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PUCO

Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

14-1297-EL-SSO

I submitted a comment letter dated April 29, 2016 for this case, which was filed in your records on May 5, 2016. The letter as filed was missing page 7. To remedy that omission, I am enclosing herewith for filing a complete copy of my comment letter, including page 7.

Sincerely,

32355 Creekside Drive

Pepper Pike, OH 44124

Email:

April 29, 2016

Public Utilities Commission of Ohio

180 East Broad Street

Columbus, Ohio 43215

Re: *First Energy Electric Security Plan*, Case No. 14-1297-EL-SSO

Ladies and Gentlemen:

I am writing regarding your recent approval of the First Energy electric security plan. I am also writing regarding the decision this week by the Federal Energy Regulatory Commission to rescind the waiver to the requirement to obtain approval of affiliate sales of electricity with regard to the proposed power purchase agreement between First Energy affiliated companies. The future course of these two proceedings seems uncertain. In the event that the PUCO approval should be reviewed or reconsidered, set forth below are comments for your consideration.

Summary of Electricity Security Plan

Under the First Energy plan approved by PUCO, FirstEnergy would buy all electricity for its customers at current market prices through a competitive bidding process, and these prices would be included in customer rates. More importantly, for an 8-year period those rates would also include an additional charge or credit, calculated by using what First Energy calls the Retail Rate Stability Mechanism. That mechanism reflects the terms of an agreement that First Energy would enter into with its affiliated generator, First Energy Solutions, to buy all of the electricity generated by the Davis-Besse nuclear plant and the 2,220 MW W.H. Sammis coal-fired plant ("Affiliated Plants"), as well as by some lesser operations. The purchase price for this electricity would be the cost to produce it, whatever that cost may be, plus a 10% return on investment ("Cost Based Price"). First Energy information provided in the PUCO proceedings indicated that the Cost Based Price was higher than current market prices, although that information is belied by recent First Energy statements regarding its 1st quarter financial results, to the effect that the Affiliated Plants are now profitable, and are expected to be so for 2116. If at some future time market prices were to be higher than the Cost Based Price, then First Energy Solutions would continue to be paid Cost Based Price. Under the Retail Rate Stability Mechanism, rate payers would be charged for the amount by which the Cost Based Price exceeds market prices, and will receive a credit if the Cost Based Price should be less than market prices.

In addition to the Retail Rate Stability Mechanism, beginning in Year 5 ratepayers might also receive four yearly credits, although these additional credits would be reduced each year by the amount of any credit otherwise produced by the Retail Rate Stability Mechanism. The possible credits would begin in Year 5 at \$10 million, and would increase by \$10 million each year through the remaining three years of the security plan, for a total of \$100 million.

The plan includes a number of other items, several of which would be especially beneficial to ratepayers. They include monetary payments to various organizations, procuring at least 100 MW of new Ohio wind or solar resources, establishing goal to reduce CO₂ emissions by at least 90% below 2005 levels by 2045, evaluating battery resources, developing smart grid technology and unlocking energy efficiency.

Summary and Conclusions

The PUCO approval of the First Energy electric security plans seems to demonstrate a need for process improvement, an unrealistically constricted view of competition, a blind spot for a flaw in its stipulation process, misinterpretations of Ohio law, unwise allocation of risks and undue deference to utility forecasts and likelihood of plant closures, all of which are harmful to ratepayers and the general public.

The huge effort required by the PUCO proceedings, only to have the outcome potentially forestalled by the FERC decision, strongly suggests the need to re-examine the PUCO process to explore ways to obtain FERC input or decisions at an earlier point in that process, thus avoiding much unnecessary time and expense by all parties involved with the continuation of those proceedings.

The FERC decision reflects a realistic understanding of the anti-competitive effects of the First Energy electric security plan that is missing from the PUCO approval. FERC acknowledged the obvious, that the First Energy electric security plan damages retail competition, because it does not give retail customers the power to NOT support the Affiliated Plants, which is the essence of competition. PUCO took incoherent conflicting positions on this issue. That inconsistency should be rationalized by recognizing the reality of the non-competitive situation created by First Energy's Retail Rate Stability Mechanism. Rate payers should benefit substantially from this more realistic approach, which PUCO is urged to consider.

