

OCC 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.)

**REHEARING DIRECT TESTIMONY
OF
KENNETH ROSE, Ph.D.**

**On Behalf of the
Office of the Ohio Consumers' Counsel**
*10 West Broad Street, Suite 1800
Columbus, Ohio 43215*

June 22, 2016

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1 **I. INTRODUCTION**

2

3 ***Q1. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.***

4 ***A1.*** My name is Kenneth Rose, an independent consultant based in Chicago, Illinois.

5 I have been retained by the Office of the Ohio Consumers' Counsel ("OCC") for
6 purposes of this proceeding.

7

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

9 ***A2.*** Yes. On December 22, 2014, the OCC submitted direct testimony I prepared that
10 provided my analysis and recommendations supporting rejection of the proposed
11 Retail Rate Stability Rider ("Rider RRS") contained in the fourth electric security
12 plan ("ESP IV") of the Ohio Edison Company ("Ohio Edison"), The Cleveland
13 Electric Illuminating Company ("CEI") and The Toledo Edison Company
14 ("Toledo Edison") (together the "FirstEnergy EDUs," "the Utilities"). The OCC
15 also submitted supplemental direct testimony I prepared in this same case on May
16 11, 2015.

17

18 My Direct Testimony also included a statement of my qualifications and listing of
19 my past testimony.

20

21 ***Q3. PLEASE SUMMARIZE YOUR CONCLUSION.***

22 ***A3.*** As with the Public Utilities Commission of Ohio ("PUCO") approved Rider RRS,
23 the Utilities' "modified" Rider RRS also collects transition revenues or equivalent

1 revenues from customers after the market development period has expired. The
2 law in Ohio does not permit the Utilities to collect such revenues from customers.
3 Modified Rider RRS is not in the public interest and will not benefit the
4 customers of FirstEnergy EDUs.

5

6 **II. PURPOSE OF TESTIMONY**

7

8 ***Q4. WHAT IS THE PURPOSE OF YOUR REHEARING TESTIMONY?***

9 ***A4.*** The Utilities filed an Application for Rehearing on May 2, 2016 claiming that a
10 PUCO Order in this proceeding was unreasonable and unlawful, as a result, the
11 Utilities are currently seeking to modify the original filing (ESP IV). The purpose
12 of my testimony is to provide my analysis and recommendations regarding the
13 modified “Retail Rate Stability Rider” (“Modified Rider RRS”) that the Utilities
14 proposed in the Application for Rehearing. I also refer to recent Ohio Supreme
15 Court decisions that have a major bearing on this case.

III. RECOMMENDATIONS AND ANALYSIS

***Q5. WHAT MODIFICATION TO THE ORIGINAL FILING ARE YOU
REFERRING TO?***

A5. My analysis is based on the Utilities' Application for Rehearing¹ and Rehearing Testimony of Eileen M. Mikkelsen.² Ms. Mikkelsen testifies that the Utilities are switching from using actual costs of the Davis-Besse and Sammis plants, and FES's share of OVEC, to proxy costs. Likewise, the Utilities are switching from the actual market revenues received by the selling the output of the plants to using "revenue proxies."³

***Q6. COULD YOU PROVIDE MORE DETAIL ON THE UTILITIES' PROPOSED
MODIFICATION?***

A6. The Utilities characterize the change to the Rider RRS as "a few modest modifications to the calculation of the costs and revenues."⁴ They go on to state that:

The only changes to the Rider RRS calculation are 1) actual costs will be replaced with the costs which are already evidence of record and relied upon by the Commission in this case; 2) actual generation output will be replaced with the generation output which is already evidence of record and relied upon by the Commission in this case; and 3) actual MWs cleared in the PJM

¹ Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company's Application for Rehearing, Case No. 14-1297-EL-SSO, filed May 2, 2016.

² Rehearing Testimony of Eileen M. Mikkelsen, On Behalf of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company, May 2, 2016.

³ Application for Rehearing, p. 18.

⁴ Application for Rehearing, p.20.

1 capacity market will be replaced with the MWs projected to clear
2 which is already evidence of record and relied upon by the
3 Commission in this case and still updated for actual base residual
4 auction (“BRA”) prices as originally contemplated.⁵
5

6 I am assuming that this switch to “cost and revenue proxies” does not
7 change the basic formula that would be used to calculate the Modified
8 Rider RRS, as was described by the Utilities’ witnesses in their initial ESP
9 filing.
10

11 ***Q7. WHAT IS THE CALCULATION METHOD FOR THE ORIGINAL RIDER***
12 ***RRS?***

13 ***A7.*** The method of calculating Rider RRS was explained by Companies’ witness
14 Savage:

15 The revenue requirement for Rider RRS will be derived based on
16 the difference between: (1) the projected costs, including a return
17 on and of invested capital, associated expenses and applicable
18 taxes, for the upcoming year for the Davis-Besse Nuclear Power
19 Station (“Davis-Besse”) and the W.H. Sammis Plant (“Sammis”)
20 (collectively, the “Plants”) along with those costs assessed against
21 FirstEnergy Solutions Corp.’s (“FES”) share of the Ohio Valley
22 Electric Corporation (“OVEC”); and (2) the projected PJM market
23 revenues that the Companies will receive for selling the energy,
24 capacity and ancillary services from the Plants and OVEC into the
25 PJM market.⁶
26

27 While the specific plants are no longer the basis for the cost calculation for the
28 Modified Rider RRS, as noted, the customer charge/credit calculation is the same.
29 The amount that the Utility would collect from customers via the Modified Rider

⁵ Application or Rehearing, p. 20.

