar liability. In fact, it takes only a few hours of non-performance for a generation asset to wipe out an entire year's worth of Capacity Performance revenue and turn it into an expense. As currently proposed, Rider RRS would transfer the entire risk of Capacity Performance non-performance to FE customers. This cannot be allowed to happen. Transferring this risk away from FES, removes the strong incentive that was expressly structured to insure maximum reliability. Perversely, removing this incentive and transferring this risk away from FES might actually lead to less generation reliability from Sammis and Davis-Besse. FES cannot guarantee that

1 they will avoid Capacity Performance penalties over the length of the eight-year ESP. If FE
2 and FES are allowed to transfer that risk as they seek to do, then the specter of non-
3 performance is a real and significant risk that could create a large financial burden for Ohio's
4 electricity customers.

5
6 **Q8. Do you believe the Stipulation can be characterized as a subsidy?**

7 **A8.** Yes. As noted by the PJM Market Monitor who testified in this proceeding, Rider RRS is a
8 non-voluntary subsidy by ratepayers². Subsidies harm open markets, but Rider RRS is
9 particularly pernicious because the benefit of the subsidy accrues exclusively to FE Ohio's
10 affiliate. Given that just the poorer performing units are marked for the subsidy and the subsidy
11 is limited only to FE Ohio's generation affiliate, the PPA in combination with the Rider RRS is
12 anticompetitive.

13
14 **Q9. Does the Stipulation address the anticompetitive aspects of the "Economic Stability
15 Program" you just described?**

16 **A9.** No. The modifications to the "Economic Stability Program" proposed in the Stipulation do
17 nothing to mitigate its fundamental, anticompetitive structure. Reducing the length of the
18 subsidy term from 15 years to 8 years still results in an anticompetitive outcome. A pernicious
19 subsidy like Rider RRS can inflict significant and irreparable harm on a market system in fewer
20 than 8 years. Reducing the return on equity to 10.38% still represents an improper and ill-
21 conceived transition of risk from FirstEnergy shareholders to FE Ohio's captive customers.
22 Rider RRS, as modified by the Stipulation, still permits FES to compete in the wholesale
23 market without the risk of loss. That alone gives it a significant advantage over other
24 competitors. The advantage may prove to be so significant that it deters and chills investment
25 in new, Ohio merchant plants. At the extreme, the subsidy could even force existing merchant
26 plants in Ohio that do not receive a ratepayer guarantee to close. This could happen even if the
27 existing plants would have otherwise been a lower-cost asset. With the subsidized, guaranteed
28 return inherent to the Stipulation, both new market entrants and existing asset owners would be
29 put in a situation in which they retain competitive market risk while being forced to compete
30 with the PPA Units which do not have any competitive market risk.

31

² See Direct Testimony of Joseph E. Bowring at 4

1 In addition, neither FE Ohio nor FES have offered anything into the record that would indicate
2 that the Stipulation addresses the numerous concerns over the anticompetitive nature of the
3 PPAs and Rider RRS raised in expert testimony in the case. In addition to the concerns raised
4 by RESA, PJM Power Provider Group witness Kalt, Ohio Manufacturers' Association witness
5 Hill, and PJM Independent Market Monitor witness Bowring all testified that the PPAs and
6 Rider RRS are anticompetitive. FE Ohio witness Mikkelsen's testimony in support of the
7 Stipulation is conspicuously silent on the issue altogether. Nothing in witness Mikkelsen's
8 testimony offers any indication that the existing or new terms in the latest iteration of the
9 Stipulation address any of the anticompetitive issues raised in the current proceeding.

10
11 **NEGATIVE IMPACT ON THE COMPETITIVE WHOLESALE AND RETAIL MARKETS**

12 **Q10. Since under the Stipulation FE will sell the subsidized PPA Unit generation into the**
13 **wholesale capacity and energy markets, will competitive retail electric service providers**
14 **be affected?**

15 **A10.** Yes. The competitive electric retail market depends on a robust competitive electric wholesale
16 market. Any provision that undermines or erodes the wholesale market will ultimately have a
17 negative impact on the retail market and retail suppliers in that market. As previously stated,
18 the Stipulation results in both an improper risk assignment to customers and a market-
19 disruptive subsidy. In the aggregate, these aspects of the Stipulation are detrimental to the
20 wholesale market and have the potential to negatively impact the retail market as well.