There is a substantial risk that the Retail Rate Stability Mechanism is unlawful because it directly impacts the interstate sale of electricity at wholesale, which is exclusively regulated by federal law. Implementation of that mechanism should be postponed until that issue is resolved.

Irrespective of whether or not the Retail Rate Stability Mechanism is pre-empted, there is no doubt that it will distort wholesale electricity prices. That mechanism ensures that the Affiliated Plants would sell their electricity into the wholesale auction market, and enables them to sell it at any price, regardless of how low, and still make a profit. That is so because, irrespective of the wholesale market price, the Affiliated Plants will receive the Cost Based Price. It is a regulatory mandate to assist the Affiliated Plants because they claim they are NOT competitive. (The credibility of that claim is seriously undermined as mentioned above.) The Affiliated Plants therefore can underprice any competitor in the wholesale market, and doing so would lower market pricing and thus distort it. Market pricing is intended to be used to influence the supply of electricity. Low prices discourage new sources of supply or continuation of inefficient sources. High prices encourage them. The Retail Rate Stability Mechanism thus directly frustrates the purpose that such market pricing is intended to serve. For PUCO not to take these anti-competitive considerations into account, due to its constricted view of the scope of its authority, resulted in the unfortunate approval now on a path to be addressed by FERC.

The Retail Rate Stability Mechanism provides for an unlawful subsidy to the Affiliated Plants. It is Ohio policy to ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service, such as First Energy's retail service, to a competitive retail electric service or to a product or service other than retail electric service (such as the Affiliated Plants), including by prohibiting the recovery of any generation-related cost through distribution or transmission rates. [O.R.C. Section 4928.02 (H).]

The Retail Rate Stability Mechanism realigns huge risks between First Energy and its ratepayers. It relieves First Energy of market price and operating cost risks that First Energy finds unacceptable, and transfers them to rate payers. Ratepayers are forced to forfeit the benefit of low rates in the near term for the possibility of benefitting from highly uncertain low rates in the long term. PUCO believes that the plan will benefit rate payers in the amount of \$256 million, and also believes that FirstEnergy would consider closing two power plants and foregoing that \$256 million if its plan were not adopted. That is not rational. First Energy would not close the plants and forego that \$256 million benefit if that benefit were sufficiently certain. Either the forecast is sufficiently uncertain, or the First Energy threat of closure of the plants is not credible. Either alternative substantially undermines PUCO approval of the Retail Rate Stability Mechanism. The security plan is very risky, unwise and unlawful, with potential for huge downside to ratepayers.

PUCO's approval of the agreement with selected parties proposing settlement (Stipulation) sanctions a process that would disenfranchise the vast majority of residential rate payers. The process facilitates the imposition on all residential ratepayers of high risk, unprecedented rate-paying obligations by representatives of a small minority who received, as inducements for their signatures, substantial monetary payments not available to the vast majority of residential ratepayers, none of whose representatives signed the Stipulation. If allowed to stand, residential ratepayers would justifiably conclude that such a process is seriously flawed and facilitates distorted results that do not protect or reflect their best interests. That is inconsistent with maintaining the integrity of the PUCO process, thus violating an important regulatory principle and therefore not satisfying the criteria for review of stipulations.

The standards for approval of the electric security plan require that it must benefit ratepayers and the public interest and must be better in the aggregate than proceeding without it. In applying these standards, nowhere does PUCO adequately take into account the prodigious amounts of greenhouse gases being discharged by the coal-fired Sammis plant, and that such pollution would terminate immediately upon closure of that plant, which First Energy threatens to do if the electric security plan is not approved. Since the Stipulation would avoid Sammis plant closure and thus avoid the early termination of that pollution, approval of the Stipulation is a powerful indicator that it does not benefit rate payers and the public interest, and is not better in the aggregate than the alternative.

