

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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|--|---|-------------------------|
| In the Matter of the Commission Review |) | |
| of the Capacity Charges of Ohio Power |) | Case No. 10-2929-EL-UNC |
| Company and Columbus Southern Power |) | |
| Company |) | |

DIRECT TESTIMONY OF
DAVID I. FEIN
ON BEHALF OF INTERVENORS
CONSTELLATION NEWENERGY, INC.
CONSTELLATION ENERGY COMMODITIES GROUP, INC.
EXELON ENERGY COMPANY, INC.
EXELON GENERATION, LLC

April 4, 2012

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DIRECT TESTIMONY OF DAVID I. FEIN

I. INTRODUCTION

A. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME AND YOUR BUSINESS ADDRESS.

A. My name is David I. Fein, and my business address is 550 West Washington Boulevard, Suite 300, Chicago, Illinois 60661.

Q. BY WHOM ARE YOU EMPLOYED?

A. I am employed by Exelon Corporation.

Q. PLEASE DESCRIBE YOUR POSITION WITH EXELON CORPORATION.

A. I am Vice President of State Government Affairs, East for Exelon Corporation. In this role, I am responsible for directing and implementing regulatory and legislative policies for Exelon Corporation's retail, wholesale, power generation, and other business interests in the eastern portion of the United States, which includes the State of Ohio.¹

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND BUSINESS EXPERIENCE.

A. I earned a Bachelor of Arts in Political Science and Behavioral Science & Law from the University of Wisconsin-Madison in 1989 and a Juris Doctorate from DePaul University College of Law in 1993. I have almost 20 years of experience in all facets of the energy industry. Previously, I was Vice President of Energy Policy in the Midwest and Pennsylvania and Director of Energy Policy for Constellation. Also, I served as Senior Regulatory Counsel for Constellation and was responsible for providing legal and regulatory support to all of the regulatory activities of Constellation NewEnergy, Inc.

¹ On March 12, 2012, Exelon Corporation acquired the Constellation Companies. *See Exelon Corp. et al.*, 138 FERC ¶ 61,167 (2012).

1 ("CNE") before state and federal regulatory agencies across the country and in Canada. In
2 addition, I acted as Senior Counsel providing primary legal support and counsel for all of
3 CNE's commercial activities in Illinois and Alberta, Canada as well as support for other
4 markets. My previous experience prior to joining Constellation includes over five years at
5 DLA Piper, LLP, a 3,600-lawyer law firm, specializing in energy and telecommunications
6 law and regulation and over four years as an Assistant State's Attorney, in the Illinois Cook
7 County State's Attorney's Office, focusing on public utility law and regulation.

8 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

9 **A.** I am testifying on behalf of Constellation NewEnergy, Inc.; Constellation Energy
10 Commodities Group, Inc.; Exelon Energy Company; and Exelon Generation Company, LLC
11 (collectively "Exelon").

12 **Q. PLEASE PROVIDE SOME BACKGROUND ON THE EXELON COMPANIES ON**
13 **WHOSE BEHALF YOU ARE TESTIFYING IN THE INSTANT PROCEEDING.**

14 **A.** The Exelon family of companies participates in every segment of the energy
15 marketplace, from generation to competitive energy sales to transmission to delivery.
16 Exelon has operations and business activities in 47 states, the District of Columbia and
17 Canada. The company is the largest competitive U.S. power generator, with approximately
18 35,000 megawatts of owned capacity comprising one of the nation's cleanest and lowest-
19 cost power generation fleets. Its Constellation business unit provides energy products and
20 services to approximately 100,000 business and public sector customers and
21 approximately 1 million residential customers. Exelon's utilities deliver electricity and

1 natural gas to approximately 6.6 million customers in central Maryland, northern Illinois
2 and southeastern Pennsylvania.

