

**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)	Case No. 14-1297-EL-SSO
Authority to Provide for a Standard Service)	
Offer Pursuant to R.C. § 4928.143 in the Form)	
of an Electric Security Plan.)	

**SUPPLEMENTAL
DIRECT TESTIMONY OF LAEL CAMPBELL
ON BEHALF OF
CONSTELLATION NEWENERGY, INC.
AND
EXELON GENERATION COMPANY, LLC**

May 11, 2015

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INTRODUCTION

Q1. Please state your name and business address.

A1. My name is Lael Campbell. My business address is 101 Constitution Avenue NW,
Washington DC 20001.

Q2. By whom are you employed and in what capacity?

A2. I am employed by Exelon Corporation and my title is Director – Regulatory &
Government Affairs.

PURPOSE OF THIS SUPPLEMENTAL TESTIMONY

Q3. Have you filed direct testimony in this proceeding?

A3. Yes, on December 22, 2014, I had submitted direct testimony on behalf of Constellation
NewEnergy, Inc. (“Constellation”) and Exelon Generation Company, LLC (“Exelon”) concerning the application filed jointly by Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively “FirstEnergy”) seeking approval of a fourth electric security plan (“FirstEnergy ESP IV”). I am supplementing my initial direct testimony to address the issue of whether the FirstEnergy ESP IV application’s proposed Rider RRS meets the criteria for ratepayer-guaranteed, power purchase agreement (“PPA”) riders that the Public Utilities Commission of Ohio (“Commission”) articulated earlier this year.

Q4. Can you explain further?

A4. In response to the Attorney Examiner's Entry of May 1, 2015, in this proceeding, I reviewed the Commission's February 25, 2015 Opinion and Order issued in *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO et al. ("AEP Ohio ESP III"), as to how it addressed the AEP Ohio proposed PPA rider, as well as the six sets of supplemental testimony filed in this proceeding by FirstEnergy on May 4, 2015. The purpose of my supplemental testimony is to evaluate several shortcomings in the FirstEnergy application in terms of the Commission's criteria for ratepayer PPA riders.

FACTORS AND REQUIREMENTS FOR FUTURE PPA REQUESTS

Q5. Having read the Commission's February AEP Ohio ESP III Opinion and Order, what factors from a supplier's perspective are to be evaluated by the Commission in deciding whether to approve future cost recovery requests associated with Power Purchase Agreement riders?

A5. On page 25 of the AEP Ohio ESP III Opinion and Order, the Commission listed the following factors and requirements for future PPA applications:

- Financial need of the generating plant;
- Necessity of the generating facility in light of future reliability concerns, including supply diversity;

- Description of how the generating plant is compliant with all pertinent environmental regulations and its plan for compliance with pending environmental regulations;
- Impact that a closure of the generating plant would have on electric prices and the resulting effect on economic development;
- Rigorous Commission oversight of the rider, including a process for periodic substantive review and audit;
- Commitment to full information sharing with the Commission and its Staff;
- An alternative plan to allocate the rider's financial risk between the company and its ratepayers; and
- Severability provision recognizing that other provisions of the ESP will continue if the PPA rider is invalidated by a court of competent jurisdiction.

In my supplemental testimony I will address four of the Commission's factors:

- Financial need of the generating plant
- An alternative plan to allocate the rider's financial risk between the company and its ratepayers
- Necessity of the generating facility in light of future reliability concerns, including supply diversity; and
- Rigorous Commission oversight of the rider, including a process for periodic substantive review and audit.

1 **Q6. What is your analysis of the financial need of the four power plants for which**
2 **FirstEnergy seeks ratepayer guarantees?**

3 **A6.** It is inconsistent to claim on the one hand that the four plants (Davis Besse, Sammis, ,
4 Kyger Creek and Clifty Creek) have a productive life of at least another 15 years over
5 which they are expected to generate a net present value of hundreds of millions of dollars,
6 and also to claim on the other hand that the four plants will be closed in the next couple
7 of years because they are uneconomic. If the four plants are truly going to produce high,
8 positive returns over the next decade and a half, the plants should not be in danger of
9 closing, and there is no financial need requiring a PPA. Furthermore, as part of the
10 Commission's consideration of the financial needs of the generation plant, the
11 Commission must take into account whether a particular plant cleared the PJM
12 Interconnection LLC ("PJM") capacity auction and has a forward capacity obligation for
13 which it will receive revenues.

