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**

JOINT REPLY BRIEF OF THE PJM POWER PROVIDERS GROUP AND THE ELECTRIC POWER SUPPLY ASSOCIATION

PUBLIC VERSION

February 26, 2016

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I. INTRODUCTION

The PJM Power Providers Group ("P3")[1] and the Electric Power Supply Association ("EPSA")[2] submit this joint reply to the initial briefs of the Ohio Edison Company, the Cleveland Electric Illuminated Company, and the Toledo Edison Company (collectively "FE"), as well as to other initial briefs submitted in this proceeding. FE has failed to meet its burden of proof in this proceeding on several key points, any one of which warrants denial of FE's request to include Rider RRS in its fourth electric security plan ("ESP IV") application.[3]

FE has not shown (and cannot show) that any of the plants to be included in its Retail Rate Stability Rider ("Rider RRS") are in financial need. FE's evidence that the W.H. Sammis plant, the Davis-Besse Nuclear Power plant and the Ohio Valley Electric Corporation ("OVEC") coal plants are in financial need is generalized historical profit/loss information and future projections of revenues versus costs under the proposed power purchase agreement ("PPA") term sheet. The underlying worksheets to those projections, however, show that the Davis-Besse and the Sammis plants are predicted to [redacted].[4]

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[1] P3 is a non-profit organization whose members are energy providers in the PJM Interconnection LLC ("PJM") region, conduct business in the PJM balancing authority area, and are signatories to various PJM agreements. Altogether, P3 members own over 84,000 megawatts ("MWs") of generation assets, produce enough power to supply over 20 million homes, and employ over 40,000 people in the PJM region, representing 13 states and the District of Columbia. This brief does not necessarily reflect the specific views of any particular member of P3 with respect to any argument or issue, but collectively presents P3's positions.

[2] EPSA is a national trade association representing leading competitive power suppliers, including generators and marketers. Competitive suppliers, which collectively account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers. This brief does not necessarily reflect the specific views of any particular member of EPSA with respect to any argument or issue, but collectively presents EPSA's positions.

[3] Any silence by P3 and EPSA on any argument raised by FE or any other party should not be construed as a non-opposition or concession to the arguments raised. P3 and EPSA reserve all rights to dispute any argument raised by FE or any other party in the future in this proceeding.

[4] P3/EPSA Exhibit ("Ex.") 2 at 42-44 (emphasis added, footnotes omitted).

This is a critical point because Don Moul, Senior Vice President, Fossil Operations and Environmental at FirstEnergy Generation, LLC, testified that [redacted][5] FirstEnergy Solutions Corp. ("FES") is also not going to close the OVEC units. It cannot because it only owns a 4.85% entitlement to the OVEC plants output,[6] and a review of FE's projected total costs versus total revenues shows that FE [redacted][7] The fact that the plants are not closing also eliminates any concerns about grid reliability, fuel diversity and transmission upgrades.

FE has also failed to show that including Rider RRS in the Stipulation is in the public interest.[8] The fact that none of the plants will close moots any claims by the Companies that Rider RRS promotes the public interest by protecting grid reliability, preserving generation diversity and avoiding transmission upgrades. Rider RRS also will not have a rate-stabilizing effect as claimed by the Companies; instead, the rider will negatively impact the wholesale markets resulting in suppressed pricing. The only evidence FE offered was to contrast standard service offer ("SSO") prices between two years[9] when congestion in the ATSI zone resulted in price increases.[10] That is not sufficient evidence to find a public interest on rate stability.

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[5] Transcript ("Tr.") Volume ("Vol.") 11 at 2433.

[6] Company Ex. 33 at 3.

[7] Tr. Vol. 9 at 1984.

[8] A partial Stipulation and Recommendation was filed in this proceeding on December 22, 2014. It was supplemented on May 28, June 4 and December 1, 2015. These filings will collectively be referred to as the "Stipulation."

[9] FE Initial Brief at 44-45 citing Company Ex. Nos. 109A through 109F.

[10] Tr. Vol. 30 at 6320.

FE has the burden of proof in this matter to justify including Rider RRS in its ESP IV.[11] FE has not met that burden for all of the plants included in Rider RRS. FES and FE may have a vested interest in improving FES' balance sheet, but using the ratepayers for that purpose is wrong. This Commission should reject Rider RRS along with the Ohio Energy Group's request for certain express findings surrounding Rider RRS. At a minimum, if the Commission believes Rider RRS should be approved, it should protect ratepayers from the unknown risk and downside to Rider RRS.

II. NONE OF THE RIDER RRS PLANTS ARE IN FINANCIAL NEED

A. FE agrees that the standard of review includes a consideration of whether each plant is in "financial need."

In its *AEP ESP III* decision, the Commission listed a number of plant-specific factors that the Commission would balance, but not be bound by, in deciding whether to approve a utility's request for cost recovery.[12] FE acknowledges and agrees that these factors apply to the Commission's review of FE's request for cost recovery.[13] As stated by FE, "[t]hese four factors focus on the generating plants proposed to support such a rider." FE further acknowledged that these factors are "plant-specific,"[14] one of which is the "financial need of the generating facility" that is the subject of the PPA.[15] This is an important point, because rather than simply looking at the plants in the aggregate, the Commission should consider the financial need of each plant

[11] R.C. 4928.143(C).

[12] *In re Ohio Power Company*, Case No. 13-2385-EL-SSO et al., Opinion and Order at 25 (February 25, 2015) ("*AEP ESP III* at ___").

[13] FE Initial Brief at 124.

[14] *Id.* at 124.

[15] *AEP ESP III* at 25 *and see* FE Initial Brief at 124.

independently when considering this factor. As FE's witnesses Moul and Lisowski repeatedly stated at the hearing, each plant must stand on its own.[16]

B. The OVEC plants are not in financial need.

FES' 4.85 percent entitlement from the OVEC plants is not in jeopardy or financial need. FES cannot unilaterally close any OVEC unit,[17] and as Mr. Lisowski admitted, [redacted][18] The record does not support including the OVEC entitlement in Rider RRS – which as Mr. Moul indicated was included in FES' proposal simply as a foundational element "based on what we saw AEP file."[19]

FE ignores the testimony of its own witnesses on OVEC, and instead makes the broad statement that all of the plants are in financial need, including the OVEC plants.[20] FE claims that the "economic viability of the Plants is in doubt" and that revenues "have been at historic lows and are insufficient to cover the Plants' costs, and thus to continue to operate the Plants, and make necessary investments."[21] FE then claims that "FES may not be financially able to bear short-term losses even if long-term projections of market prices show significant increase."[22] The record, however, shows that FES can bear any short-term losses and that by FE's own projections, the OVEC plants are not in "financial need."

[16] Tr. Vol. 8 at 1726; Tr. Vol. 11 at 2256-2257; 2390.

[17] Tr. Vol. 10 at 2185 (FE witness Moul noting that FES cannot make lone retirement decisions as to OVEC).

[18] Tr. Vol. 9 at 1984.

[19] Tr. Vol. 11 at 2329; 2393

[20] FE Initial Brief at 125. FE uses the term "the Plants" in this section of its initial brief in reference to the Davis-Besse plant, the Sammis plant and the OVEC plant entitlement.

[21] *Id.*

[22] *Id.*

FE argues that financial need for OVEC is shown because FES's share of OVEC resulted in [redacted][23] [redacted].

Table 1 – OVEC-Projected Revenues Versus Total Costs[24]

Year	Total Revenues	Total Costs	Total
2009	[redacted]	[redacted]	[redacted]
2010	[redacted]	[redacted]	[redacted]
2011	[redacted]	[redacted]	[redacted]
2012	[redacted]	[redacted]	[redacted]
2013	[redacted]	[redacted]	[redacted]
2014	[redacted]	[redacted]	[redacted]
2015	-	-	-
2016	[redacted]	[redacted]	[redacted]
2017	[redacted]	[redacted]	[redacted]
2018	[redacted]	[redacted]	[redacted]
2019	[redacted]	[redacted]	[redacted]
2020	[redacted]	[redacted]	[redacted]
2021	[redacted]	[redacted]	[redacted]
2022	[redacted]	[redacted]	[redacted]
2023	[redacted]	[redacted]	[redacted]
2024 (to May 31)	[redacted]	[redacted]	[redacted]

As the table indicates, the OVEC entitlement is [redacted] and FE only needs [redacted]. As Mr. Lisowski testified:[25]

Q. [redacted]

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[23] FE Initial Brief at 125-126.

[24] Source for data: Company Ex. 30C at 3; P3/EPSA 11C.

[25] Tr. Vol. 9 at 1984.

A. [redacted]

FE's lead negotiator for the term sheet, Jay Ruberto, put OVEC in perspective when he was asked whether he had any opinion on whether any of the OVEC units will retire within the next three years:[26]

> Q: Okay. And you also don't have any opinion as to whether any of the OVEC units will retire within the next three years, correct?
>
> A: I think the impact of whether rider RRS was approved or not has much less effect on OVEC simply because of the small share.[27]

FES cannot unilaterally retire the OVEC units, and FE's own projections show that [redacted] FE projects that the OVEC entitlement will result in [redacted], and FES can [redacted]. The OVEC units are not going to close, which eliminates any concerns about lost jobs, lost tax revenue, fuel diversity, grid reliability and transmission upgrades.