Instead of promoting diversity of energy sources, PUCO has discouraged it by allowing the Affiliated Plants to underprice competing sources and thus discouraging them from entering into, or staying in, the electricity marketplace. PUCO states that the First Energy electric security plan will encourage resource diversity because it will prevent a coal-fired generation plant and a nuclear generation plant from closing. That does not appear to promote diversity, since coal already is the dominant source of energy in Ohio, at least according to PUCO's website, which shows that coal accounts for about 58% of Ohio electricity. Diversity would be better served by encouraging

renewables, which now account for less than 2% of Ohio electricity. Some effort to do so is included in the approved plan, although not enough to offset the competitive advantage given to the Affiliated Plants. The plan requires that First Energy procure at least 100 MW of new Ohio wind or solar resources. That is helpful but very small in comparison to the output of the Affiliated Plants.

Based on the foregoing, PUCO should have rejected the First Energy electric security plan because it does not benefit ratepayers, it does not benefit the public interest, it violates important regulatory principles and it is not more favorable in the aggregate than the market rate alternative. Rate payers should therefore welcome the action taken by FERC to review the power purchase agreement that is a core element of that plan.

To make its plan more attractive, First Energy included a number of items, unrelated to the Retail Rate Stability Mechanism, which would be of great benefit to ratepayers. They pertain to renewable sources of electricity, greenhouse gas emissions, smart grid technology, battery technology, energy efficiency, etc., many or all of which would be paid for by rate payers. First Energy should be encouraged to pursue these items independently. Rate payers would likely be supportive, and their regard for First Energy would likely be enhanced.

Retail Competition

Does the Retail Rate Stability Mechanism damage retail competition? PUCO's answer was both yes and no, whichever was convenient.

It first concluded that the First Energy electric security plan was consistent with Ohio law requiring competitive retail electric service because, it said, there were no captive retail customers as they were free to choose any generation supplier. It also said, when addressing another provision of Ohio law limiting PUCO's authority to approve electric security plans, that the Retail Rate Stability Mechanism was a limitation on retail shopping for retail electric generation service. Seriously?!

These conclusions should be rationalized to conclude that the Retail Rate Stability Mechanism is a substantial limitation on retail competition. It should recognize the reality that competition means not only the right to select preferred suppliers, but to NOT support other suppliers that are not preferred. With the Retail Rate Stability Mechanism, all ratepayers will pay a charge that supports the Affiliated Plants. No choice. That is not retail competition. PUCO should have concluded that the Retail Rate Stability Mechanism severely damages retail competition and is therefore unlawful.

Pre-Empted by Federal Regulation of Wholesale Market

As a critical condition to the legality of the Stipulation, PUCO concludes that its approval of the Retail Rate Stability Mechanism is based on retail ratemaking authority under state law, and that it does not conflict with or erode federal laws or the exclusive responsibility of the Federal Energy Regulatory Commission to regulate the interstate sale of electricity at wholesale. PUCO supports its conclusion by stating that First Energy is under no state or federal requirement to enter into the arrangement proposed under the Economic Stability Program, which presumably means the agreement with its affiliated generator to purchase electricity at the Cost Based Price and sell it on the wholesale market.

After the PUCO decision, in another case, the United States Supreme Court decided that arrangements similar to the Retail Rate Stability Mechanism were unlawful because they directly impact the interstate sale of electricity at wholesale, which is exclusively regulated by federal law.

In the Supreme Court case, the means of intruding upon the interstate sale of electricity at wholesale is similar, but not identical, to that used by First Energy here. In that case, distribution utilities, similar to First Energy, were required by the public service commission to enter into long-term contracts with a new electricity generator to purchase electricity from that generator at a price approved by the regulator ("Contract Price"). The distribution utilities, however, did not actually pay the Contract Price. Instead, the new generator sold the electricity into the wholesale market at the wholesale market price. If that market price were lower than the Contract Price, the distribution utility paid only the difference and passed that cost along to its retail customers. On the other hand, if the market price were higher than the Contract Price, then that difference was remitted by the new generator to the distribution utility, which in turn passed a corresponding credit along to its retail customers. As you can see, this arrangement is very similar to the First Energy Retail Rate Stability Mechanism. The Court held that arrangement set an interstate wholesale rate, contravening federal law and was therefore pre-empted and unlawful.

