

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)
for a Standard Service Offer Pursuant to)
R.C. 4928.143 in the Form of an Electric)
Security Plan)**

Case No. 14-1297-EL-SSO

DIRECT TESTIMONY OF

LAEL CAMPBELL

ON BEHALF OF INTERVENORS

CONSTELLATION NEWENERGY, INC.

AND

EXELON GENERATION COMPANY, LLC

December 22, 2014

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1 **I. INTRODUCTION**

2 **A. IDENTIFICATION OF WITNESS**

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

4 **A 1.** My name is Lael Campbell, and my business address is 101 Constitution Avenue NW,
5 Washington, DC 20001.

6 **Q 2. By whom are you employed?**

7 **A 2.** I am employed by Exelon Corporation.

8 **Q 3. Please describe your position with Exelon Corporation.**

9 **A 3.** I am Director, State Government and Regulatory Affairs for Exelon Corporation and for
10 Constellation, an Exelon Corporation. In this role, I am responsible for advocating for
11 and implementing regulatory and legislative policies for Exelon Corporation's retail
12 marketing subsidiary, Constellation NewEnergy, Inc., and its wholesale marketing
13 affiliate Exelon Generation Company, LLC, which owns and markets non-nuclear power
14 generation in Ohio, Pennsylvania, Illinois, and Michigan.

15 **Q 4. Please describe your educational and business experience.**

16 **A 4.** I earned a Bachelor of Arts from Dickinson College in Carlisle, PA in 1994 and a Juris
17 Doctorate from Washington and Lee University School of Law in 1998. I have been with
18 Exelon and Constellation for over six years. Prior to my current role, I served as
19 Assistant General Counsel with Exelon where I was responsible for providing legal and
20 regulatory support to Exelon Generation's wholesale trading and marketing business.
21 Before that, I served as Senior Regulatory Counsel for Constellation, supporting the
22 regulatory activities of the Constellation NewEnergy, Inc.'s, retail business, in addition to
23 Constellation's wholesale market activities before state and federal regulatory agencies

1 across the country. My previous experience prior to joining Constellation includes over
2 five years as a Senior Trial Attorney at the U.S. Commodity Futures Trading
3 Commission, where I represented the agency in numerous matters relating to physical
4 and financial commodity markets, including energy markets.

5 **Q 5. On whose behalf are you testifying?**

6 **A 5.** I am testifying today on behalf of Exelon Generation Company, LLC. and Constellation
7 NewEnergy, Inc., each of which is a wholly-owned subsidiary of Exelon Corporation
8 (collectively referred to hereafter as “Exelon”).

9 **Q 6. Please describe Exelon Generation Company and indicate its interest in this**
10 **proceeding.**

11 **A 6.** Exelon Generation Company, LLC (“Exelon Generation” or “ExGen”) is the largest
12 competitive power generator in the U.S., with approximately 35,000 megawatts (“MWs”)
13 of owned capacity, comprising one of the nation’s cleanest and lowest-cost power
14 generation fleets including nuclear, fossil, hydroelectric, solar, landfill gas, and wind
15 generation assets, located in a number of organized markets. Exelon owns and/or
16 operates 24 of the nation’s 100 nuclear reactors in five states and is the nation’s largest
17 owner and operator of nuclear generation, with plants located in Illinois, Pennsylvania,
18 Maryland, New Jersey, and New York. Exelon has made significant investments in
19 renewable generation. It owns and operates 2,000 MW of hydroelectric generation, 250
20 MW of solar, and 1,300 MW of wind, making Exelon the nation’s tenth-largest wind
21 generator. As part of this clean energy portfolio, Exelon Generation operates the nation’s
22 largest urban solar power plant, Exelon City Solar, a 10 MW solar installation located on
23 a 41-acre brownfield in Chicago, and two of the largest hydroelectric facilities in the

1 Eastern United States, Conowingo Hydroelectric Generating Station and Muddy Run
2 Pumped Storage Facility totaling nearly 1,600 MWs of capacity. Exelon Generation
3 markets wholesale energy and capacity products to municipal, cooperative, and investor-
4 owned utilities, retail suppliers, retail energy aggregators, merchant participants, power
5 marketers, and major commodity trading houses. Exelon Generation has sold power to
6 Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo
7 Edison Company (collectively, "First Energy" or "FE"), and other Ohio electric
8 distribution utilities ("EDUs") pursuant to competitive wholesale procurement events
9 overseen by the Public Utilities Commission of Ohio ("PUCO" or "the Commission").

10 **Q 7. Please provide some background on Constellation NewEnergy, Inc.**

11 **A 7.** *Constellation NewEnergy, Inc.* ("CNE"), a subsidiary of Exelon Generation, provides
12 electricity and/or energy-related services to retail customers in Ohio as well as in every
13 other state in the Continental U.S. and the District of Columbia, serving more than
14 150,000 business customers and one million residential customers nationwide. CNE
15 holds a competitive retail electric service ("CRES") license from the PUCO to engage in
16 the competitive sale of electric service to retail customers in Ohio, and currently provides
17 service to customers in every customer class in Ohio.

18 **Q 8. Has Exelon participated in Ohio's electric market development proceedings?**

19 **A 8.** Yes. Exelon Generation and Constellation Energy Commodities Group, Inc., which was
20 subsumed by Exelon Generation, have been active participants before the Commission for
21 a number of years. Exelon Generation has participated as a bidder in almost every
22 electric security plan ("ESP") competitive supply offering by an Ohio utility, including
23 FirstEnergy's most recent descending clock auction. CNE has been an active participant

1 before the Commission and the Ohio General Assembly for a number of years. CNE was
2 an ardent advocate in the wake of the passage of Senate Bill 221 for the use of a
3 competitive procurement process as a better means for setting the rates that would be
4 charged to Standard Service Offer (“SSO”) customers, and has participated in every ESP
5 and Market Rate Offer case since that time. CNE also participated in the prior FE ESPs.

6 **B. PURPOSE OF TESTIMONY**

7 **Q 9. What is the purpose of your testimony?**

8 **A 9.** I developed my testimony and recommendations based upon that history and longstanding
9 advocacy for the advancement of competitive markets, as well as a desire to effectuate the
10 goals of Section 4928.02 of the Ohio Revised Code to establish Ohio’s policy to support
11 retail competition and avoid anti-competitive subsidies.¹ The previous ESP implemented
12 by FE ushered in many advancements in the development of the competitive retail and
13 wholesale markets in Ohio. FE has far and away been the leader in the state of Ohio
14 among all utilities in advancing competition in the state, being the first to (a) divest its
15 legacy generation, (b) institute an auction-based procurement policy, and (c) develop a
16 web-based data exchange interface between CRES providers and the utility. FE deserves
17 immense credit for leading the effort towards development of the competitive market in
18 OH, and Exelon supports certain aspects of the FE application, including the proposal to

¹Section 4928.02 of the Ohio Revised Code provides, in relevant part, the following:

It is the policy of this state to do the following throughout this state: ...(B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;... [and] (H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates[.]

1 continue the procurement of SSO supply via a competitive bidding process, and the
2 inclusion of certain unhedgeable, Non-Market Based charges from PJM Interconnection
3 (“PJM”) in the non-bypassable Non-Market-Based Services Rider (“Rider NMB”).

4 On the other hand, the role FE has played in the history of competitive markets in
5 Ohio makes the other elements of the ESP proposal all the more concerning, as these
6 elements represent a 180 degree about-face on the progress Ohio has made under FE’s
7 leadership. FE unfortunately proposes a monumental amendment, which if implemented,
8 threatens the retail market in the FE service territory and the state of Ohio as a whole. My
9 testimony will address my concerns with this proposal, the Retail Rate Stability Rider
10 (“Rider RRS”), a non-bypassable rider that would provide a guaranteed return to FE and
11 its merchant affiliate First Energy Solutions Corp. (“FES”) on more than 3200MW of
12 generation owned by FES. Because Rider RRS is non-bypassable, this guaranteed return
13 to FES will be funded by all customers in the FirstEnergy footprint, regardless of whether
14 they receive their electric supply from FirstEnergy or from a CRES provider.

