

1 **Q31. Can you explain your opposition to Rider RRS in the context of Porter's Five Forces?**

2 **A31.** Yes. For competitive markets to work, competitive market participants must have the ability to  
3 compete with others on a fair and level playing field and buyer power must keep generation  
4 power in check. Here, I am defining "working" as incenting proper efficient operation and  
5 investment based on market price signals to meet reliability objectives Rider RRS harms  
6 competitive markets, which is the structure used by PJM to achieve efficient, cost-effective  
7 outcomes from customers while meeting reliability requirements.

8  
9 **Q32. Can you describe how Rider RRS is a threat to new entrants?**

10 **A32.** A market participant that believes it can build, manage, and operate a superior technology will  
11 be threatened because, if they make a wise investment, they may be artificially displaced by a  
12 more expensive generator that is subsidized. For example, the subsidy in this case would occur  
13 through Rider RRS. The subsidized generator will offer into RPM as a price taker and  
14 potentially displace the real cost offer of a competitive generator. The generator will be less  
15 willing to invest given the very real regulatory risk of even more subsidized generation. Porter  
16 terms this as a "barrier to entry." On the flip-side of barrier to entry is "barrier to exit." A  
17 market participant that believes it has a better generator solution than existing generation will  
18 not enter the market because it knows it cannot displace more expensive generation that is  
19 under a Rider subsidy. The Rider-subsidized generator has a barrier to exit because the  
20 incumbent FES units prevent better, cheaper generation solutions from displacing it.

21  
22 Besides not managing its capacity costs efficiently, the subsidized capacity generator cares  
23 little about its energy revenues and associated costs. This is because PJM's markets are joint-  
24 optimized and reduced energy revenues for a Rider generator simply lead to increased capacity

1 costs since capacity bids are total costs minus energy revenues. The increased capacity costs  
2 associated with poorly managed units in the energy market are simply made whole through  
3 Rider RRS courtesy of the Companies' rate payers.  
4

5 **Q33. Can you describe how Rider RRS is a threat to a substitute product?**

6 **A33.** Yes Rider RRS generation is allowed to be paid at a higher price via ratepayer subsidy than  
7 comparable products that simply get paid a competitive market clearing price. This impedes  
8 the PJM RPM construct in sending proper market signals to maintain resource adequacy and  
9 capacity construct reliability. Regulated priced assets cannot be used as substitutes when they  
10 are guaranteed to be paid even if at out-of-market prices. Rider RRS attempts to create a  
11 loophole by using non-regulated entity-owned assets that could create a crack in the carefully  
12 constructed market. The theory of substitution in marketplace competition is based on the  
13 cheaper substitute being able to replace the more expensive existing product, and not the  
14 reciprocal.  
15

16 **Q34. Can you describe how Rider RRS completely removes the bargaining power of**  
17 **customers?**

18 **A34.** In the case of RPM, buyers (or PJM purchasing on behalf of buyers) are highly motivated to  
19 bargain for the cheapest total cost resources. Rider RRS, on the other hand, guarantees that the  
20 Companies' ratepayers will pay for its affiliate-owned generation no matter what. With all  
21 bargaining power removed, there is no pressure for the Companies or FES to manage the assets  
22 well, make smart investment decisions, or operate efficiently. For competitive markets to  
23 work, and hence RPM to work, buyer pressure must exist to ensure the best, most efficient,  
24 lowest total cost generation is selected every year. Without the market assurance of buyer

1 power (otherwise stated as the ability for a buyer to select a cheaper generation product), new  
2 generation, generation with improvements, and maintenance of existing generation are  
3 subverted by the guaranteed Rider RRS generation.  
4

5 **Q35. Can you describe how Rider RRS distorts bargaining power of generators?**

