

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

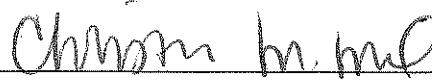
**OHIO POWER COMPANY’S MOTION TO COMPEL
AND REQUEST FOR EXPEDITED RULING**

Pursuant to Rule 4901-1-23, Ohio Adm. Code, Ohio Power Company (“Ohio Power” or “AEP Ohio”) respectfully moves the Commission for an order compelling Exelon Generation Company, LLC (“Exelon”) to provide complete responses to Ohio Power Company’s Second Set of Interrogatories, Request for Admissions, and Request for Production of Documents propounded to Exelon and to its subsidiaries, Constellation NewEnergy, Inc. and Constellation Energy Commodity Group, Inc. (collectively, the “Second Discovery Requests”). As demonstrated in the attached memorandum in support, Exelon failed to adequately respond to certain requests seeking relevant information and documents. Because Exelon has failed to comply with its discovery obligations, the Attorney Examiner should order it to provide the responses and produce the documents requested in Ohio Power’s Second Discovery Requests and repeated in this Motion. Ohio Power’s efforts to resolve this dispute pursuant to Rule 4901-1-23(C) are set forth in the Affidavit of Counsel attached as Exhibit A.

Pursuant to Rule 4901-1-12(C), Ohio Power also requests expedited ruling on this Motion to Compel. Given the expedited nature of this proceeding, the fact that hearing begins today, and given the complexity of the issues presented in this case, an expedited ruling is

necessary to provide Ohio Power a fair opportunity to review the discovery responses and prepare its case.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Steven T. Nourse", is written over a horizontal line.

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

There is no question that the ultimate prices charged to customers and capacity charges that Exelon's CRES provider subsidiaries, Exelon Energy and Constellation NewEnergy (hereinafter collectively referred to as "Exelon") would be required to pay as a result of this case are issues directly advocated by Exelon and its subsidiaries in this proceeding. Exelon should be required to responsively and completely answer discovery requests because they are directly related to Exelon and its subsidiaries' positions and participation in this case. Exelon claims in its testimony that the price Ohio Power has proposed to charge for capacity would deprive AEP Ohio customers of benefits available from purchasing their energy and capacity needs from a competitive market and would severely frustrate Exelon's CRES provider subsidiaries', Exelon Energy and Constellation NewEnergy, ability to serve retail customers in the AEP Ohio territory. Discovery requests exploring the relationship between those elements and testing Exelon's own arguments surely are an appropriate topic and correspond to its participation in the case as a party with full intervention. Ohio Power has offered to enter into a protective agreement with Exelon to fully address any concern on Exelon's part regarding the appropriate, confidential treatment of competitively sensitive and proprietary information.

Exelon, however, has not met its basic obligation to respond to Ohio Power's discovery. In its Second Discovery Requests, Ohio Power requested that Exelon provide relevant information and produce documents regarding Exelon's ability to operate competitively in AEP Ohio's service territory should the Commission require Exelon to pay a charge higher than RPM for capacity. In response, Exelon has levied a number of boilerplate objections and has failed to meaningfully respond to the vast majority of Ohio Power's requests, leaving Ohio Power with

little more information than before it propounded the Second Discovery Requests. Exelon's responses are insufficient and do not satisfy Exelon's obligation to respond to discovery requests. Accordingly, the Attorney Examiner should order Exelon to provide complete responses and produce responsive documents immediately.

II. ARGUMENT

Parties to Commission proceedings have "ample rights" to conduct "full and reasonable discovery." *See* 4903.082, Ohio Rev. Code; Rule 4901-1-16, Ohio Adm. Code ("[A]ny party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding."). These ample rights necessarily include a party's right to receive complete, timely responses to discovery requests so that the party may prepare for hearing, particularly when a case is on an expedited schedule. *See* Rule 2901-1-23, Ohio Adm. Code; *In re Investigation into the Perry Nuclear Power Plant*, Case No. 85-521-EL-COI, Entry at 10 (Mar. 17, 1987) (stating that "the policy of discovery is to allow the parties to prepare cases and to encourage them to prepare thoroughly * * *").