C. The Davis-Besse and Sammis plants are not in financial need.

P3/EPSA's initial brief explained why both the Davis-Besse and Sammis plants are not at risk of closure in the short-term.[28] P3/EPSA's witness, Dr. Kalt[29], pointed out that the plants' [redacted][30] Even FE witness Donald Moul indicated that the

[26] Tr. Vol. 13 at 2814-2815.

[27] FES' share of OVEC is small at 4.85 percent of the total OVEC entitlement equaling a nameplate capacity of 115.9 megawatts. *See* Company Ex. 5 at 8.

[28] P3/EPSA Initial Brief at 21-23

[29] Dr. Kalt is the Ford Foundation Professor (Emeritus) of the International Political Economy at the John F. Kenney School of Government, Harvard University He also works as a senior economist with Compass Lexecon, an economics consulting firm. P3/EPSA Ex. 5 at 1.

[30] P3/EPSA Ex. 2 at 42-44.

plants [redacted].[31] No plant retirements have been announced and FES has made significant investments in both plants.[32] All of this evidence collectively leads to the conclusion that Davis-Besse and Sammis will not close in the near term.

FE, in its initial brief, claims that Davis-Besse and Sammis "have a significant financial need."[33] To support that claim, like it does with OVEC, FE points to historical profit/loss information for the Sammis and Davis-Besse plants. FE claims that Sammis [redacted] and that Davis-Besse [redacted] from 2009 through 2014.[34] When the tables in Mr. Moul's testimony are reviewed, however, Sammis [redacted] while Davis-Besse [redacted]. And as Mr. Moul repeatedly said during his testimony, a plant retirement decision is based on a snapshot of one year, looking at whether the plant is recovering its avoidable cost going forward and taking the cost of any necessary future capital expenditures, overlay that with the balance sheet of the company.[35] FE's reliance on historical profit/loss information is disingenuous given its own witnesses' repeated claims that each plant must stand on its own and the analysis must look at the immediate future's financials.[36]

Dr. Kalt's analysis established that Davis-Besse and Sammis [redacted] – eliminating one concern.

[redacted]

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[31] Tr. Vol. 10 at 2202.

[32] P3/EPSA Ex. 1 at 41-42, citing Hardin Direct Testimony at 10.

[33] FE Initial Brief at 125.

[34] Id. at 125-126.

[35] Tr. Vol. 32 at 6630.

[36] *See, e.g.*, Tr. Vol. 11 at 2256-2257; Tr. Vol. 8 at 1726.

[redacted][37]

Dr. Kalt's Attachment JPK-7 shows that the plants will [redacted].

[37] P3/EPSA Ex. 2 at 42-44(emphasis added, footnotes omitted).

[redacted]

[redacted]

As the above tables indicate, Dr. Kalt included FE's own projections on the necessary capital investments. This is important because FE witnesses Moul and Lisowski repeatedly stated that there was a risk that Davis-Besse and Sammis would not be able to generate enough cash flow to pay for capital investments.[38] Mr. Lisowski included the necessary cash for capital investments in his revenue and cost projections[39] – which Dr. Kalt relied upon for his conclusion that [redacted].

Dr. Kalt's tables did not include 2016, but it is safe to say that the Davis-Besse and Sammis plants are not going to close in 2016 given that no announcement of closure has been made[40] and the fact that both plants [redacted].[41] The [redacted] because as admitted by Mr. Moul, if a retirement notice was issued for any of the plants, [redacted].[42]

Also, significantly, FE presented no expert testimony to refute Dr. Kalt's findings. FE witness Lisowski, the assistant controller for FES, was the only FE witness to present rebuttal testimony to Dr. Kalt's analysis.[43] Mr. Lisowski claimed that Dr. Kalt left out necessary capital expenditures, accretion expense and interest expense, as well as any equity return and income tax expense.[44] Mr. Lisowski claimed that Dr. Kalt presented a hypothetical scenario and failed to explain how a financially challenged plant can continue to pay these expenses and incur these

[38] Tr. Vol. 10 at 2184-2185;.Tr. Vol. 32 at 6687.

[39] Tr. Vol. 32 at 6693, 6695.

[40] Tr. Vol. 11 at 2337.

[41] Tr. Vol. 9 at 1985-1988.

[42] Tr. Vol. 11 at 2456.

[43] Company Ex. 143 and Ex. 144 (confidential).

[44] Company Ex. 143 at 2-3.

costs without available cash flow.[45] He also claims that Dr. Kalt ignores FES' balance sheet and how the plants' poor past performance has impacted the balance sheet.[46]

Unfortunately for Mr. Lisowski, the Senior Vice President, Fossil Operations and Environmental at FirstEnergy Generation, LLC, a subsidiary of FES, Don Moul, **agreed with Dr. Kalt** [redacted][47]

[redacted][48]

After answering this question, Mr. Moul then acknowledged that [redacted] The following tables derived from Mr. Lisowski's updated worksheets for each plant [redacted]

[45] *Id.*

[46] *Id.* at 3.

[47] Tr. Vol. 11 at 2433.

[48] Tr. Vol. 11 at 2432-2433.

Table 2
Sammis Total Revenue minus Total Costs
Exclusive of Income Taxes, Return on Equity and Interest Expense.[49]

Sammis Plant	**2016 (June-Dec)**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024 (June-May)**
Total Revenue	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]				
Total Costs	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]	
Difference	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]	

Table 3
Davis-Besse Total Revenue minus Total Costs
Exclusive of Income Taxes, Return on Equity and Interest Expense.[50]

Sammis Plant	**2016 (June-Dec)**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024 (June-May)**
Total Revenue	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]	
Total Costs	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]	
Difference	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]	

As both tables show, the Sammis and Davis-Besse plants [redacted] Mr. Moul's emphatic statement that [redacted] any debate over Dr. Kalt's analysis and whether the plants will close. The substantial and credible evidence of record demonstrates that the Davis-Besse and Sammis plants are not going to close and are not in financial need.

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49 Source: P3/EPSA Ex. 11 (confidential).

50 Source: P3/EPSA Ex. 11C (confidential).

D. The Sammis Plant has completed environmental upgrades unlike the Hatfield Ferry Plant, which FES closed.

Ignoring its own witnesses' statement, FE makes one last ditch attempt to claim the Sammis plant is in financial need by trying to position the Sammis plant in the same light as the closed Hatfield Ferry plant. FE claims that Sammis is in a similar position as the Hatfield Ferry plant, as both are/were coal plants, both invested in scrubbing technology and both are/were deregulated power plants in PJM.[51] FE then points to the closing of the Hatfield Ferry plant even "though it had a long-term net present value that was positive[,]" and threatens that "[i]f the Plants do not receive additional revenue then FES simply may be forced to retire them as well for the same reason."[52] FE then claims that "[t]herefore, approval of Rider RRS is critical to ensure the ongoing operation of the Plants."[53]

FE ignores a critical fact in the record when making this threat. Unlike the Hatfield Ferry plant, the Sammis plant has incurred the costs to comply with the Mercury Air Toxic Standards.[54] As FE witness Liskowski indicated, the Hatfield Ferry plant like the other units listed in his rebuttal testimony retired "given the capital investments that were required to maintain their compliance with Mercury Air Toxic Standards, and overlaying that with low energy market revenues and the balance sheet situation of FirstEnergy Solutions led to a situation where they would not cover their avoidable costs and, therefore were retired."[55] As he admitted, it was his understanding that every unit retired due to the Mercury Air Toxic Standards.[56] The Sammis plant's compliance with MATS is a significant fact that separates it from the Hatfield

[51] FE Initial Brief at 127.

[52] *Id.* at 127-128.

[53] *Id.* at 128.

[54] Tr. Vol. 32 at 6684.

[55] Tr. Vol. 32 at 6544.

[56] Tr. Vol. 32 at 6544-6545.

Ferry plant, and capital investments like that are one reason why Dr. Kalt does not believe the Sammis plant will close.[57] The Sammis plant is in much better position than the Hatfield Ferry plant that closed.

Moreover, there is an additional fact that was ignored by FE. FE witness Don Moul stated that the Sammis and Davis-Besse plants are in the middle of the pack as to performance.[58] If FE is threatening in its initial brief that Sammis and Davis-Besse will close, then one would assume that FES is facing bigger problems on the horizon for the plants that are in lower half of the pack. Yet, no mention was made at hearing that FES is closing any other units in its fleet. Altogether, this shows that FE's insinuation that Davis-Besse and Sammis will close if Rider RRS is not approved is not credible.

III. BECAUSE THE PLANTS ARE NOT CLOSING, THE REMAINING THREE BALANCING FACTORS ARE IRRELEVANT

In its *AEP ESP III* decision, the Commission listed three other plant-specific factors to consider in addition to the financial need of the plant. Those three factors are: (1) necessity of the generating facility, in light of future reliability concerns, including supply diversity; (2) a description of how the generating plant is compliant with all pertinent environmental regulations and its plan for compliance with pending environmental regulations; and (3) the impact that a closure of the generating plant would have on electric prices and the resulting effect on economic development within the state.[59] FE spends 13 pages in its initial brief arguing why the plants (including OVEC) are necessary for future reliability, are environmentally compliant and how

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[57] P3/EPSA Ex. 1 at 41-42, citing Harden Direct Testimony at 10.

