

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the 2014 Review of the Demand Side Management and Energy Efficiency Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.	)	Case No. 13-2173-EL-RDR
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	)	
	)	
In the Matter of the 2015 Review of the Demand Side Management and Energy Efficiency Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.	)	Case No. 14-1947-EL-RDR
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In the Matter of the 2016 Review of the Demand Side Management and Energy Efficiency Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.	)	Case No. 15-1843-EL-RDR
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In the Matter of the 2017 Review of the Demand Side Management and Energy Efficiency Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.	)	Case No. 16-2167-EL-RDR
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In the Matter of the 2018 Review of the Demand Side Management and Energy Efficiency Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.	)	Case No. 17-2277-EL-RDR
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In the Matter of the Determination of the Existence of Significantly Excessive Earnings for 2017 Under the Electric Security Plan of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.	)	Case No. 18-857-EL-UNC
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In the Matter of the Determination of the Existence of Significantly Excessive Earnings for 2018 Under the Electric Security Plan of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.	)	Case No. 19-1338-EL-UNC
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In the Matter of the Determination of the Existence of Significantly Excessive Earnings for 2019 Under the Electric Security Plan of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.	)	Case No. 20-1034-EL-UNC
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In the Matter of the Quadrennial Review Required by R.C. 4928.143(E) for the Electric Security Plan of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.	)	Case No. 20-1476-EL-UNC
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In the Matter of the Determination of the Existence of Significantly Excessive Earnings for 2020 under the Electric Security Plan of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.	)	Case No. 21-0586-EL-UNC
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In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Tariff Change.	)	Case No. 21-1127-EL-ATA
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**DIRECT TESTIMONY IN SUPPORT OF STIPULATION OF LANE KOLLEN  
ON BEHALF OF THE OHIO ENERGY GROUP**

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1    **Q.     Please state your name and business address.**

2    A.     My name is Lane Kollen. My business address is J. Kennedy and Associates, Inc.  
3           ("Kennedy and Associates"), 570 Colonial Park Drive, Suite 305, Roswell, Georgia 30075.

4

5    **Q.     Did you previously file Direct Testimony and Supplemental Direct Testimony in these**  
6           **proceedings?**

7    A.     Yes. I testified on behalf of the Ohio Energy Group ("OEG"). In my Direct Testimony, I  
8           demonstrated that The Toledo Edison Company ("Toledo Edison") and The Cleveland  
9           Electric Illuminating Company ("CEI") still retain nuclear power plant costs on their  
10          accounting books and still incur and report the related long-term debt and common equity  
11          financing costs on their income statements and balance sheets, despite the fact they are  
12          distribution only utilities and no longer own the legacy nuclear power plants, namely their  
13          former respective ownership interests in Davis-Besse and Perry.

1 FirstEnergy included these legacy nuclear plant financing costs in the Toledo  
2 Edison and CEI SEET return on equity (“ROE”) calculations. Including these costs  
3 reduced the ROEs for Toledo Edison and CEI in each year 2017-2019 and reduced the  
4 potential SEET refunds to \$0 for those years.

5 The legacy nuclear plant costs date to 1997 when Ohio Edison formed FirstEnergy  
6 and acquired Centerior Energy Corp., the parent company of Toledo Edison and CEI. The  
7 acquisition was accounted for as a purchase under generally accepted accounting principles  
8 (“GAAP”). Toledo Edison and CEI were required to reduce their nuclear plant costs to  
9 fair value pursuant to GAAP. Toledo Edison and CEI transferred and recorded the excess  
10 (legacy) nuclear plant costs to goodwill (miscellaneous deferred debits), where the costs  
11 still reside. As the acquiring company, Ohio Edison was not required to reduce its nuclear  
12 plant costs to fair value pursuant to GAAP.

13 In 2005, Toledo Edison, CEI and Ohio Edison transferred their nuclear power  
14 plants at net book value (and net of accumulated deferred income taxes) to FirstEnergy  
15 Nuclear Generation Corp. (“NGC”), a wholly owned first tier subsidiary of FirstEnergy  
16 Solutions (“FES”), a wholly owned first tier subsidiary of FirstEnergy. Toledo Edison and  
17 CEI did not transfer the legacy nuclear plant costs and retained those costs as goodwill and  
18 the related debt and equity financing costs on their accounting books. They reported those  
19 costs on their income statements and balance sheets and included the financing costs in  
20 their calculations of the ROEs for the SEET in the years 2017-2019.

21 I recommended that the Commission remove the legacy nuclear plant financing  
22 costs from the ROE calculations. I quantified the resulting Toledo Edison and CEI refunds  
23 under FirstEnergy’s proposed standard deviation and safe harbor SEET thresholds. More

1 specifically, I recommended that the Commission remove the common equity financing  
2 from the denominator and the interest expense on the debt financing from the numerator in  
3 the Toledo Edison and CEI ROE calculations.