A. Exelon Has Failed To Provide Adequate Responses To Ohio Power's Second Discovery Requests.

Exelon's responses to Ohio Power's Second Discovery Requests are deficient in several ways, and the Attorney Examiner should order it to supplement those responses immediately.¹

1. Interrogatory No. 2-1

In Interrogatory No. 2-1, Ohio Power requested that Exelon state any reason why Exelon could not make offers to one or more retail customers or classes of customers during the period from June 1, 2012, through May 31, 2015, if Exelon paid a number different prices for capacity.

¹ A copy of Exelon's Responses to Ohio Power's Second Discovery Requests is attached as Exhibit B.

(Ex. B at Interr. No. 2-1.) In response to this interrogatory, Exelon made numerous objections, including objections that the interrogatories were “unduly burdensome,” sought proprietary information, and were not reasonably calculated to lead to the discovery of admissible evidence. Exelon further stated that “there are a number of considerations that may affect a decision to ‘make an offer’ to sell electricity * * *, only one of which is the wholesale price paid for capacity.” Exelon’s response did not answer the question asked, which was to state reasons why it could not make offers under a number of capacity pricing scenarios.

2. Interrogatory Nos. 2-2 and 2-3

In Interrogatory No. 2-2, Ohio Power requested that Exelon state whether it has analyzed, quantified, or calculated headroom or profitability at the capacity pricing levels listed in Interrogatory No. 2-1 or at any other levels. (*Id.* at Interr. No. 2-2.) This request is directly relevant to the issue of whether Ohio Power’s proposed capacity pricing structure would, as Exelon witness Fein claims (*see* Fein Test. at 5, line 3), “severely frustrate” Exelon’s ability to serve retail customers in AEP Ohio’s service territory. Exelon responded to this interrogatory with a number of boilerplate objections similar to those described in relation to its response to Interrogatory No. 2-1, then stated that its CRES provider subsidiaries “routinely evaluate, analyze and consider capacity prices * * *.” Exelon, however, refused to provide specific information responsive to the interrogatory, claiming that such information is proprietary and confidential.

Interrogatory No. 2-3 requested, if Exelon affirmatively answered Interrogatory No. 2-2, that Exelon identify the levels or prices of capacity pricing that it has analyzed. Exelon incorporated its response to Interrogatory No. 2-2 as its response and did not provide the information requested.

3. Interrogatory No. 2-4

Interrogatory No. 2-4 similarly sought information regarding whether Exelon has examined whether it has sufficient headroom or margin to avoid increasing retail rates for the period from June 1, 2012 through May 31, 2015, if it purchased capacity at a number of different prices. Exelon again responded by incorporating its response to Interrogatory No. 2-4 and did not provide any of the information requested.

4. Request for Admission Nos. 2-7 through 2-30 Exelon made boilerplate objections to Request for Admission Nos. 2-7 through 2-30 as being “vague, ambiguous, capable of inconsistent interpretation,” irrelevant, and asking a hypothetical question not susceptible to an admission or denial. The requests sought relevant information regarding Exelon’s ability to offer contracts to different classes of retail customers at a price lower than Ohio Power’s price-to-compare at a number of different capacity prices. (*See* Ex. B at Req. for Admission Nos. 2-7 – 2-30.)

5. Request for Admission Nos. 2-31 through 2-33

Request for Admission Nos. 2-31 through 2-33 asked Exelon to admit whether a capacity charge of \$146/MW-Day (*id.* at Req. for Admission No. 2-31), \$255/MW-Day (*id.* at Req. for Admission No. 2-32), or \$355/MW-day (*id.* at Req. for Admission No. 2-33) would be just and reasonable. In response, Exelon directed Ohio Power to its response to Interrogatory No. 2-6, in which Exelon opined that “the only just and reasonable rate for capacity is the market price established by RPM.” Exelon, however, did not admit or deny any of the requests.