The reasoning of the Supreme Court case is applicable to First Energy's Retail Rate Stability Mechanism. The Court concluded, however, with a footnote indicating that its decision does not call into question long-term hedging arrangements, perhaps similar to the First Energy Retail Rate Stability Mechanism. Despite the resulting uncertainty, it seems likely that such arrangements are pre-empted and thus unlawful.

Distortion of Wholesale Price and Competition

Irrespective of whether or not the Retail Rate Stability Mechanism is pre-empted, there is no doubt that its application would distort wholesale electricity prices. That mechanism would ensure that the Affiliated Plants would sell their electricity into the wholesale auction market, and would enable them to sell it at any price, regardless of how low, and still make a profit. That is so because, irrespective of the wholesale market price, the Affiliated Plants would receive a non-competitive adjustment to assure that they receive the Cost Based Price. So they could underprice any competing seller in the wholesale market, thereby distorting market pricing and interfering with one of its intended purposes, which is to influence the supply of electricity. Low prices discourage development of new sources. High prices encourage them.

By approving the Retail Rate Stability Mechanism, PUCO authorized the imposition of a non-competitive charge on ratepayers in the retail market in order to grant a competitive advantage to the Affiliated Plants in the wholesale market. It undermined competition in the wholesale market in a manner that it likely would not tolerate in the retail market. The damage, however, to rate payers and to the public interest is the same, whether at retail or wholesale. Inefficient competitors are subsidized, and new entrants with new technologies, especially renewables, are discouraged. For PUCO to ignore this damage in the wholesale market demonstrates an inadequate consideration of rate payer interests, the public interest and whether the First Energy electric security plan is better in the aggregate than the alternative.

Unlawful Subsidy for First Energy Generator

The Retail Rate Stability Mechanism provided for an unlawful subsidy to the Affiliated Plants. It is Ohio policy, set forth in Ohio law, to ensure effective retail electric competition by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a service other than retail electric service and vice versa, including by prohibiting the recovery of any generation-related cost through distribution or transmission rates. [O.R.C. Section 4928.02 (H).]

Here we have just such an anticompetitive subsidy. It is the amount, to be paid by ratepayers, by which the Cost Based Price exceeds the actual wholesale price for electricity from the Affiliated Plants. It is anticompetitive because it's not available to competing generators. It flows from noncompetitive retail electric service, because it is unavoidable by ratepayers. It flows to a service other than retail electric service, namely the wholesale electric service of the Affiliated Plants. It is a subsidy because it allows the Affiliated Plants to continue to operate, instead of being considered for closure. That the mechanism could possibly yield a net benefit to ratepayers at some future time does not detract from the huge subsidy that would be granted to First Energy in the near term. So we have a violation of Ohio law and policy as set forth in ORC Section 4928.02(H).

FirstEnergy claims that the Retail Rate Stability Mechanism is not an anticompetitive subsidy, because it was supported by a market negotiated cost-based contract, which are common and frequently used as a PUCO approved-means to mitigate risk. The problem, of course, is that the mechanism was not market negotiated. The parties are affiliated companies. It is not credible that any distribution utility except First Energy would agree to the Retail Rate Stability Mechanism with the Affiliated Plants. In fact, another provider offered to provide the generation service at significantly lower prices. The Retail Rate Stability Mechanism was not market negotiated, and is an unlawful subsidy.

Retail Rate Stability Mechanism - Risk Re-Alignment

To the disadvantage of rate payers, the Retail Rate Stability Mechanism realigns huge risks between First Energy and its ratepayers. Rate payers end up with almost all the risks. First Energy with almost none. Without that mechanism, First Energy would retain the risks that the Affiliated Plants would continue to be so expensive to operate, and/or that market prices for electricity would remain sufficiently low, that the plants could not operate profitably. First Energy says that if not relieved of them, it would consider closing the Affiliated Plants. To avoid closure, PUCO has agreed to shift those risks, which First Energy finds unacceptable for itself, to ratepayers. Ratepayers will now have the risks pertaining to Old Plant operating costs, which First Energy will have no incentive to control, and to low market prices for electricity. These risks are huge. They are risks for First Energy investors, not its ratepayers.