4 The mechanics of this are straightforward. Almost half of Toledo Edison's total  
5 capitalization is comprised of the common equity and debt used to finance the legacy  
6 nuclear power plant goodwill. Approximately one third of CEI's total capitalization is  
7 comprised of the common equity and debt used to finance the legacy nuclear power plant  
8 goodwill. Removing the legacy nuclear plant financing costs from the Toledo Edison and  
9 CEI SEET calculations dramatically increased the ROEs for each year 2017-2019 and  
10 would result in large refunds under both of the FirstEnergy SEET thresholds for each  
11 Company. For example, Toledo Edison's ROE in 2019 increased to 45.4% compared to  
12 the Company's calculation of 12.3%.

13 In my Supplemental Direct Testimony, I recommended that the Commission utilize  
14 the SEET thresholds proposed by Ohio Consumers' Counsel ("OCC") witness Matthew I.  
15 Kahal. I also recommended that the Commission include in SEET revenue and earnings  
16 shared savings from energy efficiency and peak demand reductions and PJM revenue  
17 resulting from the sale of demand response resources into the PJM capacity market. I  
18 calculated refunds of up to \$516 million before interest using the corrected ROEs and Mr.  
19 Kahal's SEET thresholds.

20  
21 **Q. Explain why OEG supports the Stipulation.**

22 A. OEG recommends that the Commission adopt the unanimous Stipulation between the  
23 FirstEnergy Ohio utilities and all other parties in these proceedings. The Stipulation

1 provides for \$96 million of 2017-2019 SEET refunds and \$210 of rate reductions over the  
2 period 2022-2025, for a total consumer benefit of \$306 million.

3  
4 **Q. Why is the SEET important?**

5 A. The SEET is a statutory customer safeguard against excessive rates. The annual SEET  
6 review can be a very powerful regulatory tool that allows the Commission to balance the  
7 interests of Ohio's investor-owned electric utilities and consumers. The SEET is the only  
8 statutory exception to the *Keco* prohibition against retroactive ratemaking. That is why the  
9 parties to this Stipulation were able to reach back to the years 2017-2019 and effectively  
10 refund a portion of the \$457 million of Distribution Modernization Rider ("DMR") charges  
11 collected by FirstEnergy which the Ohio Supreme Court found to be unlawful, but which  
12 could not be directly refunded because of *Keco*.

13  
14 **Q. Explain how the \$306 million of SEET refunds and future rate reductions were**  
15 **derived.**

16 A. The derivation of the \$96 million SEET refund is shown on Exhibit A to the Stipulation.  
17 Exhibit A starts with the ROEs calculated by the Companies, which include numerous  
18 adjustments to the per books costs reflected in the calculations. However, the Companies'  
19 calculations as filed and as shown on Exhibit A do not include the effects of removing the  
20 legacy nuclear power plant financing costs that I recommended in my Direct Testimony.  
21 In the settlement process, OEG agreed to waive these and other adjustments and the greater  
22 SEET refunds for the years 2017-2019 in exchange for the future rate reductions and other

1 considerations reflected in the Stipulation. Pursuant to an order of the Ohio Supreme Court  
2 in an appeal brought by OCC, DMR revenues were included in the 2017-2019 SEET ROEs.  
3 Exhibit A then utilizes SEET thresholds which are the average of the thresholds  
4 recommended by the Companies, OCC and Staff. This process results in significantly  
5 excessive earnings for Ohio Edison of \$10.8 million in 2017, \$34.6 million in 2018 and  
6 \$24.6 million in 2019. The refunds sum to \$70 million over 2017-2019. Interest at the  
7 9.96% weighted average cost of capital added \$26 million for a total SEET refund of \$96  
8 million for the years 2017-2019.

9 The Stipulation also provides for future rate reductions of \$80 million in 2022, \$60  
10 million in 2023, \$45 million in 2024 and \$25 million in 2025, or \$210 million over the  
11 2022-2025 period. OEG's concession regarding the legacy nuclear power plant financing  
12 costs was the primary consideration given to FirstEnergy in exchange for the \$210 million  
13 in future rate reductions.

14 In the settlement process, the signatory parties agreed that there were no  
15 significantly excessive earnings in 2020 and that they would not raise the legacy nuclear  
16 power plant financing cost adjustments in the 2021-2024 SEET cases. As I explained  
17 previously, the legacy nuclear power plant financing cost adjustments that I recommended  
18 were excluded from the calculation of the Companies' 2017-2019 ROEs on Exhibit A.  
19 Waiving the legacy nuclear power plant financing cost adjustments from the SEET review  
20 process for the eight-year period 2017-2024 provides significant value to the Companies.  
21 That is the primary consideration provided to FirstEnergy in exchange for the \$210 million  
22 of future rate reductions.