6 **A35.** The Rider RRS generation has complete supply-side leverage guaranteed by the Companies'  
7 ratepayers. Conversely, and a little ironically, the Rider RRS generation has no supply-side  
8 power in RPM where, instead of exerting supply-side pressure for higher prices, it actually will  
9 likely enter as a price taker to assure clearing since it is at no risk of lost revenues due to the  
10 Rider. The short-term impact may be artificially lower capacity costs for all of PJM *except*  
11 *perhaps Ohio* where the Companies' ratepayers would pay for a disproportionate amount of the  
12 Rider RRS generation. Overall costs to the PJM system may increase due to effects on the  
13 energy market where cheaper generation could have been displaced, as well as long-term  
14 increased costs of less efficient generation in the marketplace, which would exert pressure for  
15 even more inefficient "regulated" (Rider) generation in the future. Further, competitive  
16 generators lose power against other generators in that they are not allowed to substitute for  
17 Rider RRS generation. Generator power is also driven down as Rider RRS subsidies suppress  
18 prices.  
19

20 **Q36. Can you describe how Rider RRS reduces intensity of competitive rivalry?**

21 **A36.** Competitive rivalry in any market is increased by facing many potential suppliers on an equal  
22 playing field against many potential buyers. Simply removing suppliers from the competition  
23 reduces competitive rivalry. This reduction in competitive rivalry could be severely damaging  
24 if a snowball effect is created where more generation is unable to compete and therefore itself



1 becomes subsidized, generating units close, or more generation is not built. No load should be  
2 held captive, devoid of competitive rivalry to serve that load as cheaply and efficiently as  
3 possible.  
4

5 **Q37. Using the Porter's Five Forces Analysis, what is your conclusion about the proposed**  
6 **Rider RRS?**

7 **A37.** Porter's Five Forces analysis of Rider RRS unambiguously leads to the conclusion that Rider  
8 RRS is a significant blow to the PJM capacity market as well as being detrimental to the energy  
9 market. If Rider RRS is allowed to go forward (assuming its legality, which RESA does not  
10 concede), competing generation will be less likely to enter or stay in the capacity market  
11 resulting in the very thing the state fears and the Companies' proposed plan is supposed to  
12 avoid – less generation. The capacity market would be subverted and we would be on a path  
13 back to inefficient re-regulated markets. As indicated in my Porter's Five Forces analysis, the  
14 Rider RRS constructs cannot work within competitive market constructs like RPM. This is  
15 why PJM is likely to change its market rules through MOPR changes to prevent subsidized  
16 generation from clearing RPM when uneconomic as described previously in this testimony.  
17

18 **Q38. Is there a better way to ensure generation without a Rider RRS?**

19 **A38.** Simply choosing a generation resource to meet the needs of any area is not as effective in  
20 maximizing the number of competing generators as transmission upgrades are at maximizing  
21 the number of competing generators. Where it makes economic sense, transmission upgrades  
22 allow more generators to compete, even from far away, for serving load. The market should  
23 decide which generation to build, replace, improve, or maintain. Where the market location is  
24 incapable of responding, more transmission is built by PJM to ensure competition by including

1 new potential supply areas. This also moves us away from a balkanized grid made up of  
2 isolated utility territories and benefits the energy market with less congestion costs. Recall  
3 from earlier in my testimony that the energy market is more than five (5) times the size of the  
4 capacity market cost to customers.

5  
6 **Q39. Companies' witness Strah (at pages 11-12 of his Direct Testimony) criticizes the approach**  
7 **of relying on staggering and laddering wholesale auctions as a tool to reduce volatility for**  
8 **standard service offer customers. Do you agree with witness Strah?**

9 **A39.** No. Despite what witness Strah asserts, fundamental long-term changes in wholesale market  
10 prices are meant to occur or else the price signals for investment are eliminated. And, even in a  
11 regulated, centrally planned environment, the utility would increase its rates for customers  
12 based on fundamental long-term changes. These fundamental changes in price are mitigated  
13 through retail customer choice and competing generation at the wholesale level, but ultimately  
14 will be passed onto customers regardless of market design or the supplying companies (even if  
15 old utilities) would go bankrupt. For those who don't choose their own product or have no  
16 choice, staggering and laddering of SSO competitive procurements can be an effective way to  
17 minimize short-term volatility while respecting changes in long-term fundamentals. Staggering  
18 and laddering is a well-established method of hedging short-term volatility.