[58] Tr. Vol. 10 at 2190.

[59] *AEP ESP III* at 25.

closing these plants will result in volatile electric rates. The Commission need not consider these arguments because with the plants not closing, the arguments are irrelevant.

A. Arguments about reliability are irrelevant.

FE ignores the fact that the plants are not going to close, claiming that the plants are needed due to future reliability concerns.[60] FE argues that "maintaining the Plants will aid in the preservation of sufficient generation resource diversity[.]"[61] FE contrasts baseload coal and nuclear units to renewable generation and also to natural gas generation, claiming that "[g]as-fired generation cannot be relied upon to provide the reliability backbone of the electric system."[62] FE then concludes that the "Plants are an essential part of the diverse generation mix necessary to ensure the reliable delivery of electric service both today and in the future[,]"[63] and that the plants' location to load is an added benefit.

FE's arguments are based on the supposition that the plants will close – but that is not the case as noted above in Section II of this reply brief. That fact alone resolves every argument raised by FE in this section. First, the continued operation of the plants means they will remain available to run when called upon by PJM including during any extreme weather events. Second, the continued operation of the plants means PJM will continue to include the plants in its calculation on diversity of fuel types in the PJM footprint. Third, the continued operation of the plants means that the plants can continue to serve the nearest electricity loads.

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[60] FE Initial Brief at 128.

[61] *Id.*

[62] *Id.* at 129.

[63] FE Initial Brief at 130.

Setting aside the fact that the plants are not going to close, PJM has overall responsibility for monitoring and maintaining grid reliability.[64] As part of the market operator function, PJM coordinates and directs the operation of the transmission grid and plans transmission expansion improvements to maintain grid reliability in the PJM region.[65] PJM, in its amicus brief, went so far as to assure the Commission that the system is reliable in Ohio and the PJM region even if the plants proposed for Rider RRS are closed. PJM wrote that:[66]

> As such, in evaluating the merits of the Stipulation, the Commission should remain cognizant that electric system reliability is assured on a comprehensive basis **and such reliability assurances do not hinge on the resources specified in the proposed Stipulation continuing in service. Indeed, the Commission and Ohio consumers can be fully assured that the system is reliable in Ohio and the PJM region**. As a result, arguments that approval of the Stipulation is needed to ensure reliability in Ohio are wide of the mark and represent a proverbial 'red herring' that should not distract from consideration of the issues presented in the record as to the merits of the proposed Stipulation itself.

PJM's role in and oversight of the regional transmission system ensures ongoing grid reliability in Ohio (and elsewhere in PJM) regardless whether the plants close. This is not a case about plants closing in PJM and in Ohio, as P3 and EPSA noted in their initial brief, this is a case about FES trying to improve its balance sheet through Rider RRS.

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[64] PJM operates a centrally dispatched, competitive wholesale electric power market that, as of June 30, 2015, had installed generating capacity of 176,741 megawatts (MW) and 944 members including market buyers, sellers and traders of electricity in a region including more than 61 million people in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia. Company Ex. 76, Quarterly State of the Market Report for PJM: January through June, at page 3.

[65] Company Ex. 76, Quarterly State of the Market Report for PJM: January through June, at page 3.

[66] PJM Amicus Brief at 11-12 (footnote omitted, emphasis added).

B. Because the plants are not closing, any environmental benefits attributable to the plants will not be lost.

FE states that the "Plants are in compliance with all existing environmental regulations and have plans to comply with pending or known future environmental regulations."[67] FE highlights Davis-Besse as a zero-emission resource, as well as numerous environmental compliance measures taken at the Sammis plant.[68] FE states that "Sammis is either fully in compliance or has a plan to comply with pending regulations at minimal cost."[69] Assuming FE's claims of environmental compliance are correct, the plants are well positioned going forward which simply further reinforces that the plants will not close. Worth noting also is that FE acknowledges that any additional costs of environmental compliance are included in FE's forecast prepared by FE witness Lisowski.[70] This was a point Dr. Kalt also made in his testimony – that FE's forecasted costs already included the costs of future capital investments necessary to continue plant operations.[71]

C. Because the plants are not closing, arguments about economic development are irrelevant.

FE argues that closing the plants would have a "negative impact on electric prices and retail rate stability, resulting in negative economic impacts, both locally and regionally.[72] FE claims that closing the plants would put more reliance on natural gas that in turn would result in higher and more volatile electric prices.[73] FE also claims that if the plants close, customers would have to pay for transmission upgrades that could increase retail prices by $1.7 to $4.1

[67] FE Initial Brief at 131.

[68] *Id.*

[69] *Id.*

[70] *Id.* at 131.

[71] PE/EPSA Ex. 5 at 9.

[72] FE Initial Brief at 140.

[73] *Id.*

billion.[74] FE's arguments on these points are again irrelevant because the plants are not going to close. The Sammis and Davis-Besse plants will continue to contribute to the local and regional economies. Both plants will also continue to bid into the energy and capacity markets by an incentivized operator (versus a disincentivized operator under Rider RRS). As well, transmission upgrades due to a hypothetical closing of both the Sammis and Davis-Besse plants are not necessary.

IV. RIDER RRS IS NOT IN THE PUBLIC INTEREST

Rider RRS has many flaws, the most significant being the unknown and speculative nature of the "hedge" that FES is selling to FE and its customers. FE tries to window dress the hedge by claiming: (i) Rider RRS is valuable "insurance"; (ii) FE negotiated a "beneficial" outcome for its customers with FES; (iii) Rider RRS will "enhance" reliability and promote generation diversity; (iv) Rider RRS will protect customers from "potentially catastrophic reliability issues related to 'overreliance' on natural gas-fired generation"; (v) the plants' "resource diversity" will contribute to retail rate stability; (vi) Rider RRS will avoid "costly" transmission upgrades; (vii) the plants will provide "significant" environmental compliance benefits and (viii) Rider RRS will be subject to "rigorous" Commission oversight with full information sharing and risk sharing.[75] A speculative eight-year, long-term hedge with no guarantee or cap for customers, however, is not in the public interest no matter how FE tries to spin the deal.

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[74] *Id.*

[75] *See,* FE Initial Brief at 41 to 76.

A. The plants are not closing, which moots any concerns about grid reliability, generation diversity and transmission upgrades.

The lack of any imminent or future closing of the plants means FE's claims that Rider RRS will "enhance" reliability and "promote" generation diversity, prevent "potentially catastrophic" reliability issues and avoid "costly" transmission upgrades are irrelevant. The OVEC units are not at risk of retirement as established by Mr. Lisowski's testimony and FE's projections. And, both Mr. Moul and Mr. Lisowski believe the Davis-Besse and Sammis plants are competitive in the wholesale markets,[76] with both plants in the middle of the pack as to performance within the FES fleet.[77] FE believes that the Davis-Besse and Sammis plants are well positioned for environmental compliance,[78] and Davis-Besse has a new steam generator that should last 30 to 40 years.[79] Also, FE's own numbers coupled with Mr. Moul's testimony conclusively establish that the plants will not close in the near-term. That fact resolves all of FE's scare tactics about the future of the grid without the Davis-Besse and Sammis plants. Rider RRS does not present any reliability, generation diversity or transmission cost avoidance benefits because, based on FE's own numbers and witness testimony, the plants are not going to retire if Rider RRS is rejected.

B. Rider RRS is neither a rate-stabilizing charge nor insurance.

Dr. Kalt, in his May 2015 supplemental testimony, described why there was no reliable evidence that retail price volatility would be reduced by Rider RRS. He explained that Ohio consumers currently have access to competitive retail electric service ("CRES") provider offers,

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[76] Tr. Vol. 32 at 6686; Tr. Vol. 32 at 6636-6637.

[77] Tr. Vol. 10 at 2190.

[78] *See*, FE Initial Brief at 131-138.