6. Request for Production Nos. 2-1 and 2-2

In Request for Production of Documents No. 2-1, Ohio Power requested that Exelon produce copies of the documents Exelon “identified, consulted, referred to, or utilized” in

preparing its responses to Ohio Power's interrogatories. (*Id.* at Req. for Prod. No. 2-1.) In Request for Production No. 2-2, Ohio Power similarly requested that Exelon produce copies of any analyses, quantifications Exelon identified in response to Interrogatory No. 2-3. Exelon responded that it possessed no responsive documents, despite that, among other things, Exelon conceded to have undertaken analyses and calculations of the type identified in Interrogatory No. 2-3. (*Id.*)

B. Exelon Should Be Required To Immediately Supplement Its Responses.

Exelon's responses to Ohio Power's Second Discovery Requests are wholly unsatisfactory. Exelon's refusal to provide Ohio Power with the information it seeks – information that is relevant to this proceeding – does not comport with the letter or the spirit of the Commission's discovery rules. Exelon has put the impact on the competitive market in Ohio at issue in this case, and doing so directly implicates the information Ohio Power seeks for Exelon to supplement.

The discovery questions unanswered by Exelon relate directly to Exelon's participation in this case and the testimony it filed. In its Motion to Intervene, Exelon sought intervention based on the fact that "[t]he issues addressed in this case will significantly affect the retail electric market in Ohio, including future contracts that Exelon Energy may seek to enter." (Feb. 7, 2011 Motion to Intervene of Exelon at 3.) Constellation stated a similar basis for intervention. (Jan. 7, 2011 Motion to Intervene of Constellation at 3.) The impact of Ohio Power's proposed capacity charge on CRES providers, including Exelon Energy and Constellation NewEnergy, is directly at issue in this case and questions related to the bases for those intervention requests are appropriate issues for discovery.

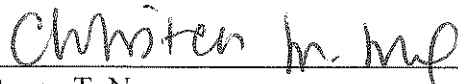
Exelon's own testimony also opens the for questions regarding how Exelon Energy and Constellation NewEnergy are or will be impacted by the capacity charge to be established in this case. Exelon has argued that the capacity charge is directly tied to competition in Ohio, as well as Exelon Energy's and Constellation NewEnergy's ability to serve retail customers. Exelon asserted in testimony that the capacity price that Ohio Power proposes would deprive AEP Ohio customers of benefits available from purchasing their energy and capacity needs from a competitive market. (*See* Fein Test. at 5.) Mr. Fein went on to state that Ohio Power's proposal "would severely frustrate Exelon Energy and Constellation NewEnergy's ability to bring the benefits of a fully competitive retail market to customers in the AEP Ohio territory." (Id.) While Ohio Power disagrees with these assertions, the matter still remains that Exelon has asserted end use customers and Exelon's CRES subsidiaries will be negatively impacted by increases in capacity costs. Discovery that explores these arguments is not only appropriate but ultimately may be important to enable the Commission to make a decision on a complete record.

Finally, to the extent that Exelon is concerned with the disclosure of proprietary or trade secret information, it has a number of options – including taking Ohio Power up on its proposal to enter into a protective agreement – available to it to safeguard that information.

III. CONCLUSION

For the reasons set forth above, the Attorney Examiner should order Exelon immediately supplement its responses to Interrogatory Nos. 2-2 through 2-4, Request for Admission Nos. 2-7 through 2-33, and Request for Production Nos. 2-1 and 2-2 of Ohio Power's Second Discovery Requests.

Respectfully submitted,



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CERTIFICATE OF SERVICE

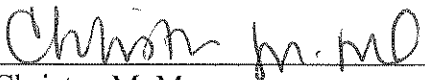
I hereby certify that a copy of Ohio Power Company's Motion to Compel and Request For Expedited Ruling was served by E-mail upon counsel for all other parties of record in this case on this 17th day of April, 2012.