19  
20 **Q40. Companies' witness Ruberto couches the Rider RRS as a mechanism by which customers**  
21 **will receive a credit in rising wholesale market environments and will mitigate price**  
22 **impacts for SSO and shopping customers. Ruberto Direct Testimony at 6-7. Do you**  
23 **agree with Witness Ruberto?**



1   **A40.** No. As previously indicated, depending on how the plants are dispatched, even in a rising  
2       market, a credit may not appear. In fact, FirstEnergy noted in their May 2014 investment  
3       update (at pages 3 and 4) that, while other generators took advantage of high prices during the  
4       polar vortex, many of their plants were not online. *See* DAS Attachment 1. Had this occurred  
5       under Rider RRS, customers would not receive a credit despite high prices. Conversely, as  
6       market prices drop, Rider RRS prevents customers from realizing savings and they are stuck  
7       subsidizing uneconomic generation from the Companies and FES. An even worse outcome  
8       appears if market prices move even lower due to the Companies' economic forecasts being off  
9       (as they often are), technology shock (disruptive innovation), load forecast error, or economic  
10      recession. The long-term forecast by the Companies should not be relied upon for what could  
11      possibly be illusory benefits of the Rider RRS. The bottom line is customers will wear the risk  
12      of the Companies' and FES' investment decisions. In a competitive market without a Rider  
13      RRS, the shareholders wear the risk and customers are not stuck with "bad" deals made by  
14      central planners. The Commission can avoid sanctioning this risk on behalf of customers by  
15      simply rejecting Rider RRS. An important disadvantage of Rider RRS generation is that  
16      customers might get stuck with outdated technology – which was in large part the impetus to  
17      going to more market-oriented structures and why the wholesale procurements have shortened  
18      periods.

19  
20   **Q41. Companies witness Strah pans the use of CRES provider contracts as an effective hedge**  
21   **for market volatility as compared to their proposed Economic Stability Program. Direct**  
22   **Testimony of witness Strah at 13. Please explain why witness Strah is wrong.**

23   **A41.** In supplying customers, many retail service providers enter into hedging strategies that arrange  
24      for long-term bilateral contracts which extend beyond auction periods to minimize volatility

1 and hedge competitiveness. Tolling agreements are used by some as well as acquisition of  
2 generation. Additionally, many customers do not typically want longer-term pricing because,  
3 even if prices are expected to be flat, uncertainties as well as commodity holding costs are  
4 greater and the forward price curve will increase. Because uncertainty of expectation  
5 exponentially increases in further out years, the curve accelerates up. The certainty of the  
6 Companies' forecasts drops off each additional year out because they rely on calculations in  
7 which one should not have much confidence.

8  
9 Finally, the perpetual uncertainty directly caused by the construct of three (3) year ESPs also  
10 significantly curbs the offering of longer-term contracts by CRES providers. Every three (3)  
11 years, a CRES provider shudders at the real possibility that the next ESP will result in  
12 detrimental changes to the market that might impact their costs in negative ways or, even  
13 worse, explicitly wipe out their market or make it so difficult to do business that they cannot  
14 operate their business. This flaw in the ESP process should not be ignored by the Commission  
15 as they evaluate this claim by the Companies.

16  
17 **Q42. Are there alternatives to the Companies' proposal as it relates to service reliability?**

18 **A42.** Yes. Again, PJM through its ordinary processes would ensure Ohioans have access to adequate  
19 and reliable service through its ordinary market mechanisms. This alone should assuage fears  
20 about reliability.

21  
22 **Q43. What solutions could PJM deploy that are better than Rider RRS?**

23 **A43.** First, PJM should let the markets work. As covered elsewhere, the PJM markets are successful  
24 in incenting new generation in Ohio and elsewhere.