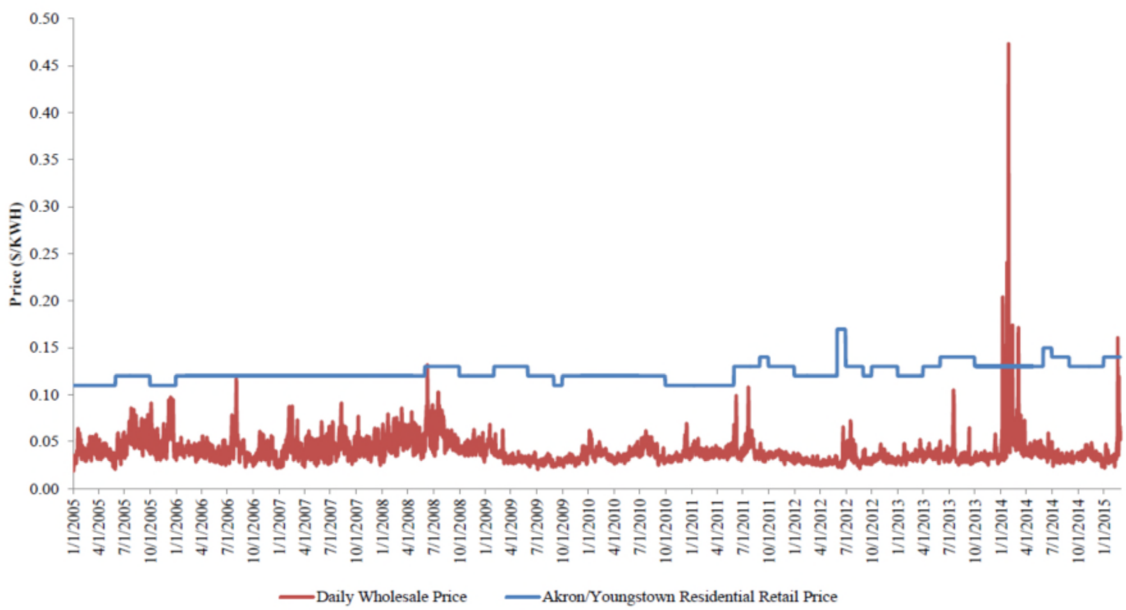
[79] Tr. Vol. 10 at 2200.

which can extend up to 36 months.[80] He then reviewed retail residential SSO rates and compared those rates to daily average wholesale prices in the PJM daily energy market over 2005-2015 in the major Ohio cities served by FE.[81]

As the following attachments from his testimony indicate, he did not see any correlation between the volatility of daily wholesale power prices to SSO retail rates.

Attachment JPK-S3a

DAILY WHOLESALE PRICE AND AKRON/YOUNGSTOWN STANDARD SERVICE OFFER RESIDENTIAL PRICE 2005-2015



Source: The Public Utilities Commission of Ohio ("PUCO") http://www.puco.ohio.gov/puco/index.cfm/industry-information/statistical-reports/ohio-utility-rate-survey/#sthash.D6DTZpmz.dpbs ; Ventyx Velocity Suite Products.

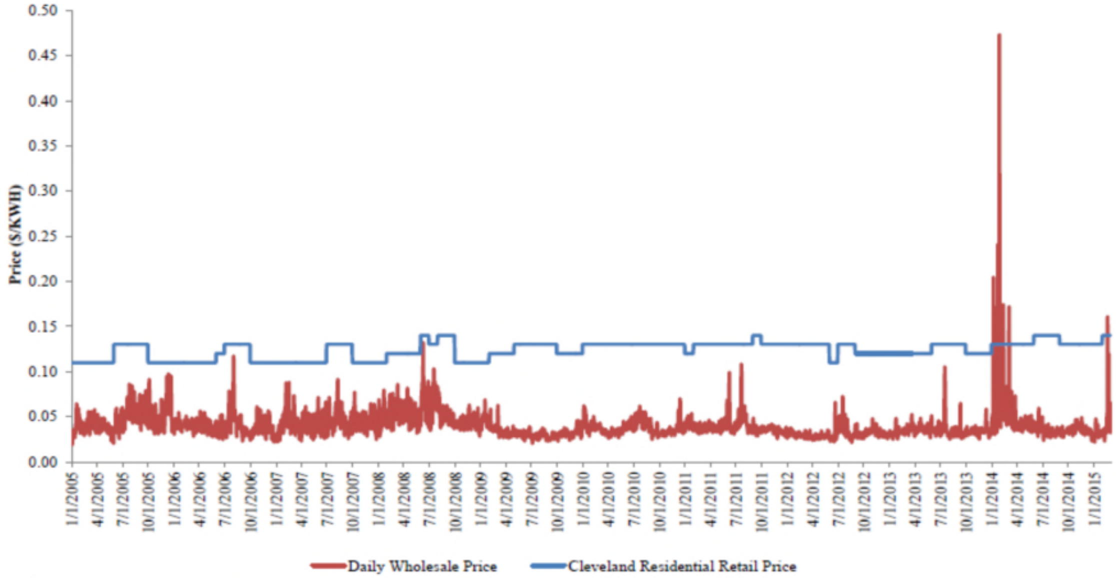
Note: For the retail price PUCO uses the Standard Service Offer as reported by the "Ohio Utility Rate Survey"; The wholesale price is PJM's AEP/Dayton hub day-ahead daily average hourly price.

[80] P3/EPSA Ex. 5 at 26-27.

[81] P3/EPSA Ex. 5 at 27.

Attachment JPK-S3b

DAILY WHOLESALE PRICE AND CLEVELAND STANDARD SERVICE OFFER RESIDENTIAL PRICE 2005-2015

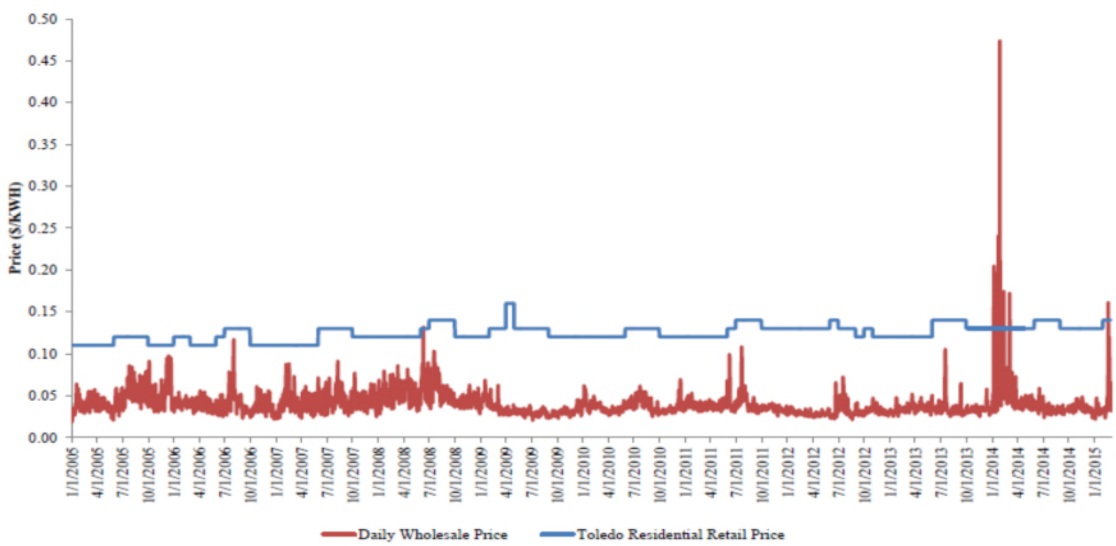


Source: The Public Utilities Commission of Ohio ("PUCO") http://www.puco.ohio.gov/puco/index.cfm/industry-information/statistical-reports/ohio-utility-rate-survey/#sthash.D6DTZpmz.dpbs ; Ventyx Velocity Suite Products.

Note: For the retail price PUCO uses the Standard Service Offer as reported by the "Ohio Utility Rate Survey"; The wholesale price is PJM's AEP/Dayton hub day-ahead daily average hourly price.

Attachment JPK-S3c

DAILY WHOLESALE PRICE AND TOLEDO STANDARD SERVICE OFFER RESIDENTIAL PRICE 2005-2015



Source: The Public Utilities Commission of Ohio ("PUCO") http://www.puco.ohio.gov/puco/index.cfm/industry-information/statistical-reports/ohio-utility-rate-survey/#sthash.D6DTZpmz.dpbs ; Ventyx Velocity Suite Products.

Note: For the retail price PUCO uses the Standard Service Offer as reported by the "Ohio Utility Rate Survey"; The wholesale price is PJM's AEP/Dayton hub day-ahead daily average hourly price.

As Dr. Kalt noted, these figures make clear that the "volatility of daily wholesale power prices is not transmitted through to SSO retail rates" even during the wholesale spikes during the 2014 Polar Vortex.

FE disagrees with Dr. Kalt's analysis of SSO volatility as tied to wholesale markets, relying instead solely upon the rebuttal testimony of Eileen Mikkelsen, who claims that a comparison of the market-forward prices for the AEP/Dayton Hub for the delivery period of June 2013 through May 2014 gave a weighted average of $37.72 per megawatt-hour ("MWh"), while the actual Day-Ahead average LMP for that same period was $44.03 per MWh and the Real Time average LMP was $42.11 per MWh.[82] She claims that Rider RRS would have captured this "value" and provided additional customer value beyond SSO staggering and laddering.[83]

FE's claims are contrary to SSO auction results and Dr. Kalt's analysis. As noted above, Dr. Kalt found no correlation between SSO auction results and wholesale market spot volatility. He also noted that long-term power prices do not vary as much as spot-market prices,[84] and that retail prices do not vary as much as wholesale electricity prices. He testified that:[85]

> Retail consumer power prices are set such that they are not even remotely as volatile as wholesale spot market prices. The former rise and fall much more slowly than wholesale market prices and are considerably less volatile. The Companies currently procure generation resources for Standard Service Offer customers via a laddered auction with 12-, 24- and 36-month terms, and the Companies' price to non-shopping customers is a fixed rate per kWh. In Ohio, only retail customers who choose to opt into variable rate pricing are exposed to variation in the price of electricity. Shopping customers may select fixed rates for periods as long as 36 months. **Therefore day-to-day volatility in wholesale electricity prices has limited direct impact upon retail customers.**

[82] Company Ex. 146 at 6-7.

[83] *Id.*

[84] P3/EPSA Ex. 1 at 39.