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Christen M. Moore

Exhibit A

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

AFFIDAVIT OF COUNSEL


STATE OF OHIO)
) ss:
COUNTY OF FRANKLIN)

Christen M. Moore, being first duly sworn, states as follows:


1. I am more than eighteen (18) years of age and I am competent to testify to the matters set forth herein from my personal knowledge.
2. I am one of counsel for Ohio Power Company ("Ohio Power").
3. On April 9, 2012, Ohio Power's Second Set of Interrogatories, Request for Admissions, and Request for Production of Documents to Exelon Generation Company, LLC and to Constellation (collectively, the "Second Discovery Requests") were served by e-mail on counsel for Exelon Generation Company, LLC, Constellation (collectively, "Exelon") and all other counsel of record. True and accurate copies of Exelon's responses to Ohio Power's Second Discovery Requests are attached to Ohio Power Company's Motion to Compel and Request for Expedited Ruling as Exhibit B. Ohio Power received Exelon's responses on April 16, 2012.

4. On April 16, 2012, I sent email correspondence to counsel for Exelon, requesting that Exelon supplement and appropriately respond to those requests in Ohio Power's Second Discovery Requests that are the subject of Ohio Power Company's Motion to Compel and Request for Expedited Ruling. In my email, I asked that counsel for Exelon inform Ohio Power by no later than 8:00 a.m. on April 17, 2012, whether it would supplement its responses. As of 8:15 a.m. on April 17, 2012, Ohio Power had not yet received such a response from Exelon.

FURTHER AFFIANT SAYETH NAUGHT.


Christen M. Moore

Sworn to and subscribed before me this 17th day of April, 2012.


Notary Public

COLUMBUS/1627977v.1



Jared Michael Klaus, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.

Exhibit B

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**RESPONSE OF EXELON GENERATION COMPANY, LLC TO THE
SECOND SET OF INTERROGATORIES, REQUEST FOR ADMISSIONS, AND
REQUEST FOR PRODUCTION OF DOCUMENTS OF OHIO POWER COMPANY**

Pursuant to Rules 4901-1-19, 4901-1-20, and 4901-1-22 of the Ohio Administrative Code, Exelon Generation Company, LLC ("Exelon") provides the following response to the Second Set of Interrogatories, Request for Admissions, and Request for Production of Documents of Ohio Power Company ("AEP Ohio").

GENERAL OBJECTIONS

1. Exelon objects to each of the Interrogatories, Requests for Production of Documents and Requests for Admission to the extent they seek information that is protected by the attorney-client privilege or that constitutes attorney work product.
2. Exelon objects to each of the Interrogatories, Requests for Production of Documents and Requests for Admission to the extent they purport to require production beyond that required under the rules or orders of the Public Utilities Commission of Ohio.
3. Exelon objects to each of the Interrogatories, Requests for Production of Documents and Requests for Admission to the extent they purport to require production of

information that is confidential, proprietary or constitutes a trade secret under the laws of the State of Ohio.

4. Given that discovery in this case is ongoing, Exelon reserves the right to supplement its responses and objections to these Interrogatories, Requests for Production of Documents and Requests for Admission.

RESPONSES TO SPECIFIC INTERROGATORIES

2-1. Is there any reason why you, or any subsidiary of yours doing business as a competitive retail electric supplier in the state of Ohio, could not make offers to one or more retail customers or classes of retail customers if, during the period from June 1, 2012, through May 31, 2015:

- a. You paid \$146/MW-day for capacity?
- b. You paid \$255/MW-day for capacity?
- c. You paid \$355/MW-day for capacity?