The Retail Rate Stability Mechanism could benefit ratepayers only if market prices at some future time were to rise significantly so that they would exceed the Cost Based Price. PUCO has concluded that that will happen and will benefit ratepayers in the amount of \$256 million. PUCO reached this conclusion by accepting First Energy forecasts, and by totally rejecting other forecasts supporting rate payer losses of billions of dollars. It did so notwithstanding that the First Energy forecasts do not fully take into account the potential for extraordinary costs (think corrosion of the lid of

the Davis-Besse nuclear plant in 2002, at a cost of \$600 million for repairs and a \$30 million fine). Nor do they reflect the concerns expressed by the following ominous First Energy statement:

"[FirstEnergy subsidiaries] are exposed to losses under their applicable sale-leaseback arrangements for generating facilities upon the occurrence of certain contingent events that could render those facilities worthless. Although we believe these types of events are unlikely to occur, [FirstEnergy subsidiaries] have a maximum exposure to loss under those provisions of approximately \$1.2 billion for [FirstEnergy Solutions], \$368 million for [Ohio Edison] and \$192 million for [Toledo Edison]. In addition, new and certain existing environmental requirements may force us to shut down such generating facilities or change their operating status, either temporarily or permanently, if we are unable to comply with such environmental requirements, or if we make a determination that the expenditures required to comply with such requirements are unreasonable." First Energy Annual Report on 10-K for year ended December 31, 2015, p. 26.

Everyone knows that forecasts are subject to substantial uncertainty. Recent experience teaches that. It is common knowledge that the turmoil in the oil and gas industry over the past few years rendered energy-related forecasts grossly inaccurate. We have seen the fracking expansion and subsequent implosion cause widely unpredicted swings in energy prices. First Energy itself has not been able to forecast prices, having to default on long-term coal purchase agreements because it forecast for its own needs for coal proved inaccurate. [See FirstEnergy Annual Report on Form 10-K for Year Ended December 31, 2015.]

It seems wise to conclude that there is a substantial risk that the First Energy forecast will not be accurate, especially in the longer term, and thus that there is substantial risk that the Retail Rate Stability Mechanism would therefore not financially benefit ratepayers. That mechanism imposes nearly certain huge additional charges on ratepayers in the shorter-term, in exchange for highly uncertain benefits in the longer term. Great for First Energy. Not so great for ratepayers.

Furthermore, it is not rational to believe that the Retail Rate Stability Mechanism will benefit rate payers in the amount of \$256 million, and also believe that FirstEnergy would consider closing the Affiliated Plants and foregoing that \$256 million if that mechanism were not adopted. First Energy would not close the Affiliated Plants and forego that benefit if the forecast were sufficiently certain. Either the forecast is insufficiently certain, or the First Energy threat of closure of the Affiliated Plants is not credible. Either alternative substantially undermines PUCO approval of the Retail Rate Stability Mechanism.

PUCO nevertheless decided to impose high risk on rate payers, and to remove virtually all risk from First Energy. Ratepayers would not be able to continue with the familiar and safer course of continuing to pay market rates, relying on the forces of free competition in the marketplace to control future market price increases. This seems especially unwise.

Flawed Process – Violates Important Regulatory Principle

PUCO's approval of the Stipulation sanctions a process that has disenfranchised the vast majority of residential rate payers. The process facilitates the mandatory imposition on all residential ratepayers of high risk, unprecedented rate-paying obligations by representatives of a small minority of First Energy's more than two million Ohio customers. That minority is comprised of representatives of a

- another utility, of a supplier and a union local with First Energy business relationships, and of 12 other organizations who each received, as inducements for their signatures, substantial monetary payments or benefits not available to the vast majority of residential ratepayers, none of whose representatives signed the Stipulation. (See table of signatories at the end of this paper.) If allowed to stand, residential ratepayers would justifiably conclude that such a process is seriously flawed, and facilitates distorted results that do not protect or reflect their best interests. This is inconsistent with maintaining the integrity of the PUCO process, thus violating an important regulatory principle and failing to satisfy the criteria for review of stipulations.

To deny that these exclusive payments or exclusive benefits induced these 12 organizations to sign the Stipulation is to deny common sense. All organizations receiving exclusive payments or benefits signed. No organizations not receiving them signed.