21
22 Another negative implication of the Stipulation that may impact the retail market stems from
23 the subsidy aspect of Rider RRS. As a subsidy, Rider RRS has the potential to skew wholesale
24 prices and incentivize irrational market behavior. For example, the Rider RRS subsidy could
25 create a situation in which FES, with a guaranteed recovery of costs and return on its PPA
26 Units, could manage its remaining generation in a manner that belies proper market behavior
27 and outcomes. Additionally, the Rider RRS subsidy will put FE Ohio in the situation in which
28 it will need to offer the generation output of the PPA Units without any direct financial
29 incentives to do so. Finally, although the intent of the Stipulation is to have FE sell the output
30 form the PPA Units into the PJM real time and day ahead markets, there is not a distinct
31 prohibition on making a bilateral sale. If FE Ohio could enter into bilateral contracts, then it
32 can provide generation at unfair, out-of-market pricing. Theoretically, FE Ohio could sell the

1 generation output to an affiliate at prices that would allow the affiliate to undercut CRES
2 providers anywhere in the PJM footprint. For that reason, should the Commission accept the
3 Stipulation it should include a proviso that the output from the PPA Units can only be sold into
4 the PJM real time and day ahead market.

6 **STIPULATION ISSUES**

7 **Q11. Is it clear that the Stipulation is properly structured?**

8 **A11.** No. While stipulated settlements can be an efficient and effective way to resolve complex
9 regulatory proceedings, the parties to and the terms of a stipulation should be structured in a
10 way that provide clearly demonstrable benefits to the broadest possible group of stakeholders.
11 Clearly the terms and benefits of a stipulation will relate most closely to the signatories of the
12 settlement itself. However, those terms and benefits should not accrue exclusively to the
13 signatories simply because they agreed to sign onto the stipulation itself. When a stipulation
14 includes a regulated Electric Distribution Utility (“EDU”) as the organizing party, the question
15 of who pays for the stipulated benefits also comes into play. Using investor funds to pay for
16 the stipulated benefits may be appropriate but it does not, in and of itself, exonerate the terms of
17 the settlement. When customer funds are used to pay for the stipulated benefits, close scrutiny
18 must be given to be sure that the stipulated benefits are worthwhile.

20 **Q12. Is it clear that the Stipulation accrues benefits to stakeholders other than FirstEnergy?**

21 **A12.** No. It is questionable as to whether the Stipulation, as proposed, equitably accrues benefits to a
22 broad group of stakeholders or if those benefits are concentrated toward FirstEnergy itself. In
23 fact, no party but FirstEnergy is guaranteed a beneficial outcome through the Stipulation. The
24 Stipulation guarantees FirstEnergy a profitable return on its assets, regardless of market
25 conditions or operating efficiency. That is the end of the guarantees in the record of this
26 proceeding. Most importantly, neither FES nor FE guarantees that future market conditions
27 will result in a net credit under Rider RRS. While witness Mickelsen’s testimony includes a
28 worksheet that predicts Rider RRS credits in the latter years of the ESP, these are simply
29 projections that may or may not come to pass. To that end, FE Ohio witness Rose admitted that
30 the projections that he made at the very beginning of this proceeding were found to be partially
31 erroneous by the time the hearing commenced. The elapsed time between filing witness Rose’s

1 testimony and the hearings was about one year while the projections FirstEnergy is using as the
2 basis for Rider RRS as a customer benefit span four to eight years into the future.

3
4 The uncertainty behind the accrual of Rider RRS credits is of paramount importance when
5 assessing whether the Economic Stability Program is broadly beneficial. Again, the record in
6 this proceeding is devoid of anything that comes close to guaranteeing benefits to Ohio
7 customers or any of the parties to the case other than FirstEnergy. Neither FES nor FE
8 guarantees that the \$100 million “risk sharing element” will fully offset the cost of Rider RRS.
9 Neither FES nor FE Ohio guarantees that the contributions to the fuel funds and the payments
10 made to the Ohio Partners for Affordable Energy (“OPAE”) and the Citizens Coalition will
11 fully offset the cost of Rider RRS. Neither FES nor FE guarantees that the economic
12 development and energy efficiency programs will fully offset the cost of Rider RRS. Even the
13 carbon emission reductions are not a guarantee but rather a proposal to either meet the
14 requirements of the Federal Clean Power Plan or, in the event the federal regulations are
15 invalidated, simply set a “goal” to reach the emission targets with no mandate to comply or
16 penalty for deficiency. FE Ohio points out on numerous occasions that the record in this
17 proceeding is comprehensive and voluminous. Yet, with all the filed testimony, depositions,
18 and cross examinations cited by FE, they have not and cannot point to a single sentence that
19 can assure the Commission that anyone other than FirstEnergy will benefit from this
20 Stipulation.