RESPONSE: Exelon objects to this Interrogatory on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. Exelon further objects to the extent that this Interrogatory purports to seek information regarding customers and business activities outside of the AEP Ohio service territory, on the grounds that such information is not relevant to any issue in dispute in this proceeding. Without waiving and subject to these objections, Exelon states that there are a number of considerations that may affect a decision to “make an offer” to sell electricity to a particular retail customer or class of retail customers, only one of which is the wholesale price paid for capacity.

2-2. Please state whether you, or any subsidiary of yours doing business as a competitive retail electric supplier in the state of Ohio, have analyzed, quantified, and/or calculated headroom or profitability at the capacity pricing levels listed in Interrogatory No. 2-1 or at any other levels or prices of capacity pricing.

RESPONSE: Exelon objects to this Interrogatory on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and because it seeks proprietary trade secrets and is not reasonably calculated to lead to the discovery of admissible evidence. Exelon further objects to the extent that this Interrogatory purports to seek information regarding customers and business activities outside of the AEP Ohio service territory, on the grounds that such information is not relevant to any issue in dispute in this proceeding. Exelon further objects to this Interrogatory on the grounds that the information requested – regarding pricing and profitability – is competitively sensitive information that goes to the core of its supplier/customer relationships (particularly with respect to commercial and industrial customers), and that such information is not properly discoverable by a competitor or affiliate of a competitor. Without waiving and subject to these objections, Exelon states that Constellation NewEnergy, Inc. and Exelon Energy Company, Inc., as licensed CRES providers, routinely evaluate, analyze and consider capacity prices in the course of their day-to-day business activities. Exelon objects to providing further specific information in response to this Interrogatory on the grounds that the information requested is proprietary, confidential and competitively sensitive.

2-3. If your response to the previous interrogatory was in the affirmative, please identify all levels or prices of capacity pricing for which you, or any subsidiary of yours doing business as a competitive retail electric supplier in the state of Ohio, have performed profitability analysis, quantification, or calculations, or for which you have calculated, analyzed, or quantified your headroom.

RESPONSE: See Exelon's Response to Interrogatory No. 2-2, above.

2-4. Please state whether you, or any subsidiary of yours doing business as a competitive retail electric supplier in the state of Ohio, have examined whether you have sufficient margin to avoid increasing retail rates at the following capacity charge levels during the period from June 1, 2012, through May 31, 2015:

- a. \$146/MW-day.
- b. \$255/MW-day.
- c. \$355/MW-day.

RESPONSE: See Exelon's Response to Interrogatory No. 2-2, above.

2-5. If you contend that a cross-subsidy is defined by a rate's relationship to market prices (*see* FES [*sic*] witness Fein's direct testimony at 12), please state the basis for that contention.

RESPONSE: Exelon objects to this Interrogatory on the grounds that it is vague, ambiguous, and not reasonably calculated to lead to the discovery of admissible evidence. Exelon further objects on the grounds that the Interrogatory's reference to a "cross subsidy" and its corresponding reference to the direct testimony of David Fein appears to

be based on a flawed understanding of the actual testimony of David Fein. Without waiving and subject to these objections, Exelon refers to and incorporates by reference the Direct Testimony of David Fein (filed April 4, 2012) at 12:4-11.

2-6. If you contend that AEP Ohio's charging a capacity charge of \$146/MW-day, during the period from June 1, 2012, through May 31, 2015, would not be a "just and reasonable" price for capacity, explain the basis for that contention.

RESPONSE: Exelon objects to this Interrogatory to the extent that it is construed to require a legal conclusion. Without waiving and subject to that objection, Exelon states that, absent a comprehensive settlement of all issues raised in this proceeding and the related proceedings before the Commission and FERC, the only just and reasonable rate for capacity is the market price established by RPM. Answering further, Exelon refers and incorporates by reference the Direct Testimony of David Fein (filed April 4, 2012) at 5:16-19; 6:5 through 9:12; and 13:9-11.

2-7. If you contend that AEP Ohio's charging a capacity charge of \$255/MW-day, during the period from June 1, 2012, through May 31, 2015, would not be a "just and reasonable" price for capacity, explain the basis for that contention.