14
15 **Q7.**

16
17
18 **A7.**

19
20
21 In fact, the FirstEnergy experts anticipate that the plants
22 will be profitable in the long run when capacity prices recover, and the recovery they
23 predict does not include the potential additional revenues from PJM's proposed Capacity

Performance (“CP”) product, which is currently awaiting a decision from the Federal Energy Regulatory Commission (“FERC”). CP will likely result in a material increase in capacity revenues, and a corresponding decrease in a generator’s financial need for a ratepayer guarantee in order to operate. The basis for FirstEnergy’s claim in this proceeding that the Rider RRS is beneficial for retail customers is the long-term profitability of the four plants. If the Commission accepts that forecast, then it should conclude that the plants have value, will not be shut down prematurely, and are not in financial need of a ratepayer guarantee. Indeed, in the criteria set forth by the Commission in the AEP Ohio ESP III, case the financial needs of the generation plants are not limited to ownership or a set rate of return. The Commission also set as a criteria the impact on electric prices for retail customers, establishing what is essentially a cost-benefit analysis for approving a ratepayer guaranteed PPA.

Q8. Please explain why the Commission should have to evaluate alternative plans?

A8. The Application calls for the Commission to grant a ratepayer guarantee, which would cover all of FirstEnergy Solutions Corp’s costs for operating the four plants plus an 11.12% rate of return on the investment for a 15-year period. The Commission should not put itself in a position of facing an ultimatum of either requiring all retail customers to pay for 15 years an 11.12% return or face plant closings. The financial need for keeping a plant running is a broader question than simply asking: “what does the utility’s affiliate want to earn in order to keep the plants running.” That is why the Commission in both the AEP Ohio ESP III and the Duke’s ESP III proceedings rejected

1 the PPA and asked for alternative plans. FirstEnergy in its supplemental testimony failed
2 to offer an alternative.

3
4 **Q9. Has Constellation offered an alternative plan?**

5 **A9.** Yes. Constellation proposes that there be a competitive bidding process established to
6 determine whether any plant seeking a PPA is the lowest-cost alternative. This can easily
7 be done with a request for proposal or other mechanism for competitive bidding that
8 provides an opportunity for power plants not affiliated with FirstEnergy, to be
9 considered.

10
11 **Q10. In its supplemental testimony, has FirstEnergy addressed the allocation of risk
12 between ratepayer and affiliate receiving the rate payer guarantee?**

13 **A10.** No. FirstEnergy's supplemental testimony does not address the factor relating to whether
14 a PPA appropriately allocates risk between FirstEnergy and Ohio ratepayers. The
15 Commission's focus on a shifting of risk under a ratepayer guaranteed PPA is
16 appropriate.

17
18 **Q11. What risks would be allocated to ratepayers under the PPAs?**

19 **A11.** The FirstEnergy proposal will clearly shift to ratepayers the *market price risk* associated
20 with the power plants as ratepayers will be responsible for providing a guaranteed hedge
21 to FirstEnergy to ensure that it receives the full PPA contract price when market revenues
22 from the plants are below that contract price. However, another significant risk that
23 would be shifted to ratepayers is the *penalty risk* associated with non-performance in the
24 PJM capacity market. Under the PPA proposal if a plant receives less capacity revenues

(or even negative revenues) due to non-performance of its capacity obligation to PJM, ratepayers, not FirstEnergy, will be financially responsible for making FirstEnergy whole on these lost revenues up to the full PPA contract price. This is an unreasonable allocation of risk that eliminates the financial incentive for FirstEnergy to actually perform on a capacity obligation it has committed to PJM. This inequitable allocation of risk becomes even more vital if one of the plants seeking a PPA is committed, or in the future commits, to PJM as a CP resource. While CP could result in increased capacity revenues, under the CP proposal, these revenues also would come with significant penalty risks for non-performance. In fact, the proposed CP penalties are so severe that they would actually exceed the potential CP revenues. So while at first glance the potential increased revenues from CP may appear attractive, if the risk of non-performance by the generator also is shifted to customers under the PPA, CP could be a disaster for ratepayers.

