

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
Establish a Standard Service Offer
Pursuant to § 4928.143, Ohio Rev. Code,
in the Form of an Electric Security Plan.**

}
}
} **Case No. 12-1230-EL-SSO**
}
}
}

DIRECT TESTIMONY OF

DAVID I. FEIN

ON BEHALF OF INTERVENORS

CONSTELLATION NEWENERGY, INC.

AND

EXELON GENERATION COMPANY, LLC

June 4, 2012

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DIRECT TESTIMONY OF DAVID I. FEIN

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND YOUR BUSINESS ADDRESS.

A. My name is David I. Fein, and my business address is 550 West Washington Boulevard, Suite 300, Chicago, Illinois 60661.

Q. BY WHOM ARE YOU EMPLOYED?

A. I am employed by Exelon Corporation.

Q. PLEASE DESCRIBE YOUR POSITION WITH EXELON CORPORATION.

A. I am Vice President of State Government Affairs, East for Exelon Corporation. In this role, I am responsible for directing and implementing regulatory and legislative policies for Exelon Corporation's retail, wholesale, power generation, and other business interests in the eastern portion of the United States, which includes the State of Ohio.¹

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND BUSINESS EXPERIENCE.

A. I earned a Bachelor of Arts in Political Science and Behavioral Science & Law from the University of Wisconsin-Madison in 1989 and a Juris Doctorate from DePaul University College of Law in 1993. I have almost 20 years of experience in all facets of the energy industry. Previously, I was Vice President of Energy Policy in the Midwest and Pennsylvania and Director of Energy Policy for Constellation. Also, I served as Senior Regulatory Counsel for Constellation and was responsible for

¹ On March 12, 2012, Exelon Corporation acquired the Constellation Companies. *See Exelon Corp. et al.*, 138 FERC ¶ 61,167 (2012).

1 providing legal and regulatory support to all of the regulatory activities of
2 Constellation NewEnergy, Inc. before state and federal regulatory agencies across
3 the country and in Canada. In addition, I acted as Senior Counsel providing primary
4 legal support and counsel for all of CNE's commercial activities in Illinois and
5 Alberta, Canada as well as support for other markets. My previous experience prior
6 to joining Constellation includes over five years at DLA Piper, LLP, a 3,600-lawyer
7 law firm, specializing in energy and telecommunications law and regulation and
8 over four years as an Assistant State's Attorney, in the Illinois Cook County State's
9 Attorney's Office, focusing on public utility law and regulation.

10 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

11 **A.** I am testifying on behalf of Constellation NewEnergy, Inc. and its parent corporation,
12 Exelon Generation Company, LLC (collectively "Exelon").

13 **Q. PLEASE PROVIDE SOME BACKGROUND ON THE EXELON COMPANIES ON**
14 **WHOSE BEHALF YOU ARE TESTIFYING IN THE INSTANT PROCEEDING.**

15 **A.** The Exelon family of companies participates in every segment of the energy
16 marketplace, from generation to competitive energy sales to transmission to
17 delivery. Exelon has operations and business activities in 47 states, the District of
18 Columbia and Canada. The company is the largest competitive U.S. power generator,
19 with approximately 35,000 megawatts of owned capacity comprising one of the
20 nation's cleanest and lowest-cost power generation fleets. Its Constellation business
21 unit provides energy products and services to approximately 100,000 business and
22 public sector customers and approximately 1 million residential customers.

1 Exelon's utilities deliver electricity and natural gas to approximately 6.6 million
2 customers in central Maryland, northern Illinois and southeastern Pennsylvania.

3 *Exelon Generation Company, LLC* ("Exelon Generation") owns or controls
4 approximately 30,000 megawatts ("MW") of generation, including nuclear, fossil,
5 hydroelectric, solar, landfill gas, and wind generation assets. It is the nation's largest
6 nuclear operator with 17 reactors located in Illinois, Pennsylvania and New Jersey
7 and has a growing renewable energy business. It is the nation's ninth largest wind
8 energy generator. In addition, Exelon Generation operates the nation's largest
9 urban solar power plant, Exelon City Solar, a 10 MW solar installation located on a
10 41-acre brownfield in Chicago, and two of the largest hydroelectric facilities in the
11 Eastern United States, Conowingo Hydroelectric Generating Station and Muddy Run
12 Pumped Storage Facility totaling nearly 1,600 MWs of capacity. Exelon Generation
13 markets wholesale energy and capacity products to municipal, cooperative, and
14 investor-owned utilities, retail suppliers, retail energy aggregators, merchant
15 participants, power marketers, and major commodity trading houses.

16 *Constellation NewEnergy, Inc.* ("CNE"), a subsidiary of Exelon Generation, provides
17 electricity and energy-related services to retail customers in Ohio as well as in 15
18 other states, the District of Columbia, and two Canadian provinces and serves more
19 than 15,000 megawatts of load and more than 10,000 customers. CNE holds a
20 certificate as a competitive retail electric service ("CRES") provider from the Public
21 Utilities Commission of Ohio ("PUCO" or "the Commission") to engage in the

1 competitive sale of electric service to retail customers in Ohio. CNE currently
2 provides service to retail electric customers in Ohio.

3 **Q. PLEASE DESCRIBE EXELON'S INTEREST IN THIS PROCEEDING.**

4 **A.** As a competitive retail electric provider and wholesale power provider to customers
5 located in the service territories of Ohio Edison Company, The Cleveland Electric
6 Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy"),
7 Exelon is extremely interested in this proceeding. The decisions that the
8 Commission makes in this proceeding will determine whether retail and wholesale
9 competition can remain viable in the FirstEnergy service territories and whether
10 CRES providers like CNE and wholesale power providers like Exelon Generation
11 have an opportunity to provide customers with an alternative to service with
12 FirstEnergy. Due to its vast experience and participation in the competitive retail
13 and wholesale markets in Ohio and across the country, Exelon will be able to assist
14 in the development of a full and complete record to assist the Commission in its
15 consideration of the Application.

16 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THIS COMMISSION?**

17 **A.** Yes. I have testified before this Commission in a number of Standard Service Offer
18 ("SSO") proceedings involving AEP, FirstEnergy, Duke Energy Ohio, and Dayton
19 Power & Light Company.

20 **II. RECOMMENDATIONS**

21 **Q. DID YOU PREVIOUSLY SUPPORT THE MARCH 2010 STIPULATED ESP THAT**
22 **FIRSTENERGY IS SEEKING TO EXTEND IN THIS PROCEEDING?**

1 **A.** Yes, CNE (which later became a subsidiary of Exelon Generation) was a supporter
2 and signatory of the March 2010 Stipulation. At that time, we believed that the CBP
3 embodied in the stipulated ESP represented an important step toward a competitive
4 model that would benefit consumers in the FirstEnergy service territory.

5 **Q. DOES EXELON JOIN IN SUPPORT OF THE NEW STIPULATION?**

6 **