⁶ Direct Testimony of Savage at 3 (August 4, 2014).

RRS would be the difference between the “generation costs” and the market revenues the Utility can receive by selling the electricity and related services. Essentially, the Utility will collect from its distribution customers the “generation costs” not recovered in the market—or the above-market generation costs.

Q8. WHAT RATIONALE DID THE UTILITIES PROPOSE TO SUPPORT RIDER RRS IN THE ORIGINAL ESP?

A8. The Utilities were of the opinion that current market conditions do not provide a sufficient return on certain generating assets. According to the Utilities’ witness Moul, “The economic viability of the Plants is in doubt. Market-based revenues for energy and capacity have been at historic lows and are insufficient to permit FES to continue operating the Plants and to make the necessary investments.”⁷

Moul continued by stating that, “[m]arkets have not, and are not, providing sufficient revenues to ensure continued operation of the Plants” and that “[t]he only thing that can be said with certainty is that the future of the Plants is in doubt.” Then he repeats that, “[t]he Plants are not receiving sufficient revenues to cover the Plants’ costs, both from an energy and capacity standpoint.”⁸

In other words, according to the Utilities, the specified plants are uneconomic and cannot compete on their own in the marketplace. Rider RRS supported the plants.

⁷ Direct Testimony of Moul, p. 2.

⁸ Witness Moul, p. 3.

Witnesses Ruberto, Savage, and Strah describe how the Rider RRS was calculated to make up these FES' market losses—to be paid for by customers of the Utilities through the Rider RRS charge.

The Modified Rider RRS would not change this reasoning. Even though the Companies would change the Rider RRS to be “without reliance on a PPA or any other contractual arrangement or other involvement of FES,” Modified Rider RRS still supports 3200 MW of generation, according to Ms. Mikkelsen.

***Q9. DID YOU CONCUR WITH THE UTILITY'S RATIONALE FOR
PROPOSING THE ORIGINAL RIDER RRS?***

A9. No, I did not. Essentially, the originally proposed Rider RRS amounted to a bail-out funded by the captive customers of the Utilities for two of FES's unregulated generation plants. As explained in my Direct Testimony, after the market development period, utilities are required under Ohio law to be fully on their own in the competitive market. Being on their own in the competitive market means that the Utilities' unregulated generation efforts cannot be subsidized by payments made by the Utilities' captive distribution customers. But that was just what Rider RRS did—it subsidized the plants to make up for the fact that market based revenues for energy and capacity are declining or insufficient. The PUCO in its Order acknowledged that Rider RRS supported the plants.⁹

⁹ Opinion and Order at 87.

1 ***Q10. IS THE UTILITIES' MORE RECENT PROPOSAL CONSISTENT WITH***
2 ***OHIO LAW?***

3 ***A10.*** No, it is still not consistent with Ohio Law. The Utilities' Modified Rider RRS
4 proposal similarly collects transition revenues or equivalent revenues after the
5 market development period has expired.

6
7 As was stated in my Direct Testimony, the fundamental idea behind deregulation
8 of the generation business (S.B. 3) is that retail customers should not now be
9 asked to protect Ohio electric utilities from competitive generation market risks or
10 losses. A market development period was provided under S.B. 3. The intent of
11 the market development period was to provide electric utilities in Ohio time to
12 prepare for a competitive environment. That market development period has
13 elapsed (in 2005). Customers are no longer obligated to cover the operating
14 generating costs and guarantee a return on generating assets owned by the
15 Utilities' unregulated affiliate. The Utilities are now "wholly responsible" for
16 whether they are in a competitive position in the generation market. Customers
17 cannot be asked to guarantee the profitability of the Utilities' affiliate-owned
18 generation units.

1 ***Q11. ARE THE UTILITIES ATTEMPTING TO COLLECT, AGAIN,***
2 ***TRANSITION COSTS OR “EQUIVALENT REVENUES”?***

3 ***A11.*** Yes, the Modified Rider RRS did not change this.

4

5 Modified Rider RRS still supports generation owned by the Utilities' affiliates.

6 Ms. Mikkelsen testifies that "Rider RRS helps ensure the continued operation of
7 3,200 MWs of fuel diverse baseload generation."¹⁰ In other words, the Modified

8 Rider RRS would provide economic support from customers for generation that
9 cannot remain in operation without this customer support.