Although PUCO notes that nothing in the Stipulation constitutes what it calls "favor trading" with PUCO Staff, that is irrelevant because Staff is an arm of PUCO and not a formal party of record to the proceedings, as evidenced by PUCO's identification of such parties on its own website. And in any event such "favor trading" likely would have been unlawful, since Staff are government officials. Staff therefore has no official standing or party status and its signature is thus not relevant.

Although insignificant to First Energy, many of these exclusive payments are hundreds of thousands of dollars, in some cases millions of dollars, to non-profit or community organizations hard-pressed for monetary contributions. Some of the payments were increased between the original and final stipulation, suggesting the importance of the special payments to induce the recipients to become signatories. That the special payments or benefits may not have been the sole motivation does not detract from the conclusion that they influenced organizations to become signatories. Their signatures are therefore no indication that the Stipulation without the special payments or benefits (as is the situation for the vast majority of residential ratepayers) would have been acceptable to them, and are no indication whatsoever that the Stipulation without special payments or benefits would be in the best interests of non-signatories.

Imposing the Stipulation on ratepayers, where it was procured by exclusive payments to signatories representing a small minority, is wrong for reasons similar to those that make it unlawful to pay for votes in a political election. There, paying for votes is unlawful because it causes the recipients to support political proposals or candidates that might otherwise not be in the public interest, with the potential consequence that the proposal or candidate would be imposed on all voters, including those who did not receive special payments. Here, the same is happening. Signatories receiving special payments are induced to support the Stipulation, which might otherwise not be in rate payers' best interests, with the result that it is imposed upon all rate payers. The harm caused in both situations is similar. It is unlawful in the political arena. It should not be tolerated in PUCO proceedings.

No criticism is intended of the receipt of special payments or benefits by nonprofit or community organizations. But to permit First Energy to use its overwhelming financial resources to take advantage of the financial need of these organizations to manipulate the PUCO process with these payments, to the disadvantage of the overwhelming majority of residential ratepayers, is inconsistent with the integrity of that process.

PUCO dismissed arguments that the signatories did not represent millions of residential ratepayers, and that virtually all of the signatories will receive monetary payments in exchange for their signatures. It noted that the signatories represent diverse interests including First Energy, a municipality, competitive suppliers, commercial customers, industrial consumers, labor unions, small businesses, advocates for low and moderate income residential customers, and Staff. It did not dispute that non-signatory parties also represent a diverse group of interests or that the diverse interests of the signatory parties, but it said (incredibly) that it gave that "little weight" in its decision. It rejected arguments that the Stipulations should only be approved if the stipulation were agreed to by a larger, more heterogeneous group of customers, including residential customers, citing Dominion Retail v. Dayton Power & Light Co. Case No. 03-2405-EL-CSS, Opinion and Order (Feb. 2, 2005) at 18; Rehearing (Mar. 23, 2005) at 7,] and stating that nothing in the record of this persuades it to reconsider that ruling.

The case cited by PUCO is clearly distinguishable. There: (i) The issue was whether the stipulation should not have been approved without the signature of the Office of Consumers Counsel, thus giving one organization an effective veto over the process. (ii) No issue was presented regarding special payments to signatories not available to non-signatories.

Here: (i) The issue is that at least some party who represents the largest group of rate payers should be required, whether it be OCC, Sierra Club, etc. After all, would the Commission approve a stipulation without the signature of the utility, in this case First Energy? (ii) The issue is that signatures on behalf of ratepayers to which the Stipulation gives special payments should not be used to impose the stipulation on rate payers who do not receive special payments.

Furthermore, the Dominion Retail case refers to a Ohio Supreme court case (Consumers' Counsel v. Public Utilities Commission), 64 Ohio St. 3d 123 (1992), for the proposition that the legal standard for reviewing a stipulation was adopted in a case in which the Office of Consumers' Counsel had not signed the stipulation. The issue, however, of whether a stipulation must be signed by signatories more representative of rate payers was not addressed at all in that case. The issue was solely whether the evidence supported the decision by the Commission.

In light of the foregoing, it is reasonable to conclude that Retail Dominion has little relevance here, that the Stipulation undermines the integrity of the PUCO process and thus violates an important regulatory principle, and that PUCO was in error to give substantial weight to it.