15 **C. SUMMARY OF POSITION**

16 **Q 10. Please summarize Exelon’s position in this proceeding.**

17 **A 10.** First, there are significant problems associated with the proposed Rider RRS as it runs
18 counter to the tremendous progress that the State of Ohio, the Commission, and FE have
19 made towards the transition to full retail and wholesale competition. Under this proposal
20 FirstEnergy would enter into a 15-year Purchase Power Agreement (PPA) with its
21 merchant affiliate FES for more than 3200MW of FES-owned generation, namely the
22 2,200 MW Sammis coal facility, the 900MW Davis Besse nuclear plant, and
23 FirstEnergy’s 180 MW PPA stake in the Ohio Valley Electric Corporation (“OVEC”)

1 generation. FirstEnergy will sell the PPA-acquired generation into the PJM markets, and
2 the non-bypassable Rider RRS will either credit or charge both shopping and non-
3 shopping customers the difference between the cost of the inter-affiliate PPA and the
4 price FE receives for the generation in the market. FirstEnergy was the driving force in
5 Ohio's move to a competitive market, and was the first to divest its generation to a market
6 affiliate. The Rider RRS proposal would move Ohio in the other direction, providing
7 ratepayer-guaranteed cost recovery to FE, using a PPA pricing structure that resembles
8 regulated rate-base for 3200 MW of previously divested generation.

9 FE has dubbed the Rider RRS scheme the "Economic Stability Program," and one
10 of the benefits claimed is that it will "safeguard customers from volatility and retail price
11 increases." (Application at 2). To the extent Rider RRS will provide a rate stabilizing
12 hedge, as will be discussed below, the recipient of that hedge is FE's registered-CRES
13 affiliate FES, not the Ohio consumers who will be paying a higher price for electricity
14 than the competitive market could otherwise offer. As such, FE has presented an
15 alternative that will likely increase costs to both shopping and non-shopping customers
16 during the term of the ESP, with the benefits going solely to FE and its merchant affiliate.
17 Forcing both shopping and non-shopping customers to be captive to a non-bypassable
18 surcharge for the purpose of subsidizing generation owned by FES is contrary to Ohio
19 law and Federal law, and could effectively erase all progress to date on the path toward
20 robust retail competition in the FE service territory and the State of Ohio.

21 Rider RRS will negatively impact the continuing efficacy of both the competitive
22 wholesale and retail markets in OH and PJM. The guaranteed subsidy FES will receive
23 from ratepayers under Rider RRS will allow FES to make offers to customers that are not

1 reflective of actual market prices, and will provide FES with a competitive advantage
2 over other CRES providers that must procure their commodity supply at market prices.
3 As explained further below, Rider RRS will eviscerate the benefits received by Ohio
4 customers currently supplied under fixed-price contracts and shielded from market
5 volatility, as these customers will now be exposed to variable generation-based charges
6 under the non-bypassable rider.

7 Rider RRS also poses a detrimental threat to the competitive wholesale market --
8 PJM. Because FE will receive guaranteed cost recovery under Rider RRS, there is no
9 incentive for FE to offer the subsidized units into the wholesale market based on the
10 variable costs of operating the units and other supply and demand fundamentals,
11 potentially distorting wholesale market price formation and de-incentivizing new
12 generation built in Ohio. In addition, the subsidies afforded to FES via Rider RRS would
13 grant FES an unfair advantage in its potential participation in competitive wholesale
14 procurements for SSO supply by FE and other EDUs in Ohio.

15 Preserving nuclear facilities like Davis-Besse should be a priority for the state of
16 Ohio and the country. Nuclear generation is the largest and most reliable form of clean
17 generation, providing almost 65 percent of the nation's carbon-free electricity, but many
18 plants are now in danger of early closure. This would be a terrible outcome for
19 consumers and a significant setback for the nation's goal to reduce carbon emissions.
20 While the preservation of nuclear generally, and the Davis Bessie plant specifically, are of
21 critical importance to the citizens of both state and national energy and environmental
22 policies, the Rider RRS proposal does not seek to compensate the unique environmental
23 and reliability attributes that nuclear alone can bring, attributes that provide immense

1 value to Ohio consumers. Rider RRS instead lumps nuclear in with aging coal units that
2 do not possess the same societal benefits of nuclear generation, and by doing so, Rider
3 RRS does not provide value specifically for nuclear's unique combination of being both
4 reliable and clean. Rider RRS does not meaningfully address the threat posed by the
5 potential early retirement of nuclear generation, and as such, Exelon recommends that the
6 Commission reject the proposed Rider RRS and that Ohio explore an all-of-the above
7 strategy that is technology neutral but guarantees the preservation and growth of
8 resources with the critical attributes of reliability and being environmentally clean.

9 Finally, Exelon supports certain aspects of the ESP, such as FE's continued use of
10 competitive auctions to meet its requirements for SSO supply. Exelon agrees with FE's
11 decision to include the percentage of income payment plan ("PIPP") supply as part of the
12 auctions, rather than having it privately placed. Exelon also supports Rider NMB and the
13 continued collection of certain non-market-based PJM charges on behalf of both
14 wholesale and retail suppliers, with some modifications as discussed below.

15 **II. THE COMMISSION SHOULD ELIMINATE RIDER RRS**

16 **A. DESCRIPTION OF RIDER RRS**

17 **Q 11. Please describe your understanding of Rider RRS.**

18 **A 11.** The Rider RRS proposal involves the purchase by FE of generation from its affiliate FES,
19 the sale of that generation by FE into the wholesale market, and a shift of risk to shopping
20 and non-shopping customers that the market revenues are less than the PPA cost. As an
21 initial step, FE would enter into a 15-year PPA with its affiliate FES, a licensed CRES
22 Provider, for more than 3200MW of FES-owned generation, including the 2,200 MW
23 Sammis coal-fired facility and the Davis Besse nuclear plant. The actual cost of the PPA
24 will vary each year and will resemble full cost-of-service ratemaking that will allow FES

1 to recover costs associated with the units as well as a return on capital investments in the
2 plants that includes an 11.15% Return on Equity (“ROE”).¹ FE has estimated these costs,
3 and although the costs are not broken down by unit, FE estimates total cost in the first full
4 year of the PPA to be approximately \$1.35 Billion, with these costs estimated to rise in
5 future years.² Second, FirstEnergy will sell the PPA-acquired generation into the PJM
6 markets, including the day-ahead energy market and the PJM forward capacity market.
7 In addition to the PPA cost which is variable and will change from year to year, the
8 revenues from the sales will be variable and predicated on wholesale market prices. The
9 revenues from the sales will be netted with the costs under the PPA, and the net debit or
10 credit would be included in the proposed Rider RRS and collected on a non-bypassable
11 basis applicable to all customers in the FirstEnergy footprint.

12 **Q 12. How does FE plan to implement Rider RRS?**

13 **A 12.** FE’s proposed Rider RRS is a non-bypassable generation-related charge.

14 **Q 13. Please describe what you mean by “Non-Bypassable Generation-Related Charge.”**

15 **A 13.** A non-bypassable generation-related charge is a fee or charge that the customer is
16 required to pay to the utility regardless of whether the customer receives generation
17 service from a CRES provider or the utility. Therefore customers are held captive to non-
18 bypassable charges because the charges cannot be avoided by switching to a CRES
19 provider.

¹ Direct Testimony of Steve Staub, pg. 2

² Direct Testimony of Jay A. Ruberto, Attachment JAR-1 (Revised).

**B. FIRSTENERGY'S NON-BYPASSABLE GENERATION RIDER SHOULD
BE REJECTED**

Q 14. Should all charges be bypassable when a customer takes service from a CRES provider?

A 14. No, only those costs associated with the service they receive from a CRES provider should be bypassable. This prevents customers from having to pay the utility for services they no longer and do not wish to receive. For example, services which are distribution-related or non-generation supply-related should continue to be paid by all customers regardless of whether they choose to select a CRES provider or remain with the utility. Customers should only pay for the costs they cause from the services that they purchase.

Q 15. How do non-bypassable charges potentially cost customers more when their supply cost is lower than the utility SSO supply cost?

A 15. It is fairly simple. When a customer takes supply from a CRES provider, the customer is receiving all of the generation-related service from that company. The customer is no longer taking generation-related service from the utility. If a shopping customer is forced to continue to pay the utility for generation-related supply charges plus pay the CRES provider for generation service, the customer is effectively paying twice for the same service. Paying the utility for a service the customer is already receiving from the CRES provider could cause the customer to pay more for electric power than if the customer had not switched to the CRES provider even if the CRES supplier's generation is at a lower cost than the SSO. It also results in the CRES-Provider-served customers effectively paying for generation it does not use. For Ohio customers to truly receive the

1 benefits of retail competition it is imperative that the double collection of generation
2 related costs is eliminated.