10

11 Transition costs are defined under Section 4928.39 of the Revised Code. It is
12 clear that costs unrecoverable in a competitive environment are considered a part
13 of the transition costs. The Modified Rider RRS mechanism is an attempt to
14 recover revenue from captive local distribution customers because the competitive
15 marketplace is providing insufficient revenue to cover the cost of operating the
16 plants.

17

18 However, the cost of generation that exceeds the market price or revenue is
19 essentially the very definition of transition cost.

¹⁰ Mikkelsen Rehearing Testimony at 15.

**Q12. DID THE COMMISSION ADDRESS THE ISSUE OF TRYING TO
COLLECT TRANSITION COSTS AFTER THE MARKET DEVELOPMENT
PERIOD IN ITS MARCH 31st ORDER?**

A12. Yes, in its Order in this case, the Commission found that the Rider RRS did not violate R.C. 4928.38.¹¹ The PUCO found that because the record showed that Rider RRS would provide a net credit over its eight year term, the costs sought to be collected are not "unrecoverable in a competitive market."¹²

This finding though conflicts with its ruling that Rider RRS is a "charge" under R.C. 4928.143(B)(2)(d).¹³ In that portion of the PUCO's Order, the PUCO accepted the Utilities' claim that during the first two years of the ESP, Rider RRS will result in a net charge to customers.

Additionally, this finding relies upon the Utilities' forecast, which was controverted by the testimony of several witnesses, including OCC Witness Wilson. The certainty of a "credit" is only as good as the forecasts, and only time will tell if a credit to customers will be achieved. Without the certainty of a credit, there is no certainty of it being "unrecoverable in a competitive market"¹⁴ or not.

¹¹ The Public Utilities Commission of Ohio, Opinion and Order, Case No. 14-1297-EL-SSO, March 31, 2016, p. 112.

¹² Id.

¹³ Id. at 108.

¹⁴ Id.

1 **Q13. ARE YOU AWARE OF ANY RECENT DEVELOPMENTS THAT THE PUCO**
2 **SHOULD CONSIDER IN EVALUATING WHETHER THE MODIFIED**
3 **RIDER RRS COLLECTS TRANSITION COSTS?**

4 **A13.** Yes. In two similar cases,¹⁵ the Supreme Court of Ohio disapproved charges that,
5 like Modified Rider RRS, collect transition revenues or equivalent revenues. The
6 PUCO should reevaluate this issue.

7

8 **Q14. WHAT DID THE OHIO SUPREME COURT CONCLUDE?**

9 **A14.** The Court, in the AEP case¹⁶ focused on the nature of the charge being collected.
10 It found that AEP's stability charge was transition revenue by another name.¹⁷
11 DP&L's stability charge, similarly was reversed.¹⁸ Both charges were used to
12 support the generation operations of the utilities.
13
14 Modified Rider RRS similarly supports the continued generation operations of
15 FirstEnergy Solutions — according to Ms. Mikkelsen, 3200 MWs of fuel diverse
16 baseload generation. Modified Rider RRS is transition revenue by another name.

¹⁵ AEP case, PUCO Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-349-EL-AAM, and 11-350-EL-AAM; DP&L case, PUCO No. 12-426-EL-SSO.

¹⁶ ¹⁶ Supreme Court of Ohio, *In re Application of Columbus S. Power Co.*, No. 2016-Ohio-1608.

¹⁷ *Id.* at ¶ 25.

¹⁸ *In re: Application of Dayton Power and Light Co.*, No 2016-3490.

1 ***Q15. IN LIGHT OF THE SUPREME COURT DECISIONS PROHIBITING THE***
2 ***UTILITIES FROM COLLECTING SIMILAR STABILITY CHARGES, WHAT***
3 ***DO YOU RECOMMEND?***

4 ***A15.*** The PUCO should not approve Modified Rider RRS. It should conclude that
5 Modified Rider RRS would allow the Utilities to collect transition costs or
6 equivalent revenues long after the market development period has ended.

7
8 At the very least, if the PUCO is determined to allow modified Rider RRS to go
9 forward, it should order it to be collected subject to refund. This is appropriate
10 because the Supreme Court has struck down similar charges, raising the
11 likelihood that FirstEnergy's stability charge will also be struck down. Collecting
12 the rider subject to refund would protect customers during the time frame that
13 accompanies an appeal of the issue to the Court.

14

15 ***Q16. DOES THIS CONCLUDE YOUR REHEARING TESTIMONY?***

16 ***A16.*** Yes, however, I reserve the right to incorporate new information that may
17 subsequently become available through outstanding discovery or otherwise.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Rehearing Direct Testimony of Kenneth Rose, Ph.D. on Behalf of the Office of the Ohio Consumers' Counsel's*, was served via electronic transmission to the persons listed below on this 22nd day of June 2016.

/s/ Larry Sauer

Larry Sauer
Deputy Consumers' Counsel

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Summary: Testimony Rehearing Direct Testimony of Kenneth Rose, Ph.D. on behalf of the Office of the Ohio Consumers' Counsel electronically filed by Ms. Gina L Brigner on behalf of Sauer, Larry S Mr.