3 *Exelon Generation Company, LLC* (“Exelon Generation”) owns or controls
4 approximately 30,000 megawatts (“MW”) of generation, including nuclear, fossil,
5 hydroelectric, solar, landfill gas, and wind generation assets. It is the nation’s largest
6 nuclear operator with 17 reactors located in Illinois, Pennsylvania and New Jersey and has
7 a growing renewable energy business. It is the nation’s ninth largest wind energy
8 generator. In addition, Exelon Generation operates the nation’s largest urban solar power
9 plant, Exelon City Solar, a 10 MW solar installation located on a 41-acre brownfield in
10 Chicago, and two of the largest hydroelectric facilities in the Eastern United States,
11 Conowingo Hydroelectric Generating Station and Muddy Run Pumped Storage Facility
12 totaling nearly 1,600 MWs of capacity. Exelon Generation markets wholesale energy and
13 capacity products to municipal, cooperative, and investor-owned utilities, retail suppliers,
14 retail energy aggregators, merchant participants, power marketers, and major commodity
15 trading houses.

16 *Exelon Energy Company* (“Exelon Energy”), a subsidiary of Exelon Generation, is a
17 licensed competitive retail electric service (“CRES”) provider in Ohio and several other
18 states. Exelon Energy has over 20,000 retail electric and gas customers across this region,
19 mainly comprising industrial and large commercial customers.

20 *Constellation NewEnergy, Inc.* (“CNE”) provides electricity and energy-related
21 services to retail customers in Ohio as well as in 15 other states, the District of Columbia,
22 and two Canadian provinces and serves more than 15,000 megawatts of load and more

1 than 10,000 customers. CNE holds a certificate as a competitive retail electric supplier
2 (“CRES”) from the Public Utilities Commission of Ohio (“PUCO” or “the Commission”) to
3 engage in the competitive sale of electric service to retail customers in Ohio. CNE currently
4 provides service to retail electric customers in Ohio.

5 *Constellation Energy Commodities Group, Inc* (“CCG”) provides wholesale power and
6 risk management services to wholesale customers (distribution utilities, co-ops,
7 municipalities, power marketers, utilities and other large load serving entities), throughout
8 the United States and Canada, in both regulated and restructured, competitive energy
9 markets. CCG is active in the PJM Interconnection, L.L.C. wholesale power markets and has
10 sold power for wholesale delivery in Ohio.

11 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THIS COMMISSION?**

12 **A.** Yes. I have testified before this Commission in a number of Standard Service Offer
13 (“SSO”) proceedings involving AEP, FirstEnergy, Duke Energy Ohio, and Dayton Power &
14 Light Company.

15 **B. PURPOSE OF TESTIMONY**

16 **Q. WHAT IS EXELON’S INTEREST IN THIS PROCEEDING?**

17 **A.** Exelon has an interest in retail and wholesale competition and electricity sales in
18 AEP Ohio’s service territory. Exelon Corporation’s subsidiaries, Exelon Energy and
19 Constellation NewEnergy, are both licensed CRES providers in Ohio and as such are
20 concerned that the capacity rate proposed to be charged to CRES providers by AEP Ohio in
21 this proceeding will postpone the development of competitive retail markets in the AEP
22 Ohio service territory and deprive AEP Ohio customers of benefits available from

1 purchasing their energy and capacity needs from a competitive market. This outcome
2 would conflict with the spirit of Ohio's state policy of promoting the development of
3 competitive markets and would severely frustrate Exelon Energy and Constellation
4 NewEnergy's ability to bring the benefits of a fully competitive retail market to customers
5 in the AEP Ohio territory.

6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

7 **A.** In December of 2010, this Commission initiated this case to resolve the following
8 questions: (i) what changes, if any, to the current state mechanism are appropriate to
9 determine AEP Ohio's capacity prices to Ohio [competitive retail electric suppliers]
10 providers; (ii) the degree to which AEP Ohio's capacity charges are currently being
11 recovered through retail rates approved by the Commission or other capacity charges; and
12 (iii) the impact of AEP Ohio's capacity charges upon CRES providers and retail competition
13 in Ohio. I will address the first and third issues.