1  
2 If generation for local deliverability issues is not produced by the market, new transmission is  
3 built to access cheaper generation elsewhere. Market solutions, such as generation, are always  
4 given the first opportunity to respond to signals based on reliability needs. Transmission  
5 upgrades can be built to shore up reliability in the ATSI region in which the Companies reside  
6 if generation is cheaper elsewhere. In fact, Companies' witness Cunningham explicitly  
7 describes how transmission upgrades could be used to assuage reliability concerns for the  
8 shutdown of the Sammis and Davis-Besse plants. Cunningham Direct Testimony at 2-3. The  
9 Companies also made proposals in 2013 in Pennsylvania and West Virginia to upgrade  
10 transmission assets to address reliability concerns.<sup>4</sup> The transmission option would provide  
11 more optionality and a better market outcome than the proposed Rider RRS scheme.  
12 Transmission would allow multiple generators to compete to serve load and is therefore a better  
13 market outcome if that is indeed needed for reliable service to customers in the ATSI area.  
14

15 **Q44. Are there additional alternatives the Commission should consider instead of Rider RRS?**

16 **A44.** The Commission should also consider amending the Companies' proposed electric security  
17 plan ("ESP") to prevent units from retiring without three (3) years' notice so that the necessary  
18 transmission upgrades can be built and competitive supply can be procured and delivered.  
19 Today, generators have the power under FERC to announce retirement with only three (3)  
20 months' notice. While generators do not have to participate in RPM, by giving such short  
21 notice they can force PJM into entering Reliability Must Run (RMR) contracts to keep the  
22 generators around in the short-term to avoid reliability concerns that arise from said retirement.  
23 The reliability concerns may take up to three years to remedy with transmission fixes. Witness

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<sup>4</sup>[https://www.firstenergycorp.com/content/fecorp/newsroom/news\\_releases/firstenergy\\_announcesenergizingthefutureinitiativeenhancetrans.html](https://www.firstenergycorp.com/content/fecorp/newsroom/news_releases/firstenergy_announcesenergizingthefutureinitiativeenhancetrans.html) (last accessed on December 19, 2014).



1 Cunningham's testimony contains an estimate of the transmission upgrades that would be  
2 needed if the Sammis and Davis-Besse generation units were to actually retire or be removed  
3 from service. Utilities can hold customers hostage to paying for uneconomic generation by  
4 waiting until the last minute to announce retirement. For instance, the RMR contract associated  
5 with Eddystone Unit #2 and Cromby Unit #2 was over \$100 million and was charged  
6 predominantly to PECO customers.<sup>5</sup> Not clearing RPM presumably helped drive this plant to  
7 retirement, but the lack of notice created the need for an RMR contract. Generators have good  
8 revenue forecasting ability thanks to the three (3)-year forward RPM, and therefore can give  
9 much more than three (3) months' notice. Also, three years' notice would allow competitors to  
10 replace the retiring capacity in the RPM Base Residual Auction (the main auction which is  
11 three (3) years forward) Such a provision would allow the market to work and for an orderly  
12 exit to protect customers.

13  
14 **Q45. Are there also alternatives available as it relates more directly to diversity of fuel supply?**

15 **A45.** Yes. Witness Strah (at pages 8-10) opines about the necessity of ensuring sufficient power and  
16 references times when certain types of fuel sources (like natural gas) might be limited for  
17 electric generating purposes. PJM has several tools at its disposal (in addition to those already  
18 mentioned) to negate concerns about diversity of fuel supply. For example, redundancy and  
19 backup can be used instead of diversity. PJM's continually evolving capacity market (for  
20 example, the Capacity Performance proposed construct to FERC) ensures that resources are  
21 reliable.