3 **Q 16. Has the Ohio General Assembly addressed the issue of whether generation-related**
4 **expenses can be collected in a utility distribution fee?**

5 **A 16.** Yes, in Senate Bill 221, the General Assembly amended Section 4928.02(H), Revised
6 Code, which addresses anti-competitive subsidies by specifically: "...prohibiting the
7 recovery of any generation-related costs through distribution or transmission rates." The
8 clear intent articulated by the General Assembly is foundational to a thriving competitive
9 retail market in Ohio, but FE's Rider RRS, which is a non-bypassable generation-related
10 rider, appears to be in conflict with this statutory provision.

11 **Q 17. Are there specific generation-related costs and charges that FE seeks to impose on**
12 **customers regardless of whether they actually purchase electric generation service**
13 **from FE?**

14 **A 17.** Yes, simply put, Rider RRS imposes generation-related, non-bypassable charges or
15 credits based on the sale of generation. The imposition of non-bypassable riders to
16 recover generation-related costs inappropriately places the financial risks associated with
17 FES's generation squarely on the shoulders of FE's customers. Business risks for
18 generation-related costs properly belong with FES, the owner of the generation.
19 Requiring customers who purchase electricity from CRES providers to compensate FE,
20 and in turn FES, by providing a full hedge from market risk for its generation losses is
21 contrary to Ohio law, fundamentally unfair, and anti-competitive.

22 **Q 18. What is the effect on the competitive retail market when shopping customers are**
23 **required to pay the utility for generation services they do not receive?**

1 **A 18.** Making shopping customers pay FE and in turn its affiliate FES for generation service
2 that they do not receive from either FE or FES has the potential to destroy the
3 development of the competitive retail market, and puts Ohio at a competitive
4 disadvantage, as businesses will face unnecessarily higher energy costs. In general,
5 generation-related, non-bypassable surcharges can thwart competition and can eliminate
6 any economic advantage from shopping. Rider RRS will prohibit customers from being
7 able to choose the lowest cost source of generation service and could mean higher costs
8 for electricity customers and businesses that provide jobs in Ohio.

9 **Q 19. What specific impact will Rider RRS have on the competitive retail market in light**
10 **of the fact that FES is also a CRES provider?**

11 **A 19.** FES, the ultimate beneficiary of the PPA subsidy, is a licensed CRES Provider. The
12 guaranteed subsidy FES will receive from ratepayers under Rider RRS will provide FES
13 with a competitive advantage over other CRES Providers that must procure their
14 commodity supply at market prices. This undermines the integrity of the competitive
15 retail market as the subsidy will allow FES to make offers to customers that are not
16 reflective of actual market prices. This anti-competitive subsidy flowing from a
17 noncompetitive retail electric service to a competitive retail electric service is contrary to
18 Ohio's stated policy goals.³

19 **Q 20. What effect will Rider RRS have on existing fixed-price contracts between CRES**
20 **Providers and Ohio shopping customers?**

21 **A 20.** Rider RRS will result in the improper intrusion on the sanctity of retail contracts by
22 effectively "un-fixing" long-term fixed-price contracts and price certainty that CRES
23 providers like Constellation provide to shopping customers. Rider RRS would expose all

³ Section 4928.02 of the Ohio Revised Code

1 customers, shopping and non-shopping, to variable price risk, as the charge (or credit) a
2 customer receives will vary based on the difference between the PPA price (variable from
3 year to year) and the variable spot market price the FES-owned generation receives in the
4 market. Because Rider RRS is non-bypassable, a shopping customer that is currently
5 shielded from market volatility under a long-term fixed-price contract from a CRES
6 provider will now be exposed to, and held captive to, these variable generation-based
7 charges. This undermines one of the key benefits of retail competition in Ohio - the
8 ability to negotiate the lowest fixed-price term from a variety of CRES providers. This
9 result also would undermine the contractual certainty that customers taking service from
10 a CRES provider rely upon when entering a longer term fixed-price contract.

11 **Q 21. Will Rider RRS have an impact on the competitive wholesale market?**

12 **A 21.** Yes. Rider RRS poses a detrimental threat to the competitive wholesale markets. The FE
13 proposal indicates that FE will be responsible for bidding the affected units into the
14 wholesale market. Yet the proposal contains no objective limitations as to how and when
15 FE will offer the more than 3200 MW of generation into the wholesale market. Because
16 FE will receive guaranteed cost recovery under Rider RRS, there is no incentive for FE to
17 offer the units into the wholesale market based on market fundamentals such as the
18 variable costs to operate the units. The lack of any incentive, or requirement, for FE to
19 offer the units into wholesale markets based on variable costs, provides FES a
20 competitive advantage over generation owners subject to wholesale market forces and
21 whose offers are guided by the variable costs to operate the unit. Ultimately, this will
22 have a distortive effect on wholesale market price formation, and the integrity of the
23 wholesale markets in general, as more than 3200 MW of generation will have no

1 incentive to participate in the market based on supply and demand fundamentals. These
2 market distortions will have a chilling effect on the development of new, more reliable,
3 and more efficient generation in Ohio.

4 Therefore, if the Commission decides to approve Rider RRS, it is imperative that
5 the Commission include an affirmative obligation that FE offer its dispatchable coal units
6 into the market in an economically rational manner based on the units' variable costs,
7 using objective criteria.

8 **Q22. What effect could Rider RRS have on FE's wholesale procurements for SSO supply?**

9 **A22.** The subsidy FES would receive under Rider RRS could impact the wholesale
10 procurements for SSO supply by FE and other EDUs in Ohio. Historically, FES has been
11 an active participant in wholesale SSO supply procurements. The guaranteed return that
12 FES would receive under Rider RRS could allow FES to potentially participate in the
13 competitive procurements without bidding in a market-reflective manner. The uncertainty
14 caused by FE's reduced incentive to make market-based bids could turn away potential
15 participants and distort the outcome of the competitive procurements. Ultimately, Rider
16 RRS could compromise the wholesale SSO supply procurements that have brought
17 considerable value to FE customers.

18 **C. RIDER RRS WILL NOT BENEFIT CUSTOMERS**

19 **Q 23. What does FE describe as the benefit of its Rider RRS?**

20 **A 23.** FE claims that the proposed Rider RRS will benefit customers by providing "a retail rate
21 stability mechanism against increasing market prices and price volatility for all retail
22 customers over the longer term."⁴

⁴ FE ESP Application, pg. 9

1 **Q 24. What is the value of Rider RRS to customers taking supply from CRES providers?**

2 **A 24.** Rider RRS brings no value to customers taking supply from a CRES provider. In fact
3 Rider RRS will raise prices for Ohio electricity customers while providing little benefit in
4 return. While FE claims that Rider RRS will provide a market volatility hedge to
5 customers, it is really FE and its affiliate FES, not Ohio customers, that will be shielded
6 from market volatility risk under Rider RRS. FE and FES will be guaranteed a return
7 from the Rider RRS, in contrast to any potential credit to customers from Rider RRS
8 which is contingent on the whims of the market and speculation that wholesale electricity
9 prices will someday exceed the high cost of the PPA. In fact, as noted above, the variable
10 nature of Rider RRS will actually have a de-stabilizing effect on Ohio customers that
11 have currently shielded themselves from variable market forces by entering into a fixed-
12 price contract with a CRES provider.

13 **Q 25. If a customer wants to hedge its generation costs, are there other options available**
14 **to the customer?**

15 **A 25.** Yes, CRES providers may have a number of different offerings for customers, geared
16 toward the customer's goals and objectives, including their risk tolerance or desire for a
17 market hedge. Without a non-bypassable Rider RRS, CRES providers can provide retail
18 customers with a true fixed-price generation product. For example, CNE has posted on
19 the Commission's Apples to Apples chart an offer to residential customers in the FE
20 service territory for \$0.0819 per kilowatt-hour ("kWh") fixed for three years. Those
21 customers know for the next three years exactly what the cost of competitive power will
22 be. The value of that certainty is erased in part if such customers must be charged the
23 generation losses via Rider RRS.