RESPONSE: See Exelon's Response to Interrogatory No. 2-6, above.

2-8. If you contend that AEP Ohio's charging a capacity charge of \$355/MW-day, during the period from June 1, 2012, through May 31, 2015, would not be a "just and reasonable" price for capacity, explain the basis for that contention.

RESPONSE: See Exelon's Response to Interrogatory No. 2-6, above.

2-9. Did you become an FRR entity or exercise the option to self-supply capacity to support your retail load in Ohio?

RESPONSE: Exelon objects to this Interrogatory on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence. Exelon further objects to the extent that this Interrogatory purports to seek information regarding business activities outside of the AEP Ohio service territory, on the grounds that such information is not relevant to any issue in dispute in this proceeding. Without waiving and subject to these objections, Exelon states that with respect to the AEP Ohio service territory the answer is "no."

2-10. Do you use any of your capacity resources to support your, or any of your affiliates' or subsidiaries', retail offerings in Ohio?

RESPONSE: Exelon objects to this Interrogatory on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence. Exelon further objects to the extent that this Interrogatory purports to seek information regarding business activities outside of the AEP Ohio service territory, on the grounds that such information is not relevant to any issue in dispute in this proceeding. Without waiving and subject to these objections, Exelon states that with respect to the AEP Ohio service territory the answer is "no," and that all capacity in AEP Ohio's service territory is currently supplied by AEP Ohio.

2-11. Is it your contention that you would further develop competitive markets in Ohio if AEP Ohio remained an FRR entity in the PJM capacity market? Alternatively, do you prefer that AEP Ohio become and remain an RPM entity in the PJM market?

RESPONSE: Exelon objects to this Interrogatory on the grounds that it is vague, compound, ambiguous, overbroad, unduly burdensome, capable of inconsistent interpretation, and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to these objections, Exelon refers and incorporates by reference the Direct Testimony of David Fein (filed April 4, 2012) at 6:17-19.

REQUEST FOR ADMISSIONS

2-1. Admit that AEP Ohio's FRR obligation remains until mid-2015.

RESPONSE: Exelon objects to this RFA on the grounds that it is vague, ambiguous and subject to inconsistent interpretation, including specifically its use of the term "FRR obligation," which in this context requires legal conclusions that are susceptible to differing interpretation and opinion. Without waiving and subject to these objections, Exelon admits that AEP Ohio will remain an FRR entity through mid-2015.

2-2. Admit that AEP Ohio will remain an FRR entity through mid-2015.

RESPONSE: Admitted.

2-3. Admit that, under Ohio law, a cross-subsidy is defined by a rate's relationship to cost.

RESPONSE: Exelon objects to this RFA on the grounds that it calls for a conclusion of law.

2-4. Admit that, under Ohio law, a cross-subsidy is not defined by a rate's relationship to market prices.

RESPONSE: Exelon objects to this RFA on the grounds that it calls for a conclusion of law.

2-5. Admit that RPM pricing for a given time period could be higher than AEP Ohio's embedded costs.

RESPONSE: Exelon objects to this RFA on the grounds that it assumes that "AEP Ohio's embedded costs" have been established, which they have not, and therefore it presents a hypothetical question that Exelon can neither admit nor deny.

2-6. Admit the RPM pricing for a given time period could be lower than AEP Ohio's embedded costs.

RESPONSE: Exelon objects to this RFA on the grounds that it assumes that "AEP Ohio's embedded costs" have been established, which they have not, and therefore it presents a hypothetical question that Exelon can neither admit nor deny.