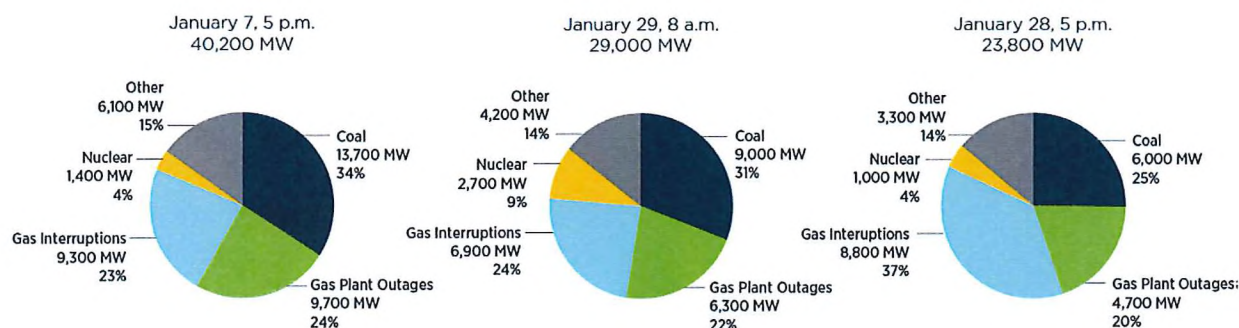
22  

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<sup>5</sup> See FERC Docket No. ER10-1418.

1 Q46. You referenced new natural gas generation being built in Ohio. Wasn't natural gas  
2 availability the reason for reliability issues and high prices during the polar vortex?

3 A46. Witness Strah also espouses the benefits of on-site fuel capability, especially in light of events  
4 like the Polar Vortex from earlier this year. Strah Direct Testimony at 8-9. It may be  
5 convenient or trendy to blame the lack of fuel diversity or natural gas fuel supply as the main  
6 culprit behind the 40,200 MW forced outage experienced during the polar vortex to meet a  
7 141,846 MW peak load, but it likewise is untrue. As demonstrated by the chart below,  
8 mechanical failures (due in large part to unusually low temperatures) accounted for 77% of  
9 forced outages on the January 7, 2014, which was the worst day of forced outages.<sup>6</sup> Similar  
10 percentages also exist for the January 28-29 time period where PJM again experienced record  
11 cold temperatures.



12 In extreme weather, all kinds of resources fail and coal is not immune to lack of availability  
13 because of coal pile freezes and pulverizer issues.  
14

15  
16 In winter 1994, PJM had more coal and nuclear generation than today and was more fuel  
17 diverse. Despite this diversity, PJM experienced rotating blackouts, and coal piles froze and  
18 were unavailable. The generator forced outages were 13,733 MW or about 33.9% of the

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<sup>6</sup> See, DAS Attachment 2, page 8, Figure 5, entitled "Problem Statement on PJM Capacity Performance Definition" (August 1, 2014), located at <http://pjm.com/~media/documents/reports/20140801-problem-statement-on-pjm-capacity-performance-definition.ashx>.



1 40,557 MW peak load on January 19, 1994, according to the NERC "Report on Electric  
2 Utilities' Response to the Cold Wave of 1994" dated April 11, 1994. *See* DAS Attachment 3.  
3 With the fuel diversity of 1994, the generator forced outage percentage of 33.9% was far  
4 greater than this year's polar vortex forced outage percentage of 28.3%. Fuel diversity does not  
5 necessarily save you from winter reliability threats, but backup and redundancy does as well as  
6 winterization of equipment. The ESP's design consideration of fuel diversity as a goal is  
7 misguided, and the PJM RPM construct should be used to incent the cheapest reliable  
8 generation using winterization, backup, and redundancy criteria. The coal and nuclear  
9 generation proposed to be subsidized in the ESP have cold weather availability vulnerabilities  
10 and are not an increase to reliability above what RPM will produce. While resource diversity  
11 can very generally be said to have favorable attributes, it is important to note that RPM incents  
12 the overall cheapest resources which vary over time based on technology breakthroughs, fuel  
13 costs and other factors. Over time, as these factors change, RPM will naturally incent different  
14 types of resources and achieve diversity.