[85] P3/EPSA Ex. 1 at 40 (footnotes omitted).

He also noted something that Ms. Mikkelsen misses or ignores -- that Rider RRS could very well result in rate instability. Specifically, the Rider RRS "true-ups" in retail ratepayers' bills could well prove to be countercyclical to the movements in wholesale prices.[86] This is because the Rider RRS bill adjustments will occur with a lag of over one-year.[87] Thus, if a period of quite high wholesale prices occurs and revenues in that period are in excess of the plants' calculated costs for the period, the subsequent Rider RRS "true-up" would be expected to take the form of a bill reduction. The lag in making bill adjustments under Rider RRS and the random walk characteristics of electricity prices mean, however, that this bill reduction would likely apply when wholesale prices have receded from their spike and are already relatively low. In other words, low wholesale prices and the Rider RRS adjustment would tend, if anything, to reinforce each other, with the Rider RRS adjustments pushing rates down at the same time wholesale prices are soft.[88] Similarly, periods of relatively soft wholesale prices would tend to generate under-recovery of the plants' calculated costs, leaving consumers having to bear upward Rider RRS adjustments on their bills in periods when unusually low wholesale prices have passed and wholesale markets have firmed.[89] The result is Rider RSS upward adjustments being borne by consumers right when wholesale prices are rising.

FE also claims that SSO customers experience volatility from fluctuations in the results of SSO auctions.[90] FE points to year-to-year changes between the October 2013 and October 2014 SSO 12-month products to claim that customers are exposed to the long-term risk of increases and volatility in the retail price of power. But Dr. Choueiki pointed out that the

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[86] P3/EPSA Ex. 5 at 28.

[87] Company Ex. 43 at 3.

[88] P3/EPSA Ex. 5 at 28.

[89] *Id.*

[90] FE Initial Brief at 45.

increases and volatility were due to announced retirements by FES prior to the auctions for the 2015-2016 delivery year, which caused the ATSI zone to be congested.[91] He noted that since the transmission upgrades have occurred, the price has gone down.[92]

The instability of Rider RRS in relation to retail prices will also have a chilling effect on economic development in Ohio. Notably, no customers have requested this "insurance" product that FES is selling to FE.[93] Likewise, nothing in the record shows that companies are basing investment or relocation decisions on the approval of Rider RRS. What the record does show is that Rider RRS will very likely be another rider in Ohio that adds costs to commercial and industrial customers' bottom lines.[94] That is not the type of rider that *attracts* new business to Ohio or will ensure continued investment in Ohio. FE has also not explained how it will project Rider RRS charges for a new company coming to Ohio that is interested in comparing electric rates in Ohio to other states.

C. Rider RRS credits and charges are speculative and high risk.

FE claims that it negotiated a "beneficial outcome" for ratepayers. It makes this argument even though it did not ask FES for a cap on the amount of losses that FE may incur under the "hedge."[95]

This was a great "oversight" on the part of FE because while FE projects $561 million in aggregate credits over the life of Rider RRS, all other witnesses projected millions in losses. P3/EPSA witness economist Dr. Joseph Kalt rejected FE's $561 million projected credit, finding

[91] Tr. Vol. 30 at 6320.

[92] *Id.*

[93] Tr. Vol. 32 at 6642-6643.

[94] Moreover, until unrelated inducements were put forth, a number of existing Ohio companies opposed Rider RRS. *See*, *e.g.*, December 22, 2014 prefiled direct testimony of Kevin M. Murray and the May 28, 2015 letter, both filed by the Industrial Energy Users-Ohio in this proceeding.

[95] Tr. Vol. 8 at 1713, 1715.

instead that with even small adjustments in up-to-date NYMEX natural gas prices held steady over the term, the projected impact on FE's ratepayers is a substantial loss -- a net present value loss of $858 million.[96] Using NYMEX natural gas future prices in the first three years and then the U.S. Department of Energy's EIA forecast for price increases for the rest of the term gives a net present value loss of $793 million.[97] Likewise, Dr. Kalt predicted that ratepayers will realize a net present value loss of $201 million simply by assuming that the net generation of the plants corresponded to historical averages.[98] Of three scenarios the OCC/NOPEC economist James Wilson[99] reviewed, he concluded a $3.6 billion loss scenario is the most likely and reasonable estimate to occur as it was the only one to be based on updated market conditions.[100]

Interestingly, when graphing the cumulative Rider RRS charges/credits that FE is predicting, Rider RRS does not create a positive aggregate credit until late 2020. FE is relying on outdated forecasts from August 2014 to predict that Rider RRS will go positive in 2020 – six years later.

[96] P3/EPSA Ex. 12 at 17.

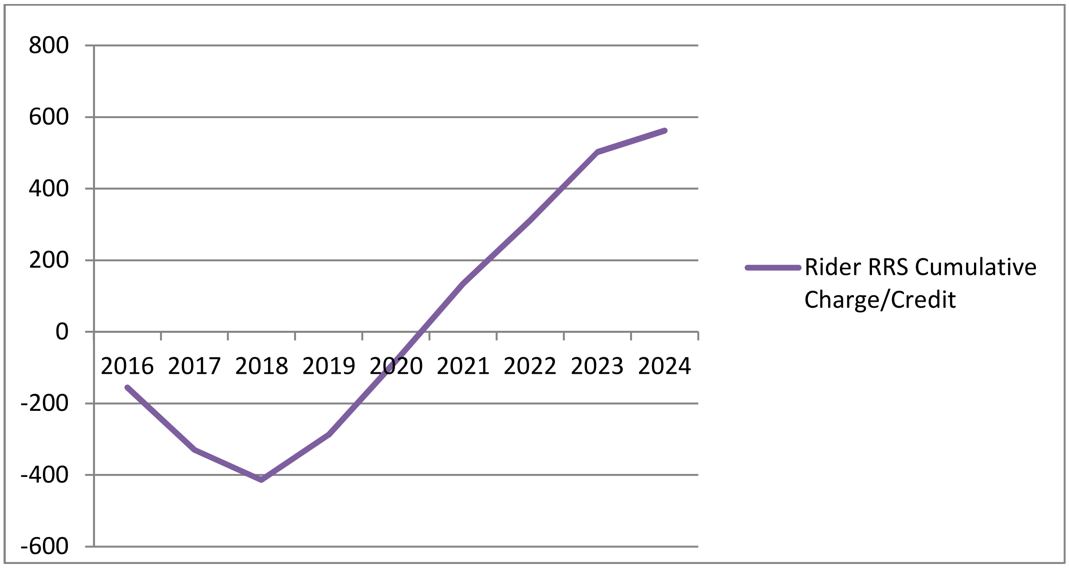
[97] P3/EPSA Ex. 12 at 17.

[98] P3/EPSA Ex. 12 at 21-22.

[99] Mr. Wilson is an economist and principal of Wilson Energy Economics. He has been involved in electricity restructuring and wholesale market design for over twenty years in PJM, New England, California, Russia and other regions. OCC/NOPEC Ex. 4 at 1-2.

[100] OCC/NOPEC Ex.9 at 12.

Figure 1 – FE's Projections on Rider RRS Cumulative Charge/Credit[101]



The fact that FE's own projections do not show an aggregate credit until late 2020 reinforces the speculative nature of Rider RRS. Moreover, the high risk associated with projecting out six years was noted by Staff witness Choueiki, who stated that he had zero level of comfort in the forecast past three years – and the uncertainty is over a hundred percent beyond three years.[102]

Also reinforcing the unknown result of Rider RRS over the eight-year term is Mr. Lisowski's statement that [redacted][103] In other words, contrary to Staff witness Choueiki, [redacted] This statement undermines Mr. Lisowski's credibility, especially as to the forecasts that he supports.

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[101] Source for data: Sierra Club 89 (Mikkelsen worksheet).

[102] Tr. Vol. 30 at 6258.

[103] Tr. Vol. 9 at 1999-2000.

Dr. Kalt explained why FE's projections are full of risk in his December 30, 2015 supplemental testimony on the stipulation. Specifically, he noted that the "primary driver of the Companies' estimated net positive present value for ratepayers in the latter years of the proposed PPA is their projection of high and rising power prices over the 8-year term of the plan now proposed in Third Stipulation."[104] He then pointed out that the increases in power prices were largely a result of FE's projected natural gas prices which FE projected to start "[redacted]"[105] The problem with FE's projected natural gas prices, provided by Mr. Rose, is that they are "now clearly now long out-of-date and [redacted] with current natural gas price forecasts available from the marketplace."[106]

Dr. Kalt then compared Mr. Rose's 2014 gas price forecast to other available forecasts. He found that:[107]

> [redacted] to reflect the sharp declines in the markets for spot and future gas that are now evident and that rationally affect forecasts. Attachment JPK-SS-1, for example, provides a comparison of the natural gas price forecast used by Mr. Rose in his August 2014 forecasting analysis (and employed in the Companies' latest NPV calculations) against more recent natural gas price forecasts that incorporate the recent significant decline in U.S. natural gas prices. Attachment JPK-SS-1 shows that not long after Mr. Rose had completed his analysis, the U.S. federal government's Energy Information Administration ("EIA") came out with its 2015 Annual Energy Outlook ("AEO"). Released in April 2015, this outlook recognized the softening in U.S. natural gas markets and forecast softening natural gas prices going forward, [redacted]. EIA's forecasted gas prices in the short-term subsequently were even lower with the release of its latest short-term forecast in December 2015 (see Attachment JPK-SS-1).