14 **C. SUMMARY OF RECOMMENDATION**

15 **Q. WHAT IS YOUR RECOMMENDATION IN THIS PROCEEDING?**

16 **A.** Exelon recommends that the state compensation mechanism for AEP Ohio remain
17 at the capacity price set by PJM's Reliability Pricing Model ("RPM"),² the state
18 compensation mechanism price implicitly in effect since 2007 and explicitly in effect since
19 December 8, 2010.

² For purposes of this testimony, the RPM price is equal to the final zonal capacity price for the unconstrained region in PJM.

1 **II. THE STATE COMPENSATION MECHANISM SHOULD BE SET TO REFLECT THE**
2 **RPM PRICE**

3 **Q. DO YOU HAVE ANY INITIAL COMMENTS THAT YOU WOULD LIKE TO MAKE TO**
4 **PLACE AEP OHIO'S REQUEST IN THE PROPER CONTEXT?**

5 **A.** Yes. Exelon has advocated for a timely and efficient transition to full competition for
6 capacity and energy in the AEP Ohio service territory on terms that are fair and equitable
7 to AEP Ohio and all other stakeholders. In Exelon's view, the September 7, 2011 Stipulation
8 and Recommendation (the "Stipulation"), although not perfect, struck the correct balance
9 and benefited Ohio ratepayers. It included the establishment of a state compensation
10 mechanism different from the RPM price for some customers in return for the settlement of
11 a broad set of issues being litigated before the Commission and the Federal Energy
12 Regulatory Commission ("FERC"). That Stipulation, however, has now been rejected by the
13 Commission. Although Exelon was a signatory and supporter of the Stipulation, it cannot
14 support AEP Ohio's current request to change only the state compensation mechanism as
15 that would restrict competitive market offerings and protect AEP Ohio's profits at the cost
16 of competition. This request should be denied.

17 Exelon, however, applauds AEP Ohio's decision to embrace competitive markets, as
18 referenced in AEP Ohio witness Munczinski's testimony, and to become a RPM entity for
19 the PJM 2015/2016 Planning Year. What this means is that, effective mid-2015, all of AEP
20 Ohio's load will be in the RPM market. RPM pricing for capacity will be effective from that
21 point on. At issue here in this case is the capacity price during a limited, three-year
22 transition period, in which AEP Ohio remains a FRR entity (from June 1, 2012-May 31,

1 2015). For several reasons that I discuss below, Exelon believes that RPM-based capacity
2 pricing is the correct state compensation mechanism during this transition period.

3 **Q. WHAT IS THE BASIS FOR YOUR RECOMMENDATION THAT THE STATE**
4 **COMPENSATION MECHANISM BE SET AT THE APPLICABLE RPM RATE?**

5 **A.** There are at least six independent reasons that the state compensation mechanism
6 should be set at the applicable RPM rate.

7 *First*, nothing in Ohio law requires the state compensation mechanism to be cost-
8 based. Indeed, this Commission has consistently recognized that, including in comments
9 filed March 22, 2012 in AEP Ohio's FERC capacity cases, that the state compensation
10 mechanism need not be cost-based.³

11 *Second*, RPM pricing is consistent with Ohio state policy, as embodied in Section
12 4928.02, Revised Code, which calls for the Commission to promote the development of
13 competitive markets. Clearly, the fully embedded cost rate of approximately \$355/MW-
14 day that AEP Ohio seeks to implement for capacity would retard retail competition in AEP
15 Ohio's service territory during the transition period. The RPM price is now, and is expected
16 to remain, far lower than the \$355.72-MW/day rate that AEP Ohio seeks to impose on CRES
17 providers and retail customers in Ohio. In fact, the RPM price currently is about 40% of
18 the AEP Ohio price as estimated by AEP Ohio witness Pearce.

19 *Third*, even AEP Ohio concedes that for many years when it was advantageous to do
20 so, it made capacity available to CRES providers at the RPM level. Now that it is no longer
21 financially advantageous to do so, however, AEO Ohio seeks to implement a cost-based

³ See Motion for Leave to Answer and Limited Answer Submitted on Behalf of the Public Utilities Commission of Ohio to PJM Interconnection, LLC Response to AEP Motion for Expedited Ruling (filed 3/22/2012 in FERC Docket No. ER11-2183-000).