15  
16 **Q47. Do you have concerns about the Companies exercising market power if Rider RRS is**  
17 **approved?**

18 **A47.** The ATSI zone is weakly interconnected with the rest of PJM, resulting in capacity congestion  
19 and energy congestion. For example, ATSI has the only constrained locational delivery areas  
20 ("LDAs") in western PJM, which are ATSI itself and ATSI-Cleveland. The Commission  
21 previously recognized the ATSI zone constraints and required the Companies to take

1 reasonable and cost-effective steps (e.g., expansion of energy efficiency and peak demand  
2 reduction measures) to avoid unnecessary RPM price increases for their customers.<sup>7</sup>  
3

4 The Companies could exercise market power in the ATSI zone by squeezing out otherwise  
5 economic replacement capacity. Rider RRS generation as a solution allows exorbitant costs  
6 through knowing the generation is not optional, but rather required, and knowing they have a  
7 guarantee by Ohio rate payers. Over time, new competitive generation might refuse to invest  
8 for fear of more subsidized generation, ironically resulting in a need for more subsidized  
9 generation. Again leaving customers stuck with really old technology that might not even meet  
10 future environmental requirements.  
11

12 The exercise of market power by the Companies and the exit of other generation units would  
13 provide the Companies an effective monopoly on generation sited in their territories. If the  
14 units are uneconomic and therefore should be retired, market-based capacity price signals  
15 should be allowed in the area to incent replacement generation that would potentially be  
16 cheaper in total than the existing generation when energy revenues are considered. If the units  
17 are uneconomic and retire without local replacement, PJM will build more transmission to keep  
18 the grid reliable and thereby increase the Capacity Emergency Transfer Limit (CETL) into the  
19 ATSI load deliverability areas. Increased CETL allows more outside generation to compete for  
20 load and leads to improved region-wide efficiency.  
21

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<sup>7</sup>*In the Matter of the Commission's Review of the Participation of The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company in the May 2012 PJM Reliability Pricing Model Auction*, Case No. 12-814-EL-UNC, Entry (February 29, 2012).



1 **Q48. The Companies rely on long-term forecasts to project an ultimate benefit (allegedly of**  
2 **approximately \$2 billion) to customers. Ruberto JAR-1 (Revised) filed on November 14,**  
3 **2014. Should the Commission put any faith in these long-term forecasts?**

4 **A48.** No. Central planning is notoriously inaccurate regarding forecasts of needs and economic  
5 investments. These central planner long-term forecasts ultimately lead to inefficient outcomes.  
6 Capital investment decisions ordinarily do not heavily weight investment decisions on the far-  
7 out years, but rather focus on the near years. In examining investment decisions for Direct  
8 Energy and in my broader academic studies, I know this to be the case. The long-term viability  
9 of continued revenues is analyzed and considered, but does not outweigh near-in year forecasts,  
10 which are considered more accurate than far-out year forecasts.

11  
12 It is more than curious that the years with the most confidence (the near-in years) of the  
13 proposed ESP all include dramatic customer charges for Rider RRS, while the years with the  
14 least confidence (the far-out years) are the ones that could benefit customers if everything goes  
15 perfectly as forecasted. The benefit years are highly unreliable. See Strah Figure 2 (Revised)  
16 filed on November 14, 2014.

17  
18 **Q49. In your experience, how accurate are long-term load forecasts?**

19 **A49.** Much of an economic price forecast is dependent on load forecasts. Load forecasts have  
20 themselves been historically very difficult to pin down. For example, PJM load forecasts in  
21 2008-2012 were significantly off from the estimates. As an example of how inaccurate  
22 forecasts are, the Ohio Consumers' Counsel ("OCC") along with state regulators, consumer  
23 protection agencies, load serving entities, and end-use customers submitted a letter to PJM  
24 dated March 8, 2010, that points out that "PJM has revised its forecasts for 2009, 2010 and