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[104] P3/EPSA 12 at 12.

[105] P3/EPSA 13C at 12.

[106] *Id.*

[107] P3/EPSA Ex. 13C at 13.

Dr. Kalt then did a comparison between Mr. Rose's August 2014 forecast of gas prices and actual forecasts in the marketplace in the form of NYMEX futures prices. As Dr. Kalt testified:[108]

> Most tellingly, Attachment JPK-SS-1 shows the comparison between Mr. Rose August 2014 forecast of gas prices and actual forecasts in the marketplace in the form of NYMEX futures prices. The latter have particular significance because they do not represent mere opinion. Rather, they represent a concise marketplace summation of the best available information on future natural gas prices. They arise from market participants of all kinds "putting their money where their mouths are" by buying and selling futures contracts. In this sense, the prices struck on the NYMEX represent the balance point between those who believe prices will go up from their current level and those that think they will go down. **In my experience over several decades, NYMEX futures prices are properly and routinely relied upon as the *markets'* forecasts in the energy sector.** The highest actual NYMEX prices in Attachment JPK-SS-1 (which occur in the later years) [redacted] as used by the Companies' in asserting that ratepayers would benefit from their proposed bailout of FES' stockholders and lenders.

Dr. Kalt's Attachment JPK-SS-1 shows [redacted] Mr. Rose's August 2014 projections are versus more current projections. The dotted blue line below is Mr. Rose's projections with [redacted] which is necessary to push Rider RRS to a positive value in that year. The red line is the EIA's forecast and the blue line is the NYMEX futures forecast.[109]

[108] P3/EPSA Ex. 13C at 14 (emphasis added and footnote omitted).

[109] Attachment JPK-SS-1 has been modified to delete a line that was stricken at hearing. *See*, Tr. Vol. 40 at 8615.

[redacted]

Dr. Kalt also developed a forecast using FE's own numbers but substituting short-term NYMEX futures for the first three years of Rider RRS and then relying on the EIA long-term natural gas price forecasts. As he testified:[110]

> In Attachment JPK-SS-3, I show results using only the first three years of current NYMEX futures prices, and then letting projected gas prices rise after 2018 at the rate of change seen in the EIA's long-term AEO forecast of April 2015. As Attachment JPK-SS-1 indicates, [redacted] each shows quite similar rates of increase over time (as represented by their roughly parallel slopes). **The consequence of trusting NYMEX for only its first three years of futures prices, and then turning to the U.S. Department of Energy's EIA forecast for the rate of price increase after 2018, is that the proposed ESP plan**

[110] P3/EPSA Ex. 13C at 17 (emphasis added, footnotes omitted).

> **portends a net present value loss of $793 million for the Companies' rank-and-file captive consumers** (Attachment JPK-SS-3).

Dr. Kalt's Attachment JPK-SS-3 provides an easy summary of his analysis. Adjusting the next two and a half years to NYMEX futures pricing and then relying on the EIA's long-term forecasts for natural gas resulted in a net present value charge of $793 million.

Attachment JPK-SS-3

NPV OF CAPTIVE RATEPAYER IMPACTS BASED ON NYMEX GAS PRICES 2016-18, RISING AT U.S. EIA FORECASTED RATE OF INCREASE 2019-2024

Attachment JAR-1 (Revised)

Estimated Retail Rate Stability Rider (Rider RRS) Impact ($M)

Regulatory Assumptions	
ROE	10.38%
Effective Tax Rate	37.44%
Assumed Debt %	50.00%
Assumed Equity %	50.00%
Cost of Debt	4.54%
WACC	7.46%

Total Under (Over)	Nominal	NPV	IRR
Total PPA Term - 15 years	(561)	(260)	22%

Note: Under recovery results in a charge under Rider RRS. Over recovery results in a credit under Rider RRS.

ESP Impacts Based on NYMEX Gas Prices 2016-18, Rising at EIA Forecasted Rate of Increase 2019-2024

Line Item	2016*	2017	2018	2019	2020	2021	2022	2023	2024*	Total
TOTAL										
Market Revenue Change	(140)	(222)	(211)	(216)	(273)	(275)	(269)	(270)	(147)	(2,023)
Projected Market Revenue	467	933	1,091	1,291	1,384	1,418	1,469	1,501	601	10,154
Variable Cost Change	(59)	(68)	(47)	(45)	(58)	(58)	(57)	(82)	(36)	(508)
Projected Costs	703	1,262	1,339	1,336	1,392	1,419	1,504	1,500	653	11,108
Under (Over) Recovery	236	329	248	45	8	1	36	(1)	52	954
NPV Under (Over) Recovery	220	285	200	34	6	1	22	(1)	27	793

*2016 is June 1 - December 31. 2024 is January 1 - May 31.

*Numbers in parentheses signify savings to customers.

Dr. Kalt summarized the issue with Mr. Rose's gas prices by noting that the levels [redacted] for the same time periods. He testified that:[111]

> In summary, Mr. Rose's gas prices – used by the Companies' to calculate claimed ratepayer impacts -- start at $[redacted]/MMBTU in 2016. They then rise to [redacted]/MMBTU [redacted] and more than [redacted]/MMBtu by the end of the 8-year term of the Companies' ESP proposal. [redacted] for the same time periods supported by actual market participants in transactions on NYMEX and the prices forecast by numerous analysts and federal agencies. For the reasons I have explained above, the effect can only be to inflate the Companies' projections of the subject plants' revenues under their proposed ESP, and to thereby understate ratepayer losses and overstate ratepayer gains.

[111] P3/EPSA Ex. 13C at 16.

FE's projections are also subject to extreme sensitivity. None of FE's witnesses conducted a sensitivity analysis on FE's projections for Rider RRS. This was acknowledged by Mr. Lisowski, who admitted there was no sensitivity analysis done on the modeling that resulted in the FE projections.[112] Ms. Mikkelsen also acknowledged this point during her cross-examination in January 2016.[113] A sensitivity analysis is critical for understanding the full extent of the risk of Rider RRS to ratepayers because of the fact that FE is relying on [redacted].

A table from the Exelon initial brief is helpful to show that FE is [redacted] to make its $561 million projected credit.

<u>Table 4 – Individual Plant Contribution to Companies' $561 Million Rider RRS Credit[114]</u>

Plant	**2016 (June-Dec)**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024 (June-May)**	**Total**
Sammis	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Davis-Besse	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
OVEC	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total	(156M)	(175M)	(84M)	126M	207M	216M	177M	189M	60M	(560M)**

*** The $560 million differs from the Mikkelsen workpaper total of $561 million due to spreadsheet rounding.*

[redacted]

[112] Tr. Vol. 8 at 1636.

[113] Tr. Vol. 36 at 7513.

[114] Exelon Initial Brief at 37, source data P3/EPSA Ex. 11C.

[redacted]. This point can also be made graphically.

Figure 2 – Cumulative Rider RRS Charge/Credit By Plant[115]

[redacted]

As Figure 2 shows, [redacted] That is why Rider RRS is speculative in nature and a high-risk, long-term hedge. It also brings into question the FE negotiating team's ability given that any experienced negotiating team would have done the above calculations and asked for the [redacted] from the proposed "hedge." Mr. Ruberto did not do that –he had never negotiated a PPA before in his career.[116] Any experienced negotiating team in an arms-length transaction

[115] Source data: P3/EPSA Ex. 11C. *See also* P3/EPSA Ex. 10 (Companies admission confirming calculations).

[116] Tr. Vol. 13 at 2867.

would also have sought caps or limits on the amount of charges that could be passed to its ratepayers as well.

Dr. Kalt's analysis of historical generation levels with the generation levels used to create FE's projections for Rider RRS show how quickly FE's revenue projections for Rider RRS turn into millions of dollars in charges. Specifically, Dr. Kalt compared the projected generation levels for the Sammis and Davis-Besse plants, which are embedded in Ms. Mikkelsen's Rider RRS projections, to the plants' actual historical generation levels to see if FE's projections were reasonable.[117] He found that the average levels of plant net generation that are embedded in FE's future projections [redacted] the average net generation the plants have actually realized over the last decade or more. In other words, FE is asking its ratepayers (and the Commission) to trust that, going forward, [redacted].

Dr. Kalt then noted that "[i]n particular, the projected average annual net-generation for Sammis is [redacted] than the historical annual average (2004-2014) and for Davis-Besse, it is [redacted] than the historical annual average (2004-2014)."[118] Dr. Kalt ran FE's projection sheet using Mr. Rose's price forecasts but relying on the historical average of the plants' generation output. He also reduced the plants' variable costs to account for those costs that would not be incurred if the plants generate less electricity.[119] The result was a net present value loss of $201 million.[120]

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[117] P3/EPSA Ex. 12 at 20-21.

[118] P3/EPSA Ex. 13C at 21.

[119] P3/EPSA Ex. 12 at 22, fn. 37.

[120] *Id.* at 21-22.

Dr. Kalt's Attachment JPK-SS-5 shows the results of this output analysis.