1 approach to capacity pricing. AEP Ohio should not be allowed to unilaterally apply “better-
2 of-market-or-cost” pricing.

3 *Fourth*, although in theory CRES providers have the option to purchase capacity
4 from entities other than AEP Ohio, in reality that is an illusory option and CRES providers
5 are captive to AEP Ohio because of AEP Ohio’s voluntary Fixed Resource Requirement
6 (FRR) election. When a load serving entity (“LSE”) elects FRR, PJM rules require that
7 capacity to serve the load be committed more than three years in advance of delivery.⁴
8 Given that PJM requirement, it is unrealistic to expect CRES providers would have
9 purchased and committed capacity to serve retail customers more than three years in
10 advance of delivery when they would have few or no committed retail customers. Thus,
11 their only legitimate option is to buy capacity from AEP Ohio. As such, CRES providers are
12 not acting opportunistically or to “game the system,” but rather are attempting to deal with
13 market realities existing only when the LSE has elected FRR.

14 *Fifth*, Section 4928.03 of the Revised Code requires that each consumer in the state
15 have “comparable and non-discriminatory” access to CRES service. CRES providers in AEP
16 Ohio’s service territory should be able to access capacity at the same rate as that which is
17 available in the service territories of other electric distribution utilities in Ohio—which is at
18 the RPM price. Certainly, nothing about the FRR status requires AEP Ohio to provide
19 capacity at a price other than at the RPM price. For example, Duke Energy Ohio is in FRR
20 until mid-2015, at which time it will enter into RPM. However, prior to that time, it will be
21 making capacity available at RPM prices. Creating uniformity in capacity pricing across all

⁴ See PJM Tariff, Schedule 8.1. See also Direct Testimony of Frank C. Graves on Behalf of Ohio Power Company (filed 3/23/2012) at 9:9-18.

1 EDU service territories will help promote retail competition in Ohio by: (1) increasing
2 efficiencies for all Ohio retail customers, especially for those commercial and industrial
3 customers who are served by more than one EDU; and (2) facilitating business planning
4 and increasing transparency for customers and CRES providers.

5 Finally, both Senate Bill 221 and Senate Bill 3 eliminated the full cost-of-service
6 analysis used prior to electric restructuring. Adopting the RPM price would make wholly
7 unnecessary the complex, arcane, and somewhat arbitrary, method of deriving a cost-of-
8 service for AEP Ohio's capacity. Unlike an estimated asset valuation based on the FERC
9 Form 1 as proposed by AEP Ohio, RPM pricing reflects true, transparent market and
10 competitive conditions. A competitive market for capacity exists today in the RPM auctions
11 at PJM;⁵ the Commission should utilize those competitively derived prices to establish this
12 state compensation mechanism.

13 **III. AEP OHIO HAS FAILED TO JUSTIFY ITS PROPOSED CAPACITY RATES IMPOSED**
14 **UPON CRES PROVIDERS**

15 **Q. DOES AEP OHIO'S VOLUNTARY ELECTION OF FRR STATUS JUSTIFY IT**
16 **CHARGING A HIGHER CAPACITY PRICE TO CRES PROVIDERS?**

17 **A.** No. The mere fact that AEP Ohio is an FRR entity does not justify the interim
18 protection from competition it now seeks. In 2007, AEP Ohio elected to self supply capacity
19 through FRR. Many Ohio stakeholders acquiesced in that 2007 decision because they
20 believed that FRR and non-market rates would prove less costly for consumers during the

⁵ The PJM Independent Market Monitor has found that "the Capacity Market results were competitive" in each of the RPM auctions that set the price for capacity between 2012 and 2015. See PJM State of the Market Reports for 2008, 2009, 2010, and 2011 at: [http://www.monitoringanalytics.com/reports/PJM State of the Market/2011.shtml](http://www.monitoringanalytics.com/reports/PJM%20State%20of%20the%20Market/2011.shtml)