2-7. Admit that if Ohio Power provides capacity to you at \$146/MW-day during the period from June 1, 2012, through May 31, 2015, you will be able to offer contracts to Ohio Power's residential retail customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: Exelon objects to this RFA on the grounds that it is vague, ambiguous, capable of inconsistent interpretation, and not reasonably calculated to lead to the discovery of

admissible evidence. Exelon further objects to this RFA on the grounds that it contains a number of uncertain assumptions, including assumptions regarding "Ohio Power's price-to-compare," and that as a result it presents a hypothetical question that is not susceptible to a response and that Exelon can neither admit nor deny.

2-8. Admit that if Ohio Power provides capacity to you at \$255/MW-day during the period from June 1, 2012, through May 31, 2015, you will be able to offer contracts to Ohio Power's residential retail customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: Objection. *See Exelon's Response to RFA No. 2-7, above.*

2-9. Admit that if Ohio Power provides capacity to you at \$355/MW-day during the period from June 1, 2012, through May 31, 2015, you will be able to offer contracts to Ohio Power's residential retail customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: Objection. *See Exelon's Response to RFA No. 2-7, above.*

2-10. Admit that if Ohio Power provides capacity to you at \$146/MW-day during the period from June 1, 2012, through May 31, 2015, you will be able to offer contracts to Ohio Power's commercial retail customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: Objection. *See Exelon's Response to RFA No. 2-7, above.*

2-11. Admit that if Ohio Power provides capacity to you at \$255/MW-day during the period from June 1, 2012, through May 31, 2015, you will be able to offer contracts to Ohio Power's commercial retail customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: Objection. *See Exelon's Response to RFA No. 2-7, above.*

2-12. Admit that if Ohio Power provides capacity to you at \$355/MW-day during the period from June 1, 2012, through May 31, 2015, you will be able to offer contracts to Ohio Power's commercial retail customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: Objection. *See Exelon's Response to RFA No. 2-7, above.*

2-13. Admit that if Ohio Power provides capacity to you at \$146/MW-day during the period from June 1, 2012, through May 31, 2015, you will be able to offer contracts to Ohio Power's industrial retail customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: Objection. *See Exelon's Response to RFA No. 2-7, above.*

2-14. Admit that if Ohio Power provides capacity to you at \$255/MW-day during the period from June 1, 2012, through May 31, 2015, you will be able to offer contracts to Ohio Power's industrial retail customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: Objection. *See Exelon's Response to RFA No. 2-7, above.*

2-15. Admit that if Ohio Power provides capacity to you at \$355/MW-day during the period from June 1, 2012, through May 31, 2015, you will be able to offer contracts to Ohio Power's industrial retail customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: Objection. *See* Exelon's Response to RFA No. 2-7, above.

2-16. Admit that if Ohio Power provides capacity to you at \$146/MW-day during the period from June 1, 2012, through May 31, 2015, you will be able to offer contracts to aggregation customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: Objection. *See* Exelon's Response to RFA No. 2-7, above.

2-17. Admit that if Ohio Power provides capacity to you at \$255/MW-day during the period from June 1, 2012, through May 31, 2015, you will be able to offer contracts to aggregation customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: Objection. *See* Exelon's Response to RFA No. 2-7, above.

2-18. Admit that if Ohio Power provides capacity to you at \$355/MW-day during the period from June 1, 2012, through May 31, 2015, you will be able to offer contracts to aggregation customers at a price lower than Ohio Power's price-to-compare while earning a positive return on such contracts.

RESPONSE: Objection. *See* Exelon's Response to RFA No. 2-7, above.

2-19. Admit that if Ohio Power provides capacity to you at \$146/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer to Ohio Power's residential retail customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: Objection. *See* Exelon's Response to RFA No. 2-7, above.

2-20. Admit that if Ohio Power provides capacity to you at \$255/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer to Ohio Power's residential retail customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: Objection. *See* Exelon's Response to RFA No. 2-7, above.

2-21. Admit that if Ohio Power provides capacity to you at \$355/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer to Ohio Power's residential retail customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: Objection. *See* Exelon's Response to RFA No. 2-7, above.