1 **Q 26. Is Rider RRS necessary or appropriate to maintain reliability in Ohio?**

2 **A 26.** No. FE claims that maintaining resource diversity and its reliability attributes is one of
3 the primary benefits of the Rider RRS.⁵ However, because of the robust transmission
4 system linking the FE zone to the rest of PJM, capacity resources in any part of the 13-
5 state PJM regional transmission organization can be used to support capacity needs in the
6 FE zone and Ohio as a whole. Even if a bona-fide reliability concern existed, a state-
7 sanctioned subsidy of generation via an embedded non-bypassable surcharge to shopping
8 customers is not the appropriate approach. If reliability truly is an issue, PJM has a
9 process for studying reliability and providing a Reliability Must Run (“RMR”) contract
10 for any units determined necessary to maintain for reliability. FE is well aware of the
11 PJM process to provide cost recovery for units that are necessary for reliability, as
12 currently FES has generators that are receiving cost recovery under PJM RMR
13 agreements, including the Ashtabula 5, East Lake 1-3 and Lake Shore 18 Generators.⁶

14 Other markets have similar processes for compensation due to reliability. For
15 Example, Exelon is currently undergoing a similar process in New York to obtain a
16 reliability-based agreement. On November 14, the New York Public Service
17 Commission (PSC) entered an Order directing negotiation of a Reliability Support
18 Service Agreement (RSSA) between Rochester Gas and Electric (RG&E) and R.E. Ginna
19 Nuclear Power Plant, LLC (Ginna), an Exelon subsidiary (PSC Order).⁷ The RSSA
20 process in NY is akin to the RMR process administered in PJM. As part of the process,

⁵ Direct Testimony of Donald Moul, pgs. 6-11.

⁶ See FERC Docket number ER12-2710 - informational filing of FirstEnergy Generation Corporation regarding deactivation avoidable cost rate of Lake Shore 18, Ashtabula 5, and East Lake 1, 2, and 3. See also <http://www.pjm.com/planning/generation-deactivation/gen-deactivation-rmr.aspx>.

⁷ State of New York Public Service Commission, Order Directing Negotiation Of A Reliability Support Service Agreement And Making Related Findings, November 14, 2014, CASE 14-E-0270 - Petition for Initiation of Proceeding to Examine Proposal for Continued Operation of R.E. Ginna Nuclear Power Plant.

1 Ginna underwent a formal reliability study conducted by the NYISO that found that if
2 Ginna were to retire there would be a negative impact on the reliability of the New York
3 bulk electric transmission system during 2015 and 2018 until planned transmission
4 upgrades are completed.⁸

5 The Federal Energy Regulatory Commission (“FERC”) is looking at the issue of
6 reliability, as well, in its Docket AD14-8, in the wake of significant cold weather events
7 this past winter. In particular, they are assessing adequacy of infrastructure, market
8 compensation models, fuel procurement and diversity, and policy implications or changes
9 that can be made in both the short and long terms. Most recently, PJM has put forth a
10 proposal for a “Capacity Performance Product” that would impart greater performance
11 and fuel security requirements on generation resources, in particular during extreme
12 weather events. If implemented Capacity Performance will be a competitive, market-
13 based mechanism for generators to obtain revenue for performance during reliability
14 events. The additional revenues from Capacity Performance could provide FE with
15 revenues needed to maintain the operation of the plants. PJM and FERC have the
16 appropriate authority and are well equipped to ensure reliability and to make changes to
17 provide the proper market structure for the interstate market that Ohio’s consumers are
18 part of. FE should work with PJM and FERC to address any legitimate reliability
19 concerns relating to the Sammis and Davis-Besse plants included in the Rider RRS
20 proposal.

21 **Q 27. Is the Rider RRS structured in the best interest of Ohio customers?**

⁸ The reliability study was conducted in accordance with applicable North American Electric Reliability Corporation (NERC) Reliability Standards, Northeast Power Coordinating Council (NPCC), New York State Reliability Council (NYSRC) Reliability Rules and Procedures, and NYISO planning and operation practices.

1 **A 27.** No. Based on the units included in the PPA, FE by its own admission does not believe
2 the Rider will result in a credit to customers in the near term. The units FE selected for
3 the PPA are economically challenged.⁹ If FE was acting in the best interest of Ohio
4 customers, it would blend into the PPA profitable units that would make it more likely
5 that customers would receive a credit.

6 If FE is truly interested in including long-term PPAs as a part of the SSO supply
7 portfolio mix for the purported benefit of customers, any such procurement must be done
8 through a competitive bid process. A competitive bid process would ensure that the
9 customers are paying the least for the benefits that FE purports the Rider RRS provides.
10 For example, the reliability-based RSSA process that Exelon is currently undergoing in
11 New York is complimented by an RFP process that provides an opportunity for
12 competitive bidders to offer a lower cost solution in lieu of NY entering into a RSSA
13 contract with Exelon.

14 **D. OTHER CONCERNS WITH RIDER RRS**

15 **Q 28.** Do you have any other concerns regarding the fact that the PPA under Rider RRS is
16 between FE and its affiliate FES?

17 **A 28.** Yes. As will be presented in the Exelon and Constellation NewEnergy, Inc. trial brief, the
18 proposed Rider RRS violates the spirit, if not the letter, of FERC restrictions on affiliate
19 transactions, which were designed to protect customers served by franchised public
20 utilities from inappropriately subsidizing their affiliates and causing financial harm to
21 customers. FE's imposition of a surcharge on *all* retail customers to provide its affiliate
22 FES a guaranteed cost recovery on generation plants it owns appears to directly
23 contravene the policy goals of the FERC restrictions on affiliate transactions. The Rider

⁹ Direct Testimony of Donald Moul, pgs. 2-4

1 RRS would make all customers, shopping and non-shopping, captive to paying a subsidy
2 that would flow from the utility to its merchant affiliate, for the ultimate benefit of the
3 affiliate. As noted above, if FE is truly procuring something under the PPA that is of
4 benefit to customers, be it generation or a rate stability hedge, then that procurement
5 should take place via a competitive bidding process to ensure that customers are
6 receiving the best value for that product, and not paying more than they should and
7 improperly benefitting FE's affiliate.

8 **Q 29. Do you have any other concerns regarding the proposed Rider RRS?**

9 **A 29.** Yes. As will be presented in the Exelon and Constellation NewEnergy, Inc. trial brief,
10 recent federal court decisions have found unlawful various state-level efforts to subsidize
11 the development of local power plants as a preemption of FERC's exclusive jurisdiction
12 over the sale of wholesale power in interstate commerce. See PPL Energy Plus v.
13 Solomon, Case No. 13-4330, slip op. (3rd Cir. Sep. 11, 2014) PPL Energy Plus v.
14 Nazarran, Case No. 13-2419, slip op. (4th Cir. June 2, 2014) and PPL Energy Plus v.
15 Hanna, Civ. Action No. 11-745, 2013 WL 5603896 (Oct. 11, 2013). It is my
16 understanding that the mechanisms proposed in these states to provide cost recovery to
17 the generators is very similar to the one proposed by FE under Rider RRS.

18 **Q 30. Is Rider RRS as currently proposed appropriate for Davis-Besse?**

19 **A 30.** Nuclear generation is the largest and most reliable carbon-free energy source, and the
20 preservation of nuclear plants like Davis Bessie is of vital importance to the citizens of
21 both the state of Ohio and the country as a whole. Nuclear provides almost 65 percent of
22 the nation's carbon-free electricity so loss of even a single plant would be a terrible
23 outcome for consumers and a significant setback for the nation's goal to reduce carbon

1 emissions. A single nuclear plant generates enough electricity to power hundreds of
2 thousands of homes, and can operate reliably even during adverse weather conditions,
3 regardless of the availability of wind or sun and in all weather extremes. Until recently,
4 nuclear plants were assumed to continue operating until license expiration or beyond.
5 That expectation is no longer sound. Many nuclear plants that are producing large
6 quantities of emissions-free electricity and operating at above 90 percent capacity factors
7 are in danger of early closure, in part due to subsidies and mandates that benefit specific
8 types of generation, but not nuclear, the largest and most reliable carbon-free energy
9 source. These policies have had the unintended effect of undermining the economics of
10 nuclear energy production. The National Association of Regulatory Utility
11 Commissioners (NARUC) recently issued a resolution recognizing the critical benefits of
12 and substantial installed investment in existing zero carbon nuclear energy, and
13 supporting efforts to “encourage States to preserve, life-extend, and expand nuclear
14 generation.”¹⁰ The early retirement of nuclear units will make the achievement of
15 meaningful carbon reductions difficult or impossible. For Ohio to be successful in
16 developing a cleaner energy future for its citizens it must preserve existing emission-free
17 resources that will benefit all Ohio consumers. Replacing even a single nuclear plant
18 with other carbon-free generation resources would, given current technology, be
19 extremely challenging.