1 five-year FRR commitment period.⁶ For a period of time, this was correct. As evidenced by
2 a lack of shopping in the AEP Ohio service territory, customers preferred the AEP Ohio
3 rates to competitive rates.⁷ However, this changed when prices for natural gas—the fuel
4 that sets the marginal price of electricity for many hours of the year—collapsed with the
5 discovery of abundant shale gas. Competitive market prices suddenly were far lower than
6 non-market rates, triggering a wave of retail shopping. However, the fact that the
7 Commission or other market participants did not oppose, or even supported, AEP Ohio's
8 FRR election in 2007 does not mean that the company is entitled to avoid RPM-based
9 pricing today. Indeed, the December 8, 2010 Entry (three years after AEP Ohio opted for
10 FRR status) required AEP Ohio to use RPM-based pricing. Moreover, there is a difference
11 between electing FRR and electing FRR at any cost. The election of FRR does not excuse
12 AEP Ohio from its responsibility to explore lower cost capacity options in the market, and
13 the PJM Tariff explicitly permits FRR entities like AEP Ohio to use the most economic
14 combination of its own units and purchased capacity through bilateral agreements with
15 other suppliers inside and, in certain circumstances, outside of PJM.

16 **Q. COULD AEP OHIO HAVE UTILIZED AN OPTION OTHER THAN FRR TO SECURE**
17 **CAPACITY FOR ITS CUSTOMERS?**

18 **A.** Yes, as stated previously, AEP selected the FRR option in 2007 and was required by
19 PJM rules to remain on FRR for a minimum of 5 years. As early as March of 2009, then, AEP
20 Ohio could have elected to participate in the RPM auction (for PJM planning year 2012/13).
21 Despite the fact that lower priced capacity was available to serve its customers, it

⁶ Transcript of Hearing in Case Nos. 11-346-EL-SSO, 10-2929-EL-UNC, et al. ("Tr.") Vol. VI at 1064-65.

⁷ Tr. Vol. VI at 1064-65.

1 voluntarily elected to remain on FRR while continuing to charge CRES providers the RPM
2 price for capacity.

3 **Q. IN YOUR VIEW, WHAT IS THE RELEVANCE OF THE DECEMBER 2010**
4 **COMMISSION RULING THAT RPM PRICING IS THE STATE COMPENSATION**
5 **MECHANISM TO AEP'S DECISION TO REMAIN FRR AND NOT TAKE ADVANTAGE**
6 **OF LOWER PRICED CAPACITY IN THE MARKET?**

7 **A.** The December 2010 Order simply reinforced the use of RPM as the appropriate
8 transfer price.⁸ Notwithstanding this order, AEP once again elected to self-supply capacity
9 through FRR in the May 2011 auction covering the period June 2014 to May 2015 time
10 period.

11 **Q. DO YOU AGREE WITH AEP OHIO WITNESS MUNCZINSKI THAT EMBEDDED**
12 **COST RATES ARE NECESSARY TO ALLOW FOR CONTINUED INVESTMENT IN**
13 **GENERATION RESOURCES WITHIN OHIO.**

14 **A.** Not at all. Mr. Munczinski expressly concedes that as of June 1, 2015, AEP Ohio will
15 be under the RPM pricing regime and that the rates set in this proceeding will be only
16 transitional in nature. It is inconceivable to me that embedded cost rates remaining in
17 effect only until May 31, 2015 would contribute in any way to investment in new Ohio
18 generation. Even AEP Ohio witness Graves concedes that "there is no apparent need for

⁸ AEP Ohio used PJM's RPM prices for capacity cost in its filing for its 2009-2011 ESP. In this prior ESP proceeding, Company witness Baker described the capacity cost component as follows "PJM Capacity Obligations – This component reflects the cost of PJM's required capacity obligations for load serving entities and was derived from the PJM Reliability Pricing Model (PJM Capacity Auction) results for the relevant time period." See Direct Testimony of J. Craig Baker on Behalf of CSPC and OPC (filed 7/8/2008) at 11:11-14 (emphasis added). Thus, AEP Ohio clearly relied on PJM's RPM capacity price to derive the capacity cost component of the Competitive Benchmark Price.