21 22 **RIDER RRS FORECASTS AND “RISK SHARING” FALL SHORT**

23 **Q13. While FE Ohio is projecting a Rider RRS cost of \$414 million for 2016 – 2018, it claims**
24 **that the total net credit will be \$561 million. Can the Commission rely on FE Ohio’s**
25 **projections that the Stipulation will create net credits over the eight-year term?**

26 **A13.** No. The weakest part of the Stipulation is the promise of a positive overall and net present
27 value for Rider RRS over the 8-year term, a value that is not backed up by FE or FES. If FE
28 believes its projections of credits are correct, then it should stand behind them. In other words,
29 instead of just offering an annual dollar commitment for some of the years, FE should assure
30 that at no time will the annual Rider RRS charge exceed a ceiling amount and that by the end of
31 the 8-year term, the aggregate Rider RRS credit will be at least equal to any Rider RRS charges
32 plus carrying charges. The Commission, in its decision in the AEP Ohio ESP III case,

1 indicated that it would only approve a rider for cost reimbursement of a PPA if the company
2 has an equitable share of the risk. The Stipulation still puts the investor risk for the PPA Units
3 on the distribution customers. The bottom line is that open-ended risk for a merchant generator
4 should be with the merchant generator owner and its voluntary shareholders.

5
6 **Q14. The concerns you just described only would apply if the cost of the PPA Unit generation**
7 **exceeded the revenue, doesn't the Stipulation address this concern with the pledge of up**
8 **to \$100 million in possible payments by FE Ohio?**

9 **A14.** No. First, the credits are not available until year five. Second, \$100 million is an insufficient
10 amount of money to fully cover the risk and potential liability of Rider RRS given the size of
11 the subsidy and the fact that it could be significantly escalated by PJM Capacity Performance
12 penalties. The Stipulation indicates that PJM capacity performance bonuses will be netted
13 against any PJM charges, including penalties. Penalties for non-performance in the PJM
14 capacity market are significant and could easily exceed the annual crediting offer pledged by
15 FE for years 5 to 8. Further, even in those years the credits could not be applied to prior losses
16 paid by customers, thus raising the probability that at the end of the eight years the rate payers
17 receive a net loss not a net benefit.

18
19 **ADDITIONAL ISSUES**

20 **Q15. Do you have concerns as to the Stipulation's proposal to potentially procure 100 MW of**
21 **renewable energy?**

22 **A15.** Yes. Including ratepayer guarantees for 100 MW of wind and solar development is a smaller
23 scale duplication of the ill-conceived transfer of generation risk to customers and the market
24 disruptive subsidies inherent to Rider RRS. Decisions to build and operate renewable
25 generation should follow the same market analysis that accompanies decisions to build,
26 maintain, or retire fossil assets. Namely, that generation development should be based on
27 market fundamentals, projections of profitability, and shareholder risk tolerances. The only
28 difference is that this decision-making for renewable generation often includes additional
29 revenue streams from portfolio standard mandates and/or federal, state, and local tax incentives.
30 FE Ohio should not be allowed to build, own, or contract for renewable generation assets
31 simply as a giveaway provision of the Stipulation. More importantly, FE Ohio should not be
32 allowed to tap its captive customer base to fund procurement of these renewable generation

1 assets under a non-bypassable rider. The Commission should disallow and reject this portion of
2 the Stipulation.

3
4 **Q16. Have you reviewed the Federal Advocacy provision of the Stipulation and if so do you**
5 **have any recommendations for the Commission?**

6 **A16.** Section V.C.3 of the Stipulation requires the Commission to solicit comments from the public
7 by October 30, 2017, if PJM has not "... obtained approval for a longer term capacity product
8 to address State resource adequacy needs by September 1, 2017." Before approving this
9 provision, the Commission should investigate the premise on which this request is being made.
10 The status of generation capacity and adequacy in Ohio is a complex question that deserves
11 study and analysis and will be impacted by the volatility of demand and whether the influx of
12 new gas-fired generation continues.

13
14 **CONCLUSION AND SUMMARY OF ALL RECOMMENDATIONS**

15 **Q17. What are your recommendations as to the Stipulation in this proceeding?**

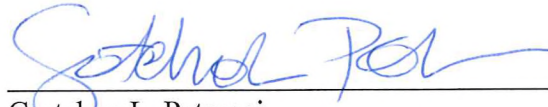
16 **A17.** For the all the reasons I have provided in my testimony, the Stipulation should be rejected and
17 Rider RRS should be rejected. Should the Commission not reject the Stipulation outright, it
18 should reject the PPAs and Rider RRS . Finally, if the Commission does approve
19 implementation of the Rider RRS, then it should protect the captive customers by assuring that
20 at no time will the annual Rider RRS charge exceed a ceiling amount and that by the end of the
21 8-year term, the aggregate Rider RRS credit will be at least equal to the aggregate of Rider RRS
22 charges paid by retail customers plus carrying charges.

23
24 **Q18. Does this conclude your stipulation direct testimony?**

25 **A18.** Yes, although I reserve the right to further supplement my supplemental testimony.

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served upon the persons below via electronic mail this 30th day of December, 2015.



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