20 Davis-Besse and other nuclear plants provide 1) Clean, 2) Reliable, 3) Baseload
21 generation. While other forms of generation possess *some* of these attributes, only

¹⁰ Resolution Recognizing the Importance of Nuclear Power in Meeting Greenhouse Gas Goals, approved at National Association of Regulatory Utility Commissioners (NARUC), at its 2014 Annual Committee Meetings in San Francisco, California, www.naruc.org. Specifically located at: <http://www.naruc.org/Resolutions/14%201119%20NARUC%20Board%20Substantive%20Resolutions%20Packet.pdf>.

1 nuclear possesses *all* of these attributes. The combination of these attributes is of
2 significant value to Ohio energy consumers and society as a whole, and Ohio should
3 explore an all-of-the above strategy that is technology neutral but guarantees the
4 preservation and growth of resources with the critical attributes of reliability and being
5 environmentally clean. The Rider RRS proposal, however, does not seek to compensate
6 the unique combination of environmental and reliability attributes that nuclear alone can
7 bring. In seeking the subsidy under Rider RRS, FE instead combines Davis-Besse with
8 aging coal units that do not possess the same societal benefits of nuclear generation. The
9 correct solution is one that recognizes Davis-Besse's valuable combination of
10 environmental and reliability attributes, and provides compensation for these important
11 attributes. For example, one solution could be a state-wide clean energy standard that is
12 technology neutral, and establishes a value for clean and reliable sources of generation,
13 similar to the mandates many states have established for solar and wind, but without
14 discriminating against nuclear.

15 In contrast, Rider RRS combines Davis-Besse with aging coal plants and seeks a
16 subsidy tied to the values of energy and capacity only. Rider RRS brings nuclear down to
17 the lowest common denominator and provides no incremental value to the unique
18 combination of environmental and reliability attributes that only nuclear can provide.
19 Therefore the FE proposal misses an opportunity to move Ohio and the country forward
20 by meaningfully addressing the specific challenge posed by the potential early retirement
21 of nuclear generation and the terrible impact it would have on Ohio customers.

1 **E. SUMMARY OF RECOMMENDATION FOR RIDER RRS**

2 **Q 31. What is your recommendation regarding Rider RRS?**

3 **A 31.** Forcing both shopping and non-shopping customers to be captive to a non-bypassable
4 surcharge for the purpose of subsidizing generation owned by FES is contrary to Ohio
5 and Federal law, and could effectively erase all progress to date on the path toward robust
6 retail competition in the FE service territory and the State of Ohio. The Commission has
7 the ability to alter the proposed ESP, and should do so by rejecting the proposed Rider
8 RRS.

9 **III. CERTAIN ELEMENTS OF FIRSTENERGY'S ESP SHOULD BE APPROVED**

10 **Q 32. Does FE's ESP continue the transition to a fully competitive retail and wholesale**
11 **markets?**

12 **A 32.** Yes, in certain respects it does. The Commission has taken great strides over the last few
13 years to transition all of the Ohio EDUs towards a fully competitive retail and wholesale
14 market. FE has played a critical leading role in the success of the transition thus far. For
15 example, FE, more than a decade ago, was the first EDU to set about a plan of divesting
16 their legacy generation. FE continues to rely upon a competitive SSO procurement
17 process for the purchase of electricity for customers that do not choose to take service
18 from a CRES Provider. FE has improved this process in the instant ESP proposal by
19 reinserting the load associated with customers on a PIPP as part of the auctions, rather
20 than having it privately placed. In this proceeding, the Commission should support steps
21 such as these that continue down that path to a fully competitive market.

1 **IV. RIDER NMB SHOULD BE APPROVED WITH MODIFICATION**

2 **Q 33. Please Describe Rider NMB**

3 **A 33.** FE proposes that certain PJM charges will continue to be paid by utilities for all
4 shopping and non-shopping load, and that such costs shall continue to be recovered
5 through the Rider NMB on a non-bypassable basis. FE Proposes that the following PJM
6 line items be charged directly to FE, collected through Rider NMB, and not be a part of
7 PJM billings to a SSO or CRES Supplier:

- 8 • PJM Billing Line Items 1100, 1101, 1104, 2100, 2101, and 2104 – Network
9 Integrated Transmission Service (“NITS”) related charges and credits.
- 10 • PJM Billing Line Items 1108 and 2108 - Transmission Enhancement.
- 11 • PJM Billing Line Item 1109 and 2109 – MTEP Project Cost Recovery.
- 12 • PJM Billing Line Item 1250 – Meter Correction.
- 13 • PJM Billing Line Items 1218 and 2218– Planning Period Congestion Uplift.
- 14 • PJM Billing Line Items 1260 and 2260– Emergency Energy.
- 15 • PJM Billing Line Items 1320, 1330, 2320 and 2330 – Transmission Owner
16 Scheduling, System Control and Dispatch Service and Reactive Supply and
17 Voltage control.
- 18 • PJM Billing Line Items 1375, 1376, 1378, 2375, 2376, 2378 – Balancing
19 Operating Reserves, Balancing Operating Reserve for Load Response and
20 Reactive Services.
- 21 • PJM Billing Line Item 1450 – Load Reconciliation of 1320.
- 22 • PJM Billing Line Items 1930, 1932, 2930 and 2932 – Generation Deactivation
23 and Generation Deactivation Refund.

1 **Q 34. Does Exelon support the FE Rider NMB proposal?**

2 **A 34.** Yes, but with modification. Exelon believes that only those PJM charges that are truly
3 non-market-based, and therefore are not hedgeable, predictable, or manageable by
4 suppliers, should be included in Rider NMB.

5 **Q 35. Why does Exelon support the FE Rider NMB proposal for non-market-based-**
6 **charges?**

7 **A 35.** The FE proposal to assume responsibility for non-market-based charges and pass them
8 through to all customers via a competitively neutral, non-bypassable charge is efficient
9 and reasonable. Exelon is concerned that changes to these types of charges are difficult
10 for potential SSO Suppliers and CRES providers to predict and manage. As is the case
11 for all NMB Charges, if SSO Suppliers and CRES providers – rather than EDUs – are
12 responsible for these unknown and unpredictable, administrative costs and changes
13 thereto that *may* occur, then, in order to account for such risk, all suppliers will need to
14 factor a premium into their SSO bids and retail offers, respectively, for such *potential*
15 charges *regardless* of the frequency and extent to which such charges and changes
16 thereto *actually* occur. Prudent SSO suppliers and CRES providers would have to
17 consider the costs that they *could* incur. To be sure, if these charges do not occur and/or
18 are not increased, as applicable, absent FE's proposal, consumers may – through costs
19 embedded in SSO bids and CRES offers – pay for market charges which were never
20 *actually* realized. In this way, it is very difficult for suppliers to financially hedge NMB
21 charges because of how those charges are calculated and imposed. By having FE provide
22 NMB services and recover the costs from all customers through a rider that imposes a

1 reconcilable, non-bypassable charge, competitive neutrality can be maintained and all
2 customers should benefit.¹¹

3 Furthermore, the SSO product – without Rider NMB – potentially raises the
4 ultimate costs for SSO supply for consumers. The same would be true for fixed-price
5 retail offerings from CRES providers. Rider NMB, in turn, would be more likely to
6 result in more competitive SSO and CRES supply costs for consumers. It is appropriate
7 that such customers bear any *actual* costs for these types of NMB charges *directly*, rather
8 than leaving SSO bidders and CRES providers responsible for trying to predict their
9 impacts.