1 new capacity in and around AEP” for the “next several years.”⁹ As such the claim that
2 embedded cost-based rates are needed to encourage investment in generation is a red
3 herring.

4 **Q. A NUMBER OF AEP OHIO WITNESSES CLAIM THAT IF AEP OHIO IS REQUIRED**
5 **TO CHARGE THE RPM PRICE, AEP OHIO WILL BE SUBSIDIZING CRES**
6 **PROVIDERS WHO HAVE NOT ARRANGED TO OBTAIN THEIR OWN CAPACITY.**
7 **DO YOU AGREE?**

8 **A.** No. The claim of subsidy is also a red herring. Under this proposal, AEP Ohio
9 provides no subsidy, as the CRES providers will be required to pay the full market price for
10 capacity. The real subsidy would be requiring other market participants and customers to
11 reimburse AEP Ohio for its above market, cost-based capacity costs.

12 **Q. WOULD IT BE PROPER TO CONSIDER A PRICE OTHER THAN RPM FOR THE**
13 **STATE COMPENSATION MECHANISM UNDER SOME CIRCUMSTANCES?**

14 **A.** Exelon is not completely unsympathetic to AEP Ohio’s position; however, Exelon
15 remains interested in a comprehensive settlement regarding AEP Ohio’s SSO structure that
16 relies on a transparent and competitive wholesale and retail market model. We believe
17 that the structure of the Stipulation rejected by the Commission represented a fair balance
18 of many diverse interests. Many of the Stipulation’s tenets therefore still provide a viable
19 framework for a new ESP and any changes to the state compensation mechanism.

⁹ Direct Testimony of Frank C. Graves on Behalf of Ohio Power Company (filed 3/23/2012) at 15:17-18.

1 **Q. EXELON WAS A PARTY TO THE STIPULATION, WHICH IN PART ALLOWED AEP**
2 **OHIO TO RECEIVE A CAPACITY CHARGE GREATER THAN RPM. HOW DO YOU**
3 **RECONCILE THAT WITH EXELON'S POSITION THAT RPM PRICING SHOULD**
4 **APPLY TO AEP OHIO?**

5 **A.** The Stipulation was an integrated package which contained a number of key pro-
6 competitive features providing a viable glide-path to a fully competitive wholesale and
7 retail market structure. As a result, Exelon, like many parties to the settlement
8 compromised its position on other issues, such as the capacity rate for the state
9 compensation mechanism. Before the Stipulation, however, Exelon strongly advocated for
10 adoption of RPM pricing. (See Direct Testimony of Joseph Dominguez filed July 25, 2011 in
11 the *ESP II* proceeding.¹⁰) Exelon's position has not changed.

12 **Q. IN ANY OTHER CASE, IS AEP OHIO SEEKING A NON COST-BASED CAPACITY**
13 **PRICE FOR THE STATE COMPENSATION MECHANISM ?**

14 **A.** Yes. On March 30, 2012 AEP Ohio filed a modified Electric Security Plan¹¹ which
15 proposes to establish the state compensation mechanism at \$146/MW-day for some
16 customers and \$255/MW-day for other customers. This demonstrates that AEP Ohio is
17 willing to accept something other than a cost-based price for capacity used to serve retail
18 customers.

¹⁰ Case Nos. 11-346-EL-SSO and 11-348-EL-SSO.

¹¹ Case No. 11-346-EL-SSO.

1 **Q. WHAT IS THE BASIS FOR THE \$146/MW-DAY PRICE?**

2 **A.** According to AEP Ohio witness Allen, the rate of \$146/MW-day is based on the
3 "Final Zonal Capacity Price adjusted for the RPM Scaling Factor, the Forecasted Pool
4 Requirement and losses for the PJM planning year 2011/2012."¹² In short, this is the RPM
5 price.