Greenhouse Gases

To be approved, the Stipulation must benefit ratepayers, must benefit the public interest and must be better in the aggregate than proceeding without the electric security plan. In making this determination, nowhere does PUCO take into any significant account that closure of the coal-fired Sammis plant, which First Energy threatened to do if the electric security plan were not approved, would terminate the continuous global warming damage being caused by the prodigious amounts of greenhouse gases discharged by that plant, and thus enormously benefit rate payers and the public interest. Since the Stipulation would avoid plant closure and thus avoid the early termination of that pollution, those consequences are powerful indicators that the plan does not benefit rate payers and the public interest, and is not better in the aggregate than the alternative. This is glaring omission is manifest error.

The Stipulation includes a FirstEnergy goal to reduce CO₂ by at least 90 percent below 2005 levels by 2045, regardless of whether the EPA's recently finalized Clean Power Plan is overturned by court order. That is a commendable goal, but there are no adverse consequences imposed on First Energy if it fails to achieve it, so it is of little value.

Diversity of Supply

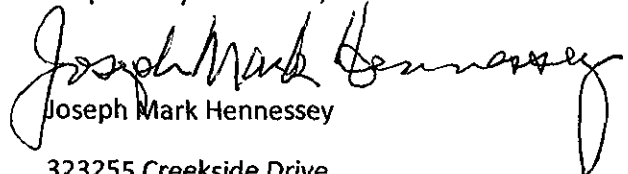
PUCO said that the Retail Rate Stability Mechanism would encourage resource diversity, because it would prevent the Affiliated Plants, a 2,220 MW coal-fired generation capacity plant, as well as a 908 MW nuclear generation plant, from closing because they cannot compete. That is unconvincing, especially because coal is already the dominant source of energy in Ohio, according to PUCO's website, which shows that coal is used to generate about 58% of Ohio's electricity.

Instead of promoting diversity, the mechanism would discourage it by allowing the Affiliated Plants to underprice competing sources, especially renewables, and thus discouraging their entry into the marketplace. The mechanism would allow the Affiliated Plants to "crowd out" other more efficient generators. No other generator would build new electric generating capacity knowing that it would be underpriced by the Affiliated Plants, which could sell electricity at any price irrespective of cost and still make a profit. There would be less incentive for new generation capacity and no incentive to retire inefficient non-competitive capacity of the Affiliated Plants. This is a misallocation of resources that harms all Ohio ratepayers, and would interfere with the market mechanism designed to result in long-term reliability at the lowest possible cost.

Diversity would be better served by encouraging renewables, which now account for less than 2% of Ohio electricity, according to PUCO's website. Some effort to do so was included in PUCO's approval, although perhaps not enough to offset the competitive advantage given to the Affiliated Plants. It would require that First Energy procure at least 100 MW of new Ohio wind or solar resources as part of a strategy to further diversify Ohio's energy portfolio. That seems to be a major step in right direction, although small in comparison to the generation capacity of the Affiliated Plants.

In light of the foregoing, if PUCO review of the First Energy electric security plan will continue, because of request for reconsideration or otherwise, PUCO should use that opportunity to reject it.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph Mark Hennessey", written over the printed name.