1   **Q.   Other than in the specific circumstances set forth in the Stipulation, does the**  
2       **Stipulation modify Opinion and Order in Case Nos. 96-1211-UNC and 96-1322-MER**  
3       **in which the Commission prohibited recovery of the legacy nuclear power plant costs**  
4       **in future rate proceedings, consistent with FirstEnergy's agreement not to seek such**  
5       **recovery?**

6   A.   No. As explained in my Direct Testimony, the \$561 million and \$1,045 million of legacy  
7       nuclear power plant costs recorded as goodwill on the books of Toledo Edison and CEI,  
8       respectively, originated with the 1997 formation of FirstEnergy by Ohio Edison and its  
9       acquisition of Centerior (parent company of Toledo Edison and CEI). When it approved  
10      this 1997 acquisition, the Commission conditioned its approval on FirstEnergy's  
11      agreement that the legacy nuclear power plant costs, which include the financing costs,  
12      would not be included in rates. This condition was enforced in the Companies' last base  
13      rate cases in 2007 by excluding the legacy nuclear power plant costs from rate base.

15   **Q.   Why is it reasonable to exchange \$210 million for an issue which you calculated is**  
16       **worth as much as \$516 million before interest?**

17   A.   There is always litigation uncertainty. The \$516 million SEET refund for the period 2017-  
18       2019 that I calculated was based on the OCC's recommended SEET thresholds. If the  
19       Companies' standard deviation SEET thresholds were adopted, then the 2017-2019 SEET  
20       refund under my approach would have been \$138 million before interest. Also, in prior  
21       cases the Commission has increased the SEET threshold, or eliminated SEET refunds,  
22       because of future committed capital expenditures by utilities. As explained in my  
23       Supplemental Direct Testimony, I believe that this policy is misguided because the utilities

1 already have inherent incentives to make capital expenditures and increase rate base. That  
2 is how they grow earnings. This is especially true with respect to the return on capital  
3 expenditures (rate base) that are recovered in real time through riders. Nevertheless, this  
4 litigation risk is resolved by the Stipulation. Finally, even if the legacy nuclear power plant  
5 financing cost adjustments are made, the possibility of SEET refunds after 2019 is  
6 substantially reduced because the DMR charges and revenues, and the incremental  
7 earnings from those revenues ended in 2019. These factors lead OEG to conclude that  
8 foregoing the refunds that would have resulted from properly removing the legacy nuclear  
9 power plant financing costs from the ROE calculations in exchange for the known and  
10 certain \$210 million in future rate reductions is a reasonable outcome for consumers.

11  
12 **Q. Does the Stipulation result in a fair, just, and reasonable resolution of the issues**  
13 **addressed in these proceedings?**

14 A. Yes.

15  
16 **Q. Does this complete your Direct Testimony In Support of Stipulation?**

17 A. Yes.



# AFFIDAVIT

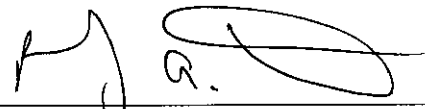
STATE OF GEORGIA            )

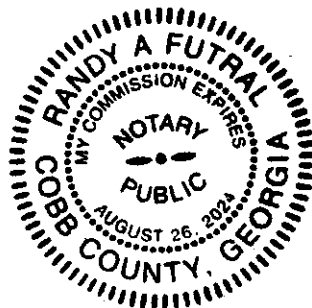
COUNTY OF FULTON         )

LANE KOLLEN, being duly sworn, deposes and states: that the attached is his sworn testimony and that the statements contained are true and correct to the best of his knowledge, information and belief.

  
Lane Kollen

Sworn to and subscribed before me on this  
15th day of November 2021.

  
\_\_\_\_\_  
Notary Public



### **CERTIFICATE OF SERVICE**

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document on the parties referenced on 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(s) is also being served (via electronic mail) on the 15<sup>th</sup> day of November, 2021.

/s/ Michael L. Kurtz

Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

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**Case No(s). 13-2173-EL-RDR, 14-1947-EL-RDR, 15-1843-EL-RDR, 16-2167-EL-RDR, 17-2277-EL-RDR, 18-0857-EL-UNC, 19-1338-EL-UNC, 20-1034-EL-UNC, 20-1476-EL-UNC, 21-0586-EL-UNC, 21-1127-EL-ATA**

Summary: Testimony Ohio Energy Group (OEG) Direct Testimony of Lane Kollen in Support of Stipulation electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group