1 2011 downward by over 5,000 MW." *See* DAS Attachment 4. The letter also states that "As  
2 noted in the December 11, 2008 letter referenced above, the load forecast is a major  
3 determinant of the quantity, price, and cost of capacity procured through PJM's Reliability  
4 Pricing Model. It is estimated that each 1% of change in the peak load forecast translates into  
5 approximately \$500 million in costs to load entities—a very significant impact." In an ex parte  
6 letter to the PJM Board of Managers on September 2, 2014 from a group of state commissions,  
7 state consumer advocates, utilities, and other stakeholders, the following was stated "Since the  
8 advent of the 2.5% holdback with the 2012/2013 Delivery Year, PJM's three-year forward load  
9 forecasts used in Base Residual Auctions have been, on average, in excess of 6% above the  
10 load forecast in place at the start of the actual Delivery Year." *See* DAS Attachment 5.

11  
12 As indicated, small changes in load or price forecasts can equate to large changes in how  
13 uneconomic the Companies' ESP plants are in the market. Similar errors in load forecasting  
14 would moot the economic price forecasting by the Companies and possibly put customers on  
15 the hook for more charges than credits. Fortuitously, the PJM marketplace allows market  
16 participants to decide what to build and maintain based on their own forecasting, views of  
17 future prices, and views of future technology changes rather than on a central planner's  
18 foresight.

19  
20 **Q50. Does the proposed Rider RRS scheme shift the risk of the competitive market from the**  
21 **Companies to customers?**

22 **A50.** Yes. The point of PJM's wholesale markets is to take the risk off of ratepayers for forward  
23 decisions by generators, such as FES, and put that risk on their shareholders. Ultimately, the  
24 shareholders reap the market-based returns or the market-based losses from those generating



1 units. The Rider RRS scheme turns that paradigm on its head and forfeits for customers a  
2 primary benefit of the competitive marketplace. FirstEnergy Corp. profited handsomely in the  
3 past but now seeks a ratepayer bailout when its previous management decisions now fail to  
4 provide the return they seek. The proposed Rider RRS scheme is simply a “heads we win, tails  
5 you lose” deal for ratepayers.

6  
7 If RPM is allowed to function as intended without subsidized offers and the Companies’  
8 ratepayers are not charged the Rider RRS, the risks of poor capacity resource choices are  
9 placed on the market generators rather than the ratepayers. If a resource is too expensive to  
10 clear RPM, then there is a cheaper resource used instead and the ratepayer gets to use this  
11 cheaper resource rather than guarantee payment to the more expensive resource.

12  
13 **Q51. The Companies labeled their ESP as Powering Ohio’s Progress and call**  
14 **the Rider RRS scheme the Economic Stability Program. Do you believe the ESP will**  
15 **power Ohio’s progress or achieve economic stability?**

16 **A51.** No. Electricity costs disciplined by the forces of competitive wholesale markets provide the  
17 backdrop that will move Ohio forward economically, especially those energy-intensive  
18 industries that call Ohio home. The Rider RRS scheme would ultimately raise rates for  
19 customers while at the same time undermining the very markets that create market-based prices  
20 for customers. Potentially holding customers on the bill for higher electric rates would damage  
21 economic growth and job expansion in the Companies’ territories and not add to vitality.  
22 Worse yet, the ESP puts the territories at great risk for higher prices relative to other utility  
23 service territories due to the unreliability of central planning relying on unreliable load and  
24 pricing forecasts. These forecasts will likely prove wrong over time. Industry and business

1 will migrate to cheaper utility territories if Rider RRS leads to higher prices, especially those  
2 that intensively rely on electricity as input to processes. Rider RRS, if implemented as I've  
3 described, could drive investment out of the FirstEnergy service territory.

4  
5 The Ohio General Assembly made a very conscious choice in 1999 to allow customers to  
6 choose their retail electric generation provider through a competitive marketplace. The change  
7 to a competitive marketplace was a direct repudiation to the previous vertically-integrated  
8 model where the only way a customer could get a rate different than the utility rate, with poorly  
9 managed costs, was a special contract approved by the Commission. Rider RRS harkens back to  
10 an abandoned, centrally planned rate-setting system that did not work and still would not  
11 provide benefits to ratepayers that a market-based system provides.