Attachment JPK-SS-5

NPV OF CAPTIVE RATEPAYER IMPACTS BASED ON PLANTS' PROJECTED NET GENERATION EQUALING HISTORICAL AVERAGES

Attachment JAR-1 (Revised)

Estimated Retail Rate Stability Rider (Rider RRS) Impact ($M)

Regulatory Assumptions	
ROE	10.38%
Effective Tax Rate	37.44%
Assumed Debt %	50.00%
Assumed Equity %	50.00%
Cost of Debt	4.54%
WACC	7.46%

Total Under (Over)	Nominal	NPV	IRR
Total PPA Term - 15 years	(561)	(260)	22%

Note: Under recovery results in a charge under Rider RRS. Over recovery results in a credit under Rider RRS.

ESP Impacts with Plants' Net Generation Projected at Historical Averages

Line Item	2016*	2017	2018	2019	2020	2021	2022	2023	2024*	Total
TOTAL										
Market Revenue Change	(76)	(138)	(145)	(164)	(180)	(182)	(188)	(191)	(81)	(1,344)
Projected Market Revenue	531	1,017	1,157	1,343	1,477	1,511	1,550	1,581	667	10,833
Variable Cost Change	(43)	(73)	(74)	(80)	(81)	(87)	(97)	(103)	(44)	(682)
Projected Costs	719	1,257	1,312	1,301	1,369	1,390	1,464	1,479	644	10,934
Under (Over) Recovery	188	240	155	(42)	(108)	(122)	(86)	(102)	(23)	101
NPV Under (Over) Recovery	175	208	125	(31)	(75)	(79)	(52)	(57)	(12)	201

*2016 is June 1 - December 31. 2024 is January 1 - May 31.

*Numbers in parentheses signify savings to customers.

Significantly, so far as is known, neither Mr. Rose, FE, nor FES have followed the implication of Mr. Rose's forecasts and purchased massive amounts of NYMEX gas futures in the years in which Mr. Rose partially or wholly replaces NYMEX prices with his own forecasts.[121] Economically, this means that they do not actually believe in Mr. Rose's price projections in the same way that FE is asking its ratepayers (and the Commission) to trust those forecasts. That is, in claiming that ratepayers will benefit from the proposed ESP scheme *given Mr. Rose's price forecasts*, FE is effectively asking its rank-and-file consumers and the Commission to "trust" in Mr. Rose's price forecasts and assume hundreds of many millions of dollars of obligations.[122] It is not facetious to say that if Mr. Rose, FE and FES actually trusted

[121] P3/EPSA Ex. 12 at 18.

[122] *Id.*

Mr. Rose's gas price forecasts for 2018 onward, it would be irrational for them not to "put their money where their mouths are" and purchase very large amounts of NYMEX futures.[123]

The natural gas price forecast built into FE's claim that rank-and-file consumers will benefit from the proposed ESP plan promises exorbitant payoffs – [redacted][124] – when such futures come due. In reality, of course, it would be wholly irrational for Mr. Rose, the Companies and FES to take such risk – just as it would be wholly irrational for the Commission to impose such risk on the ratepayers, as FE is asking the Commission to do.

D. Rider RRS as designed will negatively impact wholesale markets and pricing signals.

Rider RRS will also negatively impact the wholesale markets and result in suppressed pricing signals. Dr. Bowring, the PJM Independent Market Monitor, testified that "Rider RRS would constitute a subsidy analogous to the subsidies previously proposed in New Jersey and Maryland, both of which were found to be inconsistent with competition in the wholesale power markets."[125] Dynegy witness Dean Ellis testified that "the subsidy creates a disincentive for FES and the Companies to operate the subsidized units efficiently and to competitively market the units output in the PJM market."[126]

PJM, in its amicus brief, also recognizes that Rider RRS will affect the wholesale markets. PJM states in its amicus brief, "one could argue that the Stipulation turns market-based incentives on their head by encouraging below cost bidding in order for a unit owner to escape possible disallowance of retail revenues pursuant to the broad language in the PUCO Oversight

[123] *Id.*

[124] P3/EPSA Ex. 13C at 19.

[125] IMM Ex. 1 at 3.

[126] Dynegy Ex. 1 at 6.

Provisions."[127] The result of below-cost bidding would be a suppressing effect on prices and degrade the signal upon which PJM and Ohio are relying to attract new generation in Ohio and to PJM.[128]

Dr. Joseph Bowring summarized this issue stating:[129]

> The proposed Rider RRS would require that the ratepayers of the Companies subsidize the costs of the plants and the contracts to the benefit of the Companies. **The logical offer price for these resources in the PJM Capacity Market, under these conditions, would be zero. A zero offer would be rational because this would maximize the revenue offset to the customers who would be required to pay 100 percent of the costs of this capacity and bear all of the performance risks. Offers at or near zero would have an anti-competitive, price suppressive effect on the PJM Capacity Market as would any offers at less than the competitive offer level. The proposed Rider RRS would create strong incentives for FirstEnergy to offer this capacity at less than the competitive offer level.**
>
> **This type of subsidy is inconsistent with competition in the wholesale power markets because of its price suppressive effects**. Such effects would make it difficult or impossible for generating units without subsidies to compete in the market. Competition depends on units making competitive offers that reflect their costs and the risk of paying penalties and/or receiving benefits (e.g. the offer cap for Capacity Performance resources) and on recovering revenues only from the markets and not from subsidies. Such subsidies would negatively affect the incentives to build new generation in Ohio and elsewhere in PJM and if adopted by others would likely result in a situation where only subsidized units would ever be built.

FE's lack of incentive stems from the fact that it is not obtaining generation for its ratepayers and therefore does not have the risk of either a traditional cost-of-service generator or a merchant generator. There is no incentive for FE to offer the units into the wholesale market based on market fundamentals such as the variable costs to operate the units. The lack of any incentive, or requirement, for FE to offer the units into wholesale markets based on variable

[127] PJM Amicus Brief at 5.

[128] IMM Ex. 2 at 5.

[129] IMM Ex. 2 at 5 (emphasis added).

costs, provides FE (as a market participant) a competitive advantage over generation owners subject to wholesale market forces and whose offers are guided by the variable costs to operate the unit.[130]

The underlying yet-to-be executed PPA also will affect the PJM markets. Under the proposed term sheet, FES will not have liability for capacity performance penalties like it does today.[131] Instead, FE's customers will be responsible for capacity performance penalties even if FE determines that FES did not utilize "Good Utility Practice" as defined under the term sheet. There is no language in the term sheet that requires FES to pay for capacity performance penalties in the event it does not perform, regardless whether it uses Good Utility Practice or not.[132] And if FES utilized Good Utility Practice, it gets a six-month grace period for non-performance and only has to cover capacity and energy commitments for the period after the six-month period.[133] The customers pick up the first six months of penalties and charges regardless.[134]

This creates a disincentive for FE to make the necessary investments in the Sammis and Davis-Besse plants to minimize capacity performance penalties. It, instead, creates an incentive for FES to shift capital investments away from those two plants to focus instead on the other plants in the FES fleet for which FES has liability for capacity performance penalties. The disincentive created by Rider RRS will have a negative effect on the PJM markets and undermines the whole purpose of PJM's capacity performance program.

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[130] Ex*elon Ex. 1 at 13.*

[131] *See* Company Ex. 156 at 2-3.

[132] *See* generally Company Ex. 156.

[133] *Id.* at 2-3.

[134] *See* Tr. Vol. 11 at 2334-2335; Tr. Vol. 14 at 3014-3016; 3030; Tr. Vol. 9 at 1997-1998.

FE implies that these disincentives will be avoided by "rigorous" Commission oversight with full information sharing and a "risk-sharing mechanism."[135] As discussed in P3/EPSA's joint initial brief, the oversight is woefully insufficient to prevent market harm. Commission oversight in the Stipulation's oversight process applies only to FE, and not FES.[136] Moreover, under the Stipulation (Section V.B.3.a.) the proposed oversight process consists of an audit to verify the mathematical calculation of the rider rate, and then a separate review of the costs included in the rider.[137] The Commission cannot disallow costs unilaterally under the Stipulation. FE witness Mikkelsen's testimony makes this clear, stating that FE can object to any recommendations from Staff to disallow costs through a hearing.[138]

FE can also pursue legal challenges for disallowed costs, and while the dispute is ongoing, can continue to recover those costs during the dispute period.[139] This means that FE can charge ratepayers for costs the Commission believes should be disallowed all the way through resolution at the Supreme Court of Ohio. Also disingenuous under the Stipulation is that even if the Commission disallows a capacity performance penalty, FE can still net the disallowed penalty against any bonus payments received – meaning FE can avoid responsibility for disallowed penalties when its capacity performance bonuses exceed the disallowed penalties.[140] That result does not reflect a program of "rigorous Commission oversight."

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[135] FE Initial Brief at 73.

[136] Tr. Vol. 36 at 7702-7703.

[137] Company Ex. 7 at 14-15.

[138] Tr. Vol. 36 at 7739.

[139] Company Ex. 7 at 15.

[140] Company Ex. 156 at 8.