10 **Q 36. Which of the FE-proposed charges does Exelon support being collected via Rider**
11 **NMB?**

12 **A 36.** The following are non-market-based charges, as described by FE,¹² that Exelon agrees
13 should be recovered through Rider NMB:

- 14 • PJM Billing Line Items 1100, 1101, 1104, 2100, 2101, and 2104 – Network
15 Integrated Transmission Service (“NITS”) related charges and credits. NITS
16 charges are developed from aggregate customer Network Service Peak Load
17 (“NSPL”) tags multiplied by the applicable NITS rate. The ATSI Zone does not
18 have NITS Offset charges or credits. The billing line items have been included,
19 however, should they ever be required in the future. While the Companies will be
20 charged for NITS, SSO Suppliers and CRES providers remain responsible to
21 secure the actual NITS service and fill out all paperwork with PJM to procure this
22 service.

¹¹ Direct Testimony of Edward Stein, pg. 16

¹² Direct Testimony of Edward Stein, pgs. 12-15

- 1 • PJM Billing Line Items 1108 and 2108 - Transmission Enhancement. These line
2 items are associated with transmission projects allocated to load serving entities
3 ("LSEs") that are not part of a transmission owner's normal recovery mechanism
4 through NITS rates.
- 5 • PJM Billing Line Item 1109 and 2109 – MISO Transmission Expansion Plan
6 ("MTEP") Project Cost Recovery. These line items are associated with charges
7 levied from Midcontinent ISO ("MISO") to PJM for transmission projects in
8 MISO that benefit transmission zones in PJM. PJM, in turn, allocates these
9 expenses to those serving load in the affected PJM Zone.
- 10 • PJM Billing Line Item 1250 – Meter Correction. Meter corrections are charges or
11 credits levied on the distribution companies for errors in tieline or generation
12 metering within the applicable transmission zone.
- 13 • PJM Billing Line Items 1260 and 2260– Emergency Energy. PJM may, from time
14 to time, be required to purchase energy to alleviate an emergency from outside the
15 PJM footprint. When this occurs, PJM allocates the costs of such purchases to
16 load serving entities based on their deviations in load schedules and actual load.
17 Such purchases are not reflected in locational marginal pricing ("LMP") and
18 represent a charge similar to an uplift cost, i.e., a cost that does not fit market-
19 based cost causation principles, which is typically allocated to market
20 participants.
- 21 • PJM Billing Line Items 1320, 1330, 2320 and 2330 – Transmission Owner
22 Scheduling, System Control and Dispatch Service and Reactive Supply and
23 Voltage control. Charges and credits from these billing line items arise from the

1 operations of the transmission owner including costs of transmission control
2 centers as well as voltage stabilization of the system.

- 3 • PJM Billing Line Items 1930, 1932, 2930 and 2932 – Generation Deactivation
4 and Generation Deactivation Refund. These line items relate to when generation
5 plants seek to be decommissioned but are required to run for reliability purposes
6 (aka “RMR”). This charge type may work in conjunction with the market and
7 uplift mechanisms (such as PJM Billing Line Items 1375 and 1378) depending on
8 the recovery mechanism the generator owner elects and may be compensated for
9 under PJM’s Generator Deactivation mechanism.

10 **Q 37. Which of the FE-proposed PJM charges does Exelon believe should not be collected**
11 **via Rider NMB?**

12 **A 37.** Exelon believes that the following PJM charges are market based, manageable, or
13 predictable, and therefore should not be recovered through Rider NMB:

- 14 • PJM Billing Line Items 1375, 1376, 1378, 2375, 2376, 2378 – Balancing
15 Operating Reserves, Balancing Operating Reserve for Load Response and
16 Reactive Services. Collectively, these charges represent costs of dispatching
17 generation/demand response out of merit to meet regional transmission operating
18 conditions and are allocated to LSEs based on deviation between actual and
19 scheduled load.
- 20 • PJM Billing Line Item 1450 – Load Reconciliation of 1320. This billing line item
21 merely updates previously billed costs under Line Item 1320 for changes in actual
22 load served.

1 • PJM Billing Line Items 1218 and 2218– Planning Period Congestion Uplift.

2 These charges or credits are associated with allocations to LSEs for any revenue
3 deficient transmission rights (Auction Revenue Rights (“ARRs”) or Financial
4 Transmission Rights (“FTRs”) remaining at the end of the Planning Period.

5 Exelon believes that Reactive Services is generally predictable within reason by using
6 historical experience and projecting it forward, and is a charge that suppliers should fix
7 for the customer. With regard to Balancing Operating Reserves, Exelon believes that a
8 large portion of this charge is best aligned if it is borne by the suppliers who are both
9 forecasting and bidding in the load obligation with PJM. This is a market-based charge
10 that is impacted by market based demand bids submitted to PJM by suppliers, and also
11 can be managed by suppliers based on proper demand forecasting. Including it with the
12 non-market-based charges of Rider NMB would be contrary to the spirit of Rider NMB.
13 Furthermore, removing this potential cost to suppliers may result in less efficient demand
14 bidding and potentially higher costs to customers.

15 In regard to Planning Period Congestion Uplift Charges, these are payments from
16 one set of FTR holders to other FTR holders, associated with an economic decision to
17 enter into an FTR position at PJM. As described in the PJM Billing Guide, “The
18 “Planning Period Congestion Uplift charge” is the participant’s share of the allocated
19 costs of providing the Uplift credits. Charges are allocated to FTR holders in proportion
20 to their net positive total FTR Target Credits for the planning year.” The Billing Guide
21 states that “The “Planning Period Congestion Uplift credit” is a “make-whole”

1 congestion credit to FTR holders to satisfy any previously unfulfilled FTR Target Credits
2 that remain at the end of the planning year.”¹³

3 These charges represent risks or benefits a market participant receives by taking
4 on a PJM position in an ARR or FTR product, which is an independent market based
5 decision. They are not charges that are directly tied to serving load, and therefore they
6 should not be passed back to the customer.

7 **Q 38. What is Exelon’s recommendation with regard to Rider NMB?**

8 **A 38.** Exelon recommends that the following items should be removed from the PJM charges
9 that will continue to be paid by FE for all shopping and non-shopping load under Rider
10 NMB:

- 11 • PJM Billing Line Items 1375, 1376, 1378, 2375, 2376, 2378 – Balancing
12 Operating Reserves, Balancing Operating Reserve for Load Response and
13 Reactive Services.
- 14 • PJM Billing Line Item 1450 – Load Reconciliation of 1320.
- 15 • PJM Billing Line Items 1218 and 2218– Planning Period Congestion Uplift.

16 With this modification Exelon recommends the approval of Rider NMB.

17 **V. OTHER ASPECTS OF THE MSA**

18 **Q 39. Does Exelon have concerns with any other provisions of the MSA?**

19 **A 39.** Yes. Upon review of the proposed Master SSO Supply Agreement, submitted as
20 Attachment EBS-1 to the Direct Testimony of Edward Stein (“MSA”), Exelon has some
21 recommended changes. These include edits to eliminate certain terms that FE has
22 deleted from the definitions from the body of the MSA, the use of the most up-to-date

¹³ <http://www.pjm.com/markets-and-operations/market-settlements/guides-forms/guide-to-billing.aspx>

1 PJM Declaration of Authority, a recommended change to the definition of “Settlement
2 Amount,” and a suggestion that FE include additional language relating to PIPP
3 customers.

4 **Q 40. What is Exelon’s recommendation relating to PIPP customers?**

5 **A 40.** As noted above, Exelon applauds FE for reinserting the load associated with PIPP
6 customers as part of the SSO auctions, rather than having it privately placed. However,
7 there is a risk to wholesale suppliers competing in the auction process that legislative or
8 regulatory efforts may result in a change in law during the ESP term that results in PIPP
9 customers being removed from SSO load. FE should consider adding language to the
10 MSA, such as a change in law provision, which addresses the risk to SSO suppliers of a
11 legislative action that would result in PIPP customers being removed from SSO supply.¹⁴
12 Without such a provision this regulatory risk will likely be priced into wholesale supplier
13 bids, potentially resulting in a higher SSO auction clearing price.