6 **Q. IS AEP OHIO SEEKING TO ESTABLISH THE PRICE FOR USE OF ITS CAPACITY TO**
7 **SERVE RETAIL CUSTOMERS IN ANY OTHER REGULATORY VENUE?**

8 **A.** Yes, in two FERC cases. First, on November 1, 2010, on behalf of AEP Ohio, AEP filed
9 an application under Section 205 of the Federal Power Act ("FPA") ("AEP's 205
10 Proceeding")¹³ to change the basis of its compensation for capacity sold to CRES providers
11 under the PJM Tariff. AEP's 205 Proceeding sought FERC approval to charge CRES
12 providers over \$300/MW-day for capacity, instead of PJM's RPM capacity price. The
13 Commission and other parties intervened and opposed AEP's 205 Proceeding arguing that
14 the PJM Tariff provides a "state compensation mechanism will prevail" in setting capacity
15 costs to CRES providers, and that since the inception of AEP Ohio's SSO, the state implicitly
16 adopted PJM's RPM auction price to value capacity. As of December 8, 2010, the
17 Commission has expressly adopted the use of PJM's RPM auction price as its state
18 compensation mechanism. On January 20, 2011, FERC rejected AEP's filing. AEP has
19 sought rehearing of this January Order. FERC has yet to act upon this request.

¹² Direct Testimony of William A. Allen (filed 3/30/2012 in Case No. 11-346-EL-SSO) at 7:7-9.

¹³ FERC Docket No. ER11-2183-001.

1 In response to the FERC's order in AEP's 205 Proceeding, AEP initiated a second
2 proceeding at FERC pursuant to Section 206 of the FPA ("AEP's 206 Proceeding"),¹⁴ by
3 filing a complaint alleging that the PJM Tariff is unjust and unreasonable and the
4 Commission had no authority over wholesale capacity rates.

5 On February 29, 2012, AEP Ohio filed a motion for an expedited ruling in AEP's 205
6 Proceeding claiming that the Commission "hurriedly" established an interim state
7 compensation mechanism that has been in effect since December 2010.

8 AEP Ohio is clearly forum shopping, as it seeks to have FERC declare that Ohio has
9 no jurisdiction to determine the capacity rates from that same generation to CRES
10 providers. AEP Ohio seeks to declare unlawful a tariff that it historically supported,
11 including the provision explicitly giving the Commission the right to set the capacity rate
12 AEP Ohio charges CRES providers.

13 **Q. WHAT WOULD BE YOUR RECOMMENDATION TO THE OHIO COMMISSION AS TO**
14 **THE PROPER CAPACITY CHARGE THAT AEP OHIO SHOULD ASSESS CRES**
15 **PROVIDERS WHEN SERVING OHIO RETAIL CUSTOMERS?**

16 **A.** I recommend that the Commission adopt the RPM price as established by PJM. I
17 repeat that Exelon is not unsympathetic to AEP Ohio's financial concerns and believes the
18 Commission can address that issue with a "stability" or other suitable fee. I will also note
19 that the issues in this case are integral to, and cannot be considered in isolation from, AEP
20 Ohio's ESP case.

¹⁴ FERC Docket No. ER11-32-001.

1 Ultimately, Exelon is interested in a comprehensive settlement which promotes an
2 SSO based on a transparent and competitive wholesale and retail market structure to the
3 benefit of AEP Ohio's customers and Ohio. Absent a balanced and comprehensive
4 settlement that addresses all of the issues regarding AEP Ohio's transition to a fully
5 competitive market structure, however, the only just and reasonable price is RPM.

6 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

7 **A. Yes.**

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served this 4th day of April, 2012 via electronic mail on the following persons.



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Summary: Testimony Direct Testimony of David I. Fein on Behalf of Intervenors Constellation NewEnergy, Inc., Constellation Energy Commodities Group, Inc., Exelon Energy Company, Inc., Exelon Generation, LLC electronically filed by M HOWARD PETRICOFF on behalf of Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. and Exelon Energy Company, Inc. and Exelon Generation, LLC