As to information sharing, the Exelon initial brief covered the inadequacies of the Stipulation's information sharing provisions.[141] Those inadequacies include only providing documents upon a Staff "reasonable" request, no jurisdiction over FES and no information sharing on bilateral contracts or plant sales to new owners. FE's "risk sharing mechanism" is also woefully inadequate as it only applies a certain amount of credits in years 5 through 8, leaving ratepayers fully exposed during the first four years when FE projects an aggregate loss of $288 million.[142]

The Commission should be very concerned that FES is not willing to take on any risk under this deal, and that FE is also unwilling to take on any substantial risk; instead both FES and FE are comfortable letting ratepayers take on the unlimited and very real downside of Rider RRS. That is not in the public interest and does not justify the negative impact that Rider RRS will have on the wholesale markets.

E. Intermingling the "bad" with the "good" is not in the public interest.

FE tries to package Rider RRS as simply another part of its ESP IV and then claim that the Stipulation as a whole is in the public interest.[143] As noted in P3 and EPSA's joint initial brief, however, packaging Rider RRS with items that may have benefit by themselves is not in the public interest. Dr. Kalt summarized this issue in response to a question from Commissioner Haque on social utility, stating:[144]

> I will try to give you a briefer answer. That's sort of the topic of public policy economics. That's what we teach about. The first principle that we invoke is the public has an abiding interest in an economically efficient economy meaning you deliver what consumers want at the lowest possible cost. You don't waste resources. And you -- that's principle No. 1.

[141] *See*, Exelon Initial Brief at 51-52.

[142] Sierra Club Ex. 89.

[143] FE Initial Brief at 79-113.

[144] Tr. Vol. 41 at 8717-8718 (emphasis added).

> Principle No. 2 is that where you have some inefficiency the appropriate public policy approach to that we sometimes say to the students you go at it head on. What we mean by that, if you need grid modernization among your regulated companies, then what you do is you get grid modernization for its own sake. **And, you know, to go to the heart of this case in some sense, you don't, for example – in other words, if it's efficient to do it, you ought to do it. You don't, for example, say we will do that as part of a trade. We'll let you shift all these costs and have the captive ratepayers and use their captivity to guarantee the rates of return and so forth on a couple of plants in order to get grid modernization. You want to separate those from a public policy point of view.** And there's actually theorems about this in the work of Nobel Prize Winner Paul Samuelson about how you want to take on those things because - *** if you try to mess up, if you will, make this inefficient over here in order to get some inefficiency over here, you are going to end up distorting the whole economy, and that's contrary to the public interest. **And so we have this principle of separation we call it, approach the problem head on. Want a better, cleaner environment? Go regulate the plants for environmental cleanliness. Don't trade it away by doing something like, you know, using your captive ratepayers to cut a deal.** I think that's trying to be responsive.

Including Rider RRS in the Stipulation does not benefit ratepayers generally and does not benefit the *public* interest. The Commission should not trade the unlimited and very real downside of Rider RRS for other provisions in the Stipulation. As it did in the *AEP ESP III* proceeding, the Commission should evaluate Rider RRS independently, and by doing so conclude that it should remove Rider RRS from FE's ESP IV.

V. OHIO ENERGY GROUP'S REQUESTS FOR EXPRESS FINDINGS SHOULD BE REJECTED

The Commission should also refuse to adopt the specific findings of fact requested by the Ohio Energy Group ("OEG"). At pages 32 of its initial brief, OEG asks this Commission to make certain express findings which OEG believes will "reinforce the terms of the stipulation."[145] Two of OEG's requests warrant a response. Those requests are that: (1) the Commission find there is no evidence showing that approval of the Rider RRS would have a

[145] OEG Initial Brief at 32.

direct effect on PJM wholesale markets, and (2) that the Commission find that the yet-to-be executed PPA's costs are projected to be below market over the 8 year term.[146]

A. Any finding by the Commission that there will be no "direct effect on the wholesale markets would be contrary to PJM's opinion, the IMM's opinion and the many witnesses that actively work and compete in the wholesale markets.

OEG argues that there is no evidence that Rider RRS will directly affect the PJM wholesale markets.[147] OEG argues that demand will not be affected because customers will still purchase all of their generation supply through the retail market or through SSO auctions. OEG also argues that Rider RRS will not limit the amount of generation sold to consumers and will not limit the amount of generation procured through the SSO auctions. OEG also argues that there is no evidence that Davis-Besse, Sammis and the OVEC plants will shut down absent approval of Rider RRS.[148]

P3 and EPSA agree with OEG that the Davis-Besse, Sammis and OVEC plants will not close. OEG, however, misses the point: wholesale markets will be affected by the actions of FE, which will have no incentive to maximize profits when it is bidding capacity and energy from over 3,200 megawatts of nameplate capacity into the PJM markets. The wholesale markets can also be affected by the actions of FES which will be receiving cost-plus recovery for units that as of today are fully subject to the competitive markets. All of these points are discussed above in Section IV. D. and are supported by the testimony of Dr. Bowring, the PJM Market Monitor[149]

[146] *Id.*

[147] OEG Initial Brief at 33.

[148] *Id at 32-33.*

[149] IMM Ex. 1 at 3.

and Dynegy witness Dean Ellis[150] as well as PJM's recognition in its amicus brief that Rider RRS will affect the wholesale markets.[151]

As Dr. Bowring testified, Rider RRS is inconsistent with competition in the wholesale markets because of its price-suppressive effects, and would negatively affect the incentives to build new generation in Ohio and elsewhere in PJM.[152] The evidence in the record precludes the Commission from making an express finding that there is no "definitive evidence" demonstrating that Rider RRS will have a direct effect on the PJM wholesale markets.

B. The Commission cannot find that FES' costs will be below market over the term of Rider PPA.

OEG also asks the Commission to find that the costs of the yet-to-be executed PPA with FES are projected to be below-market over the PPA term. OEG claims that the Commission should demonstrate to the "public, to FERC, and to the courts that its review and approval process is consistent with state law and will result in rates that are stable, just, and reasonable."[153] OEG does not point to any evidence to support its claim, nor can it. The Exelon offer effectively showed that FES' proposed hedge is being offered at above-market rates by more than $2 billion.[154] Likewise, Staff witness Choueiki stated that he had zero level of comfort in the forecast past three years – and the uncertainty is over a hundred percent beyond three years.[155] Other witnesses also testified about the risk and speculative nature of the Rider RRS forecasts, including Dr. Kalt and Mr. Wilson both of whom estimated Rider RRS could

[150] Dynegy Ex. 1 at 6.

[151] PJM Amicus Brief at 5.

[152] IMM Ex. 2 at 5.

[153] OEG Initial Brief at 32.

[154] Exelon Ex. 5 at 6.

[155] Tr. Vol. 30 at 6258.

result in charges in the millions and billions.[156] Even FE witness Jay Ruberto (the lead EDU team negotiator) agreed that the Rider RRS aggregate credits were not guaranteed to customers.[157] FE witness Jason Lisowski also admitted [redacted][158]

OEG's request to the Commission highlights the inherent flaws in awarding a PPA on a no-bid basis to an affiliate. For example, this Commission would never approve the award of an eight-year no-bid contract to FES to supply generation for FE's SSO customers. That supply is procured through competitive retail auctions administered by the Commission.[159] As Staff witness Dr. Choueiki noted: "[n]ot only are the resulting SSO rates competitive, they also serve as transparent 'prices to compare to' or 'benchmarks' for customers who are considering whether to take service from a competitive retail electric service (CRES) provider."[160] Rider RRS, in contrast to the SSO auctions, is the equivalent of allowing FES to offer generation to FE's ratepayers at an initial bid price without the challenges of a competitive process.

Forcing all ratepayers (because Rider RRS applies regardless whether a ratepayer shops or does not shop) to pay FES for its cost-plus recovery is contrary to this Commission's reliance on the competitive markets to seek the lowest cost for ratepayers. The no-bid nature of the PPA on which Rider RRS will be based is contrary to this Commission's past and current practices, and is certainly not a market-based outcome. The Commission should not and cannot make OEG's requested express findings.

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[156] P3/EPSA Ex. 12 at 17, 21-22; OCC/NOPEC Ex. 9 at 12.

[157] Tr. Vol. 13 at 2896-2897.

[158] Tr. Vol. 9 at 1907.

[159] Staff Ex. 9 at 7.

[160] *Id.* at 7, n.14.

VI. CONCLUSION

This Commission is not bound by its decision in the *AEP ESP III* case when reviewing FE's proposal to include a new charge (Rider RRS) in its ESP IV. The Commission, by law, has the authority to strip out Rider RRS from FE's ESP IV, and it should exercise that right. Rider RRS presents a high-risk long-term gamble for FE's ratepayers (shopping and non-shopping) with unlimited downside. Rider RRS' impact on retail rate stability will be minimal if any, and importantly no customer has asked for this program. And if the Commission conducted a survey, it would likely result in what is now on the Commission's public comment docket – thousands and thousands of ratepayers saying they do not want Rider RRS with its costs and risks. Rider RRS is bad for Ohio's ratepayers, bad for the wholesale markets, and bad for Ohio. If FirstEnergy Corp. is unwilling to invest in FES, then this Commission should not force FE's ratepayers to make that investment. To do otherwise is simply a bad business and policy decision that will be unreasonable and unlawful.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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