14 **Q 41. What is Exelon’s concern with regard to certain definitions that were deleted from**
15 **the MSA?**

16 **A 41.** In the proposed MSA, FE has deleted certain credit terms from its definitions. These
17 include “Independent Credit Requirement or ICR”, “Independent Credit Threshold or
18 ICT”, “ICR Collateral”, “ICRT”, and “ICT Guaranty.”¹⁵ Despite FE’s intent to delete

¹⁴ Exelon recommends the following language: “At the time of execution of this Agreement, Percentage of Income Payment Plan (“PIPP”) customers are included in the SSO Load served by SSO Suppliers. If, during the Delivery Period, PIPP Customers are no longer included in the SSO Load served by SSO Suppliers due to a change in applicable law, order, rule, or regulation, the Companies shall provide Supplier with as much advanced written notice as possible of the loss of such PIPP Customers, such notice to include the Companies’ reasonable estimate of the amount of load associated with such PIPP Customers, such estimate to constitute the “Load Shortfall.” Supplier shall calculate its expected costs, gains and losses reasonably attributable to the Load Shortfall. Supplier shall provide a copy of such calculation to the Companies within [] Business Days of receiving notice from the Companies regarding the Load Shortfall. If Seller’s losses and costs associated with the Load Shortfall exceed Seller’s gains, the Companies shall pay the amount of such excess to Supplier as part of next monthly invoice.”

¹⁵ Attachment EBS-1 to the Direct Testimony of Edward Stein (MSA), Article I, pg. 6

1 these terms, the terms can still be found within the body MSA. In order to maintain
2 consistency and avoid confusion, Exelon recommends these terms be removed from the
3 entirety of the MSA.

4 **Q 42. Does Exelon have any other recommendations with regard to certain definitions in**
5 **the MSA?**

6 **A 42.** Yes. Exelon recommends that the definition of “FE Ohio Aggregate” in the MSA be
7 updated to include the specific price node identifiers (“PNode IDs”).¹⁶ Inclusion of the
8 specific PNode IDs in the MSA will resolve any ambiguity or confusion regarding the
9 settlement and pricing of transactions associated with serving SSO customers.

10 **Q 43. What is Exelon’s recommendation as to the PJM Declaration of Authority?**

11 **A 43.** The PJM Declaration of Authority found in Appendix F to the proposed MSA appears to
12 be different from the form PJM currently requires suppliers to execute.¹⁷ Exelon
13 recommends that FE update Appendix F to reflect the long-form Declaration of
14 Authority currently used by PJM.

15 **Q 44. What is Exelon’s recommendation relating to definition of “Settlement Amount”?**

16 **A 44.** Exelon recommends that the definition of “Settlement Amount”¹⁸ be revised such that the
17 “notional quantity language” contained in the definition be deleted. Exelon recommends
18 the following specific change to the definition:

19 “Settlement Amount” means the net amount of the Losses or Gains, and Costs, expressed
20 in U.S. Dollars, which the Non-Defaulting Party incurs as a result of Early Termination,
21 calculated from the Early Termination Date through the end of the Original Delivery
22 Period. For purposes of calculating the Settlement Amount, the quantity of Energy (and

¹⁶ Attachment EBS-1 to the Direct Testimony of Edward Stein (MSA), Article I, pg. 5

¹⁷ Attachment EBS-1 to the Direct Testimony of Edward Stein (MSA), Appendix F

¹⁸ Attachment EBS-1 to the Direct Testimony of Edward Stein (MSA), Article I, pg. 9

1 other components of SSO Supply) provided for under this Agreement for the period
2 following the Early Termination Date through the remainder of the Original Delivery
3 Period will be determined by the Non-Defaulting Party in a commercially reasonable
4 manner reflecting estimated SSO Load for un-switched customers as of the Early
5 Termination Date based on the then most recent load switching report filed by the
6 Companies with the PUCO as of the Early Termination Date ~~will be deemed to be those~~
7 ~~quantities that were delivered on an hourly basis, or would have been delivered on an~~
8 ~~hourly basis had this Agreement been in effect, during the previous calendar year,~~
9 ~~adjusted for any SSO Load changes as may have occurred since the previous calendar~~
10 ~~year as determined by the Companies.~~ The calculation of Settlement Amount with respect
11 to an Early Termination shall exclude Default Damages calculated pursuant to Section
12 5.2(b).

13 The recommended language above has been approved by the Commission for Duke
14 Ohio.¹⁹ In the alternative, the MSA could be drafted to allow the supplier to choose
15 between the definition of "Settlement Amount" proposed by FE and the revised definition
16 of "Settlement Amount" proposed herein.

17 **Q 45. IS IT COMMON PRACTICE TO MAKE THE NOTIONAL QUANTITY**
18 **LANGUAGE OPTIONAL IN THIS WAY?**

19 **A 45.** Yes. It has become common practice to make the Notional Quantity Language optional,
20 consistent with Exelon's alternative recommendation. In other default service

¹⁹ See Duke Ohio Master SSO Supply Agreement, [http://www.duke-energyohiocbp.com/Portals/0/Documents/DEO%20Master%20SSO%20Agreement%20\(May%202013%20Auction\).pdf?v=3](http://www.duke-energyohiocbp.com/Portals/0/Documents/DEO%20Master%20SSO%20Agreement%20(May%202013%20Auction).pdf?v=3)

1 agreements utilized in Delaware, the District of Columbia and Maryland the Notional
2 Quantity Language has been made optional.²⁰

3 In approving the revision to make the Notional Quantity Language optional, at the
4 supplier's discretion, the Maryland PSC stated that:

5 [i]t has always been the intent of the [Maryland PSC] that language in the
6 [contract] should provide for the optionality discussed in [Constellation's]
7 "notional quantity" proposal. [Making the Notional Quantity Language
8 optional] *broadens* the pool of potential bidders.²¹

9 The Public Service Commission of the District of Columbia ("DC Commission"), in
10 deciding to make the Notional Quantity Language optional at the supplier's discretion,
11 stated that the DC Commission:

12 recalls that [the Notional Quantity Language] was included in the contract
13 [in order] to allow more diverse parties such as investment banks to
14 participate in the SOS process. The [DC Commission] does not believe
15 that [making the Notional Quantity Language optional] will detract from
16 the clause's intended purpose and therefore accepts . . . [the] revision to
17 [the contract].²²

18 The Delaware Public Service Commission ("Delaware Commission") similarly approved
19 the proposal to make the Notional Quantity Language optional at the discretion of the
20 supplier.²³

²⁰ See *Recommended Decision*, Commission Docket No. P-2008-2060309 (issued Apr. 16, 2009) at p.20. Note that the Commission has not yet adopted the PPL Electric DSP Settlement.

²¹ *Order No. 81102*, Maryland PSC Case No. 9064 (issued Nov. 8, 2006) at p.49 (*emphasis added*).

²² *Order No. 14065*, DC Commission Formal Case No. 1017 (issued Sept. 21, 2006) at P36.

²³ See *Order No. 7053*, Delaware Commission Docket No. 04-391 (issued Oct. 17, 2006) at P70 (stating that all parties "have agreed on" making the Notional Quantity Language optional at the supplier's discretion and approving "the parties' agreement as being in the public interest").

1 **Q 46. PLEASE EXPLAIN WHAT “NOTIONAL QUANTITY” LANGUAGE IS AND**
2 **WHY IT IS USED.**

3 **A 46.** The Notional Quantity Language is included in the MSA to create a “notional quantity”
4 and transform the MSA into a derivative instrument as defined under Rule 133 of the
5 Statement of Financial Accounting Standards (“SFAS”), in order to meet the preferred
6 accounting practices of certain wholesale suppliers, in particular banks and financial
7 institutions that participate in SSO auctions. In other words, with the inclusion of the
8 Notional Quantity Language, the MSA is considered to have a notional quantity and thus
9 results in the MSA being considered a derivative under SFAS 133.

10 **Q 47. WHAT CONCERN IS RAISED BY INCLUDING SUCH LANGUAGE IN THE**
11 **MSA?**

12 **A 47.** Due to the inclusion of the Notional Quantity Language and a MSA’s resulting status as a
13 derivative, in order for a supplier to account for this contract on an accrual basis (*i.e.*, not
14 on a ‘mark-to-market’ basis) it must designate it as a “normal purchase and sale” contract
15 for accounting purposes. One of the requirements for electing the “normal” designation
16 is that such contracts must be taken to physical delivery throughout their entire term.
17 Because of this requirement, the future assignability of the contract is compromised. If a
18 MSA designated as normal were to be net settled, as might occur if such MSA were ever
19 assigned, it would call into question the supplier’s initial designation as normal and could
20 require, under current accounting rules, that the MSA be rebooked as a mark-to-market
21 contract unless the assignment was caused by exogenous circumstances (*e.g.*,
22 bankruptcy), potentially causing significant negative financial and accounting
23 consequences for the supplier. This feature essentially makes the MSA unassignable for
24 any supplier that has designated the MSA as a normal purchase and sale. An ability to

1 assign these MSAs provides reassurance to suppliers that they will be able to
2 appropriately manage their obligations. Moreover, an ability to assign the MSA
3 promotes the interests of consumers in that a supplier that unexpectedly finds itself
4 unable to meet its obligations under the MSA due to financial or other reasons will be
5 able to transfer its supply obligations to a supplier that is more readily able to meet the
6 MSA's requirements.