Joseph Mark Hennessey

323255 Creekside Drive
Pepper Pike, Ohio 44124
Phone: 216-831-9432
Email:

Signatories to First Energy Electric Security Plan		
	Name	Exclusive Payment or Benefit Not Available to Other Ratepayers or Relationship to First Energy
1	Ohio Edison Company, by James W. Burk	Applicant and a regulated electric distribution company.
2	The Toledo Edison Company, by James W. Burk	Applicant and a regulated electric distribution company.
3	The Cleveland Electric Illuminating Company, by James W. Burk	Applicant and a regulated electric distribution company.
4	Council of Economic Opportunities in Greater Cleveland, by James P Meissner	First Energy agrees to pay the Council of Economic Opportunities in Greater Cleveland \$463,333 per year from 2017 to 2024 to continue funding of fuel fund to assist low income customers in paying electric bills.
5	Ohio Power Company (limited approval)	A regulated electric distribution company, with interests similar to those of First Energy. Not a ratepayer.
6	Ohio Energy Group, By Michael Kurtz	An organization that represents large energy intensive corporations. First Energy allows Ohio Energy Group, Industrial Energy Users—Ohio*, as well as Nucor Steel Marion and Material Sciences Corporation, to avoid certain transmission charges that consumers and all other customers pay as part of the distribution portion of their energy bill.
7	City of Akron, by Patricia Ambrose	First Energy agrees to fund benefits to Akron customers only by promoting energy efficiency, in the amount of \$100,000 during the first three years. First Energy agrees to maintain its corporate headquarters and its nexus of operations in Akron during the term of the retail rate stability program.
8	Council of Smaller Enterprises (COSE), by Matthew R. Cox	First Energy agrees to make contributions to COSE Ohio Energy Efficiency Response Plan: \$170,000 in 2016, \$25,000 in 2017 and \$25,000 in 2018, \$20,000 in 2019 and \$60,000 per year from 2020 to 2024. Plus \$1 million in administrator compensation, to be paid in installments, upon COSE receiving PUCO approval for specific projects. Costs to be recovered from ratepayers.
9	Staff of the Public Utilities Commission of Ohio, by Thomas D. McNamee	Not party of record. Arm of PUCO.
10	Consumer Protection Association, by Joseph P. Meissner	First Energy agrees to continue funding of fuel fund in CEI territory to assist low income customers in paying electric bills, the Cleveland Protection Association to receive \$463,333 per year from 2017 to 2024.
11	Cleveland Housing Network, by Joseph P. Meissner	First Energy agrees to allocate to Cleveland Housing Network \$1.7 million per year from the annual \$6 million funding for Community Connections. First Energy agrees to continue funding of fuel fund in CEI territory to assist low income customers in paying electric bills, the Cleveland Housing Network to receive \$463,333 per year from 2017 to 2024.
12	Citizens Coalition, by Joseph P. Meissner	First Energy agrees to contribute to the Citizens Coalition to establish a Customer Advisory Agency in the amount of \$1,000,000 per year.

13	Nucor Steel Marion, Inc., by Michael Zavanga	First Energy allows for Nucor Steel Marion, Ohio Energy Group, Industrial Energy Users—Ohio*, and Material Sciences Corporation to avoid certain transmission charges that consumers and all other customers pay as part of the distribution portion of their energy bill. [Same as 6.]
14	Material Sciences Corporation, by Craig Smith	First Energy allows Material Sciences Corporation, the Ohio Energy Group, Industrial Energy Users—Ohio* and Nucor Steel Marion to avoid certain transmission charges that consumers and all other customers pay as part of the distribution portion of their energy bill. [Same as 6 and 13.]
15	Association of Independent Colleges and Universities of Ohio ("AICUO"), by Christopher L. Miller	First Energy agrees to contribute to the Association of Independent Colleges and Universities of Ohio Efficiency Resource Program for AICUO Unrestricted Payment: \$50,000 per year for the 8-year period commencing 2016. Costs to be recovered from ratepayers.
16	International Brotherhood of Electrical Workers Local 245, by Larry Tacherne	Represents electrical union workers near Toledo, and First Energy employs a number of those workers.
17	EnerNOC, Inc., by (illegible)	Sells energy intelligence software to utilities such as First Energy. Headquartered in Boston, MA. Has office in Dublin, Ohio.
18	The Kroger Company, by Mark S. Yurick	Appears to benefit from special rate available only to companies headquartered in Ohio, operate at least 30 locations in FirstEnergy's distribution territory, use at least 1.5 gigawatt hours of electricity per year at each facility, and have a "major portion" of that load come from refrigeration.
19	Ohio Partners for Affordable Energy, by Colleen Mooney	First Energy agrees to pay Ohio Partners for Affordable Energy Housing, out of the \$6,000,000 funding per year from 2016 to 2023 to Community Connections program, an administrative fee of 5%. Ohio Partners for Affordable Energy to be provided \$1,000,000 per year from 2016 through 2023 through shareholder contributions to be used for funding the fuel fund to be administered by OPAE
*Dropped opposition to First Energy electric security plan at same time that First Energy amended its plan to allow Industrial Energy Users-Ohio to avoid transmission charges.		