2-22. Admit that if Ohio Power provides capacity to you at \$146/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts

you can offer to Ohio Power's commercial retail customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: Objection. *See Exelon's Response to RFA No. 2-7, above.*

2-23. Admit that if Ohio Power provides capacity to you at \$255/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer to Ohio Power's commercial retail customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: Objection. *See Exelon's Response to RFA No. 2-7, above.*

2-24. Admit that if Ohio Power provides capacity to you at \$355/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer to Ohio Power's commercial retail customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: Objection. *See Exelon's Response to RFA No. 2-7, above.*

2-25. Admit that if Ohio Power provides capacity to you at \$146/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer to Ohio Power's industrial retail customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: Objection. *See Exelon's Response to RFA No. 2-7, above.*

2-26. Admit that if Ohio Power provides capacity to you at \$255/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer to Ohio Power's industrial retail customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: Objection. See Exelon's Response to RFA No. 2-7, above.

2-27. Admit that if Ohio Power provides capacity to you at \$355/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer to Ohio Power's industrial retail customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: Objection. See Exelon's Response to RFA No. 2-7, above.

2-28. Admit that if Ohio Power provides capacity to you at \$146/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer to aggregation customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: Objection. See Exelon's Response to RFA No. 2-7, above.

2-29. Admit that if Ohio Power provides capacity to you at \$255/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer to aggregation customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: Objection. See Exelon's Response to RFA No. 2-7, above.

2-30. Admit that if Ohio Power provides capacity to you at \$355/MW-day during the period from June 1, 2012, through May 31, 2015, your total costs with respect to contracts you can offer to aggregation customers are lower than Ohio Power's price-to-compare for such customers.

RESPONSE: Objection. See Exelon's Response to RFA No. 2-7, above.

2-31. Admit that a capacity charge of \$146/MW-day is just and reasonable.

RESPONSE: Denied. See Exelon's Response to Interrogatory No. 2-6, above.

2-32. Admit that a capacity charge of \$255/MW-day is just and reasonable.

RESPONSE: Denied. See Exelon's Response to Interrogatory No. 2-6, above.

2-33. Admit that a capacity charge of \$355/MW-day is just and reasonable.

RESPONSE: Denied. See Exelon's Response to Interrogatory No. 2-6, above.

REQUEST FOR PRODUCTION OF DOCUMENTS

2-1. Produce a copy of each document you identified, consulted, referred to, or utilized in preparing your responses to Interrogatory Nos. 2-1 through 2-11.

RESPONSE: None.

2-2. Produce a copy of any and all analyses, quantifications, or calculations identified in response to Interrogatory No. 2-3.

RESPONSE: None.

2-3. You did not produce a joint defense agreement in response to AEP Ohio's first set of discovery requests. Accordingly, produce copies of all communications between you and any other party to this proceeding concerning or relating to:

- a. the development of witness testimony; and
- b. the development of positions in this case that you or any other party may take.

RESPONSE: In its prior response to Interrogatory No. 22 of AEP Ohio's first set of discovery requests, Exelon did not identify the Joint Defense and Confidentiality Agreement dated September 7, 2011 between AEP Ohio and various signatory parties to the September 7, 2011 Stipulation and Recommendation, including Exelon. That joint defense agreement (like the Stipulation) related to "this proceeding" (10-2929) and the various other related proceedings that were the subject of the Stipulation. Exelon objects to this Request to the extent that it would purport to require production of communications between Exelon and AEP Ohio relating to the Stipulation. Such documents, to the extent they exist, are already available to AEP Ohio and need not be produced by Exelon. Without waiving and subject to these objections, Exelon states that it has no other documents responsive to this Request.

Dated: April 16, 2012

As to objections,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served this 16th day of April, 2012 via electronic mail on the following persons.



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Summary: Motion Ohio Power Company's Motion to Compel and Request For Expedited Ruling electronically filed by Ms. Christen M Moore on behalf of Ohio Power Company