7 **Q 48. WHAT WILL BE THE RESULT IF THE MSA IS NOT REVISED TO DELETE**
8 **THE NOTIONAL QUANTITY LANGUAGE OR MAKE IT OPTIONAL?**

9 **A 48.** Without such a revision to the MSA, certain wholesale suppliers likely will account for
10 their inability to appropriately manage their obligations (*i.e.*, their inability to assign the
11 MSA without incurring potentially significant financial consequences as a result of
12 accounting practices) by limiting their participation in the Competitive Bidding Process
13 ("CBP") and/or including in their bids an additional risk premium. Thus, by deleting the
14 Notional Quantity Language or making it optional as explained herein, the Commission
15 may reduce the likelihood of additional risk premiums and increase the robustness of the
16 bidding process by attracting more wholesale suppliers to FE's CBPs, resulting in more
17 competitive procurement processes and more competitive prices for consumers.

18 Note that making the language optional will allow for an *equal* ability to assign the
19 MSAs for *all* potential suppliers (rather than only by those suppliers like financial
20 institutions who utilize mark-to-market accounting). However, making such a revision
21 will do nothing to either undermine the requirements that a supplier must meet its supply
22 and other obligations under the MSAs or limit FE's ability under the MSA to reject any
23 proposed assignment by a supplier.

1 **Q 49. WILL CALCULATIONS OF DAMAGES BE AFFECTED WITHOUT**
2 **INCLUSION OF THE NOTIONAL QUANTITY LANGUAGE?**

3 **A 49.** When language such as the Notional Quantity Language is included in a contract, it is
4 included only in order to meet the requirements of FAS 133 and qualify as a derivative
5 contract for accounting purposes for those parties who wish to retain an ability to choose
6 such language. Actual damages under the MSA are meant to be calculated in a
7 commercially reasonable manner by the Non-Defaulting Party. To be specific, the MSA
8 provides that:

9 The Non-Defaulting Party shall calculate, in a commercially
10 reasonable manner, a Settlement Amount with respect to the
11 obligations under this Agreement.

12 The MSA defines a "Settlement Amount" as:

13 [w]ith respect to a Non-Defaulting Party, the net amount of the Losses
14 or Gains, and Costs . . . which such Party incurs as a result of Early
15 Termination

16 "Losses" and "Gains" also must be "determined in a commercially reasonable manner"
17 pursuant to the MSA's definitions, while "Costs" are defined to include the Non-
18 Defaulting Party's:

19 brokerage fees, commissions and other similar transaction costs and
20 expenses reasonably incurred by such Party either in terminating any
21 arrangement pursuant to which it has hedged its obligations or entering
22 into new arrangements which replace this Agreement; and all
23 reasonable attorneys' fees and expenses incurred . . . in connection
24 with the termination of this Agreement.

25 In this way, the MSA lays out clearly that the costs of obtaining replacement energy or a
26 replacement supplier are not dependent on the language in the Notional Quantity
27 Language, but rather are dependent on the *actual costs* that a Non-Defaulting Party incurs
28 in replacing the energy that the defaulting supplier did not provide. These *actual* costs

1 are verifiable *actual* replacement supplies (where FE is the Non-Defaulting Party) or
2 *actual* transactions to unwind hedges (where the supplier is the Non-Defaulting Party), as
3 stated in the MSA's damages provisions, and are not dependent upon a calculation of
4 what "those quantity amounts . . . would have been," as stated in the Notional Quantity
5 Language. In short, pursuant to the terms of the MSA, calculations of damages will not
6 be affected by not including the Notional Quantity Language for those entities that do not
7 elect such option.

8 **VI. OTHER CONCERNS**

9 **Q 50. Are there any other issues that you wish to address?**

10 **A 50.** Yes. It has come to Constellation's attention that certain data provided by FE on their
11 website differs from that which FE provides to PJM and upon which CRES providers are
12 billed.

13 **Q 51. What is the issue?**

14 **A 51.** Annually, FE provides to PJM aggregated forecasted Peak Load Contribution (PLC) for
15 each LSE in its zone. Separately, on a daily basis, FE is required to send PJM a daily
16 upload file of the aggregated actual PLC for each LSE, which is intended to reflect
17 movement of customers into and out of the respective zone. In theory, if an EDC's daily
18 upload file for the zone does not equal the initial annual forecasted load for the zone then
19 there is an adjustment, the Daily Zonal Scaling Factor (DZSF), to make the daily upload
20 equal the annually forecasted zonal total. The DZSF ultimately is factored into the
21 capacity charge billed to CRES by PJM on a monthly basis. If the daily aggregate PLC
22 calculation equals the total annually forecasted load for the zone then the DZSF factor
23 equals 1.0, but if the daily aggregate PLC calculation submitted by the EDC is less than

1 the total annually forecasted load for the zone, for example a DZSF of .97, that ultimately
2 should result in a lower capacity charge from PJM.

3 **Q 52. What is happening in FE?**

4 **A 52.** FE applies a daily zonal scaling factor *before* they submit their PLC and NSPL data to
5 PJM, which makes PJM believe that the forecasted load that FE submitted at the
6 beginning of the year matches the actual load, which is not the case. In other words the
7 data FE is submitting to PJM does *not* reflect *actual* daily aggregate PLC for the zone
8 based on customers moving into and out of the zone.

9 **Q 53. What information is FE posting on its website?**

10 **A 53.** On the website, FE posts the *actual* daily aggregate PLC for the zone based on customers
11 moving into and out of the zone. Additionally, they post that information retroactively on
12 only a monthly basis, although the numbers may differ each day. The mismatch between
13 the website posted information and the information FE provides to PJM (which is used by
14 PJM to bill CRES providers) is causing confusion for market participants. Due to the of
15 the lack of reliability of the web-posted information, and the confusion it is causing, it is
16 unclear what value there is in FE posting this information on the web at all.

17 **Q 54. What do you propose?**

18 **A 54.** Ultimately it is necessary to bring consistency between the information FE is providing to
19 PJM and the information FE is posting on the web. This will eliminate confusion for
20 shopping customers and frustration for CRES providers. We recommend that FE provide
21 to PJM daily information that reflects actual daily aggregate PLC for the zone based on
22 customers moving into and out of the zone.

1 **VII. CONCLUSION AND SUMMARY OF RECOMMENDATIONS**

2 **Q 55. Given those conclusions, what are Exelon's recommendations?**

3 **A 55.** Exelon recommends that the Commission adopt a modified ESP that contains the
4 following elements:

- 5 • **Reject Rider RRS in its entirety.** Rider RRS undermines the Ohio
6 policymakers' explicit goal for retail competition: to provide customers the right
7 to choose less costly options rather than be captive to one provider's costs. See,
8 e.g., Sections 4928.02(C) and (H), 4928.03, and 4928.06(A) and (B), Revised
9 Code. The Commission has the ability to alter the proposed ESP, and should do
10 so by rejecting the proposed Rider RRS.
- 11 • **Approve the non-bypassable Rider NMB with the modifications described**
12 **above, through which FE will direct-bill certain unhedgeable, Non-Market**
13 **Based PJM charges on behalf of both wholesale and retail suppliers.**
- 14 • **Approve the aspects of the ESP that promote the benefits of competition in**
15 **Ohio such as the proposal to continue the procurement of SSO supply via a**
16 **competitive bidding process, and the inclusion of the PIPP load in the SSO**
17 **load.**

18 The anti-competitive elements of the ESP should be eliminated. Absent the elimination
19 of Rider RRS, FE's ESP will constitute a monumental step backwards from the transition
20 to full competition ordered by the Commission.

21 **Q 56. Does this conclude your testimony?**

22 **A 56.** Yes, it does.

CERTIFICATE OF SERVICE

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