12  
13 **Q52. Are you aware of federal court decisions striking down state meddling in the wholesale**  
14 **markets administered by PJM?**

15 **A52.** Yes, I am aware of four (4) separate decisions (two federal district court decisions and two  
16 circuit court decisions upholding the respective lower court decisions) that found particular  
17 compensation schemes adopted by New Jersey and Maryland unconstitutional under the United  
18 States Constitution.

19  
20 **Q53. Are the compensation schemes approved in Maryland and New Jersey similar to the**  
21 **compensation scheme proposed by the Companies?**

22 **A53.** Yes. I am not a lawyer and the purpose of my testimony is not to provide a legal analysis. I  
23 simply want to point out that the compensation scheme proposed by the Companies is nearly



1 identical to the ones struck down in Maryland<sup>8</sup> and New Jersey.<sup>9</sup> The only noteworthy  
2 distinction between the Companies' proposal and the others is the Maryland and New Jersey  
3 mechanisms dealt with new-build generation and the Companies' scheme deals only with  
4 existing generation. Whether Rider RRS violates the U.S. Constitution is a legal matter for the  
5 courts to decide, but factually, and as a practical matter, I believe Rider RRS would  
6 functionally result in the same market intrusions as the Maryland and New Jersey plans were  
7 designed to effectuate.

8  
9 **Q54. Does this conclude your testimony?**

10 **A54.** Yes. However I reserve the right to supplement my testimony should additional evidence  
11 become available or other circumstances arise where supplementing my testimony becomes  
12 necessary.

13  

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<sup>8</sup> "Intervenor-appellant Commercial Power Ventures Maryland, LLC (CPV) submitted the winning bid and was awarded the promised CfDs [contract for differences]. The CfDs required CPV to build a plant and sell its energy and capacity on the federal interstate wholesale markets ...If CPV successfully cleared the market, it would be eligible for payments from the EDCs [electric distribution companies] amounting to the difference between CPV's revenue requirements per unit of energy and capacity sold (set forth in its winning bid) and its actual sales receipts. These costs would in turn be passed on to the EDCs' retail ratepayers. If CPV's receipts exceeded its approved revenue requirements, it would be obligated to pay the difference to the EDCs. The CfDs did not require CPV to actually sell any energy or capacity to the EDCs." *PPL EnergyPlus, LLC, v. Nazarian*, 2013 WL 5432346 \*30 (D.MD 2013); affirmed *PPL EnergyPlus, LLC, v. Nazarian*, 753 F.3d 467, 473-474 (June 2, 2014).

<sup>9</sup>First, the Board "awarded" each generator a specific amount of capacity to transact through its Standard Offer Capacity Agreement. Second, the Board required generators to "participate in and clear" PJM's annual capacity auction. *N.J. Stat. § 48:3-98.3(c)(12)*. Thus, when NRG's bid failed to clear the PJM auction, its LCAPP participation ended. ...Third, the Board guaranteed each generator a fixed price for its cleared capacity. The Board achieved this by attempting to structure the Standard Offer Capacity Agreements as contracts-for-differences between the price of capacity received by a generator from the PJM auction and a price fixed by the Agreement itself. If the Agreement price exceeded the auction price, the Agreement required the electricity distribution companies to pay the difference in price, multiplied by the amount of capacity, to the LCAPP generators. If the auction price exceeded the Agreement price, the Agreement obliged the LCAPP generators to pay the difference in price, multiplied by the amount of capacity, to the electricity distribution companies." *PPL Energyplus, LLC v. Hanna*, 977 F. Supp. 2d 372, 2013 U.S. Dist. LEXIS 147273 (D.N.J., 2013); affirmed *PPL EnergyPlus, LLC v. Hanna*, 2014 U.S. App. Lexis 17557 at \*20-\*21 (September 11, 2014).

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HOWARD PETRICOFF on behalf of Retail Energy Supply Association