Q12. Would the shifting of the capacity performance penalty risk have a potential impact on reliability?

A12. Yes. Shifting the penalty risk of non-performance to ratepayers would undermine the purpose behind performance penalties in capacity markets. If ratepayers are financially responsible for non-performance penalty, the generator has no real incentive to spend the money or to make the investment necessary to ensure performance on its capacity obligation. This would have the perverse impact of actually *increasing* the reliability risk in Ohio and PJM, not decreasing it. Therefore, the risk of non-performance on a capacity

obligation must remain with the generator, and the Commission should not permit this risk to be allocated to ratepayers.

Q13. Has FirstEnergy adequately addressed the Commission’s criteria of evaluating a generating facility in light of future reliability concerns, including supply diversity?

A13. No, FirstEnergy has not provided a sufficient showing of the reliability needs of the four plants because it has not presented a reliability study by a third party demonstrating the reliability needs of the generating plants based on commonly accepted local or regional reliability standards. I am not aware of any third-party reliability study having been conducted for the FirstEnergy plants. At a minimum, FirstEnergy should have a third-party reliability study conducted that provides: (1) a demonstration of the reliability needs of the generating plants and, (2) description of the methodologies and findings in the underlying reliability studies. This would be consistent with concerns the FERC has recognized, as recently as February 2015, for certain PPAs in the wholesale market administered by the New York Independent System Operator, Inc. (“NYISO”), under which the generation resources would continue to operate and recover costs that would not otherwise be recovered through generator sales of energy, capacity and ancillary services in NYISO’s markets. If the reliability study in this case discovers a reliability need, there should then be a competitive process to determine the lowest-cost solution that best addresses the reliability need.

1 **Q14. How has FirstEnergy addressed the Commission's criteria calling for rigorous**
2 **Commission oversight of the rider, including a process for periodic substantive**
3 **reviews and audits?**

4 **A14.** FirstEnergy witness Mikkelsen addressed the issue and FirstEnergy agreed to what I
5 believe are financial audits, but not to substantive review and Commission approval of
6 the terms and conditions of the PPA itself. Both of those items, though, are necessary if
7 there is going to be rigorous Commission review. Since FirstEnergy is going to be
8 purchasing the power from its affiliate on a "cost plus" basis, the Commission simply
9 must be in a position to draw the lines as to what constitutes a proper cost. It is not
10 sufficient to protect the public by having the Commission only do a financial audit of the
11 mechanics of Rider RRS to start with, and then in subsequent years not be able to review
12 the management performance which questions the legacy investment.

13
14 **Q15. Could you give me an example of the kind of expense that FirstEnergy could pass**
15 **through which, if there was rigorous Commission oversight, may not be allowed?**

16 **A15.** As I mentioned earlier, FirstEnergy's PPA proposal, as currently constructed, inequitably
17 shifts to ratepayers the *penalty risk* associated with generator non-performance in the
18 PJM capacity market. With just a financial structural audit of Rider RRS and a limit on
19 cost review of any investment made pre-2015, the Commission Staff would not have the
20 information to do a management performance audit and even if they did, the Commission
21 under the Application would be powerless to stop the FirstEnergy utilities from passing
22 the risks of the FirstEnergy Solutions operation on to the retail customers. With financial
23 audits only, the Commission may not know about the payment of penalties or the loss of

1 potential revenues let alone protect the ratepayers from such losses. As such, there must
2 be no restrictions on the information that Staff obtains and no restrictions on Rider RRS
3 adjustments because of performance or improper risk shifting. Under a “cost plus”
4 agreement as provided for in the ESP IV Application, the Commission Staff must receive
5 all the relevant information in a timely fashion and the final decision as to passing on
6 costs and profits must rest solely with Commission, anything less is simply not rigorous
7 regulatory oversight.

8
9 **CONCLUSION**

10 **Q16. Does this conclude your supplemental testimony?**

11 **A16.** Yes, although I reserve the right to further supplement my testimony.

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served upon the persons below via electronic mail this 11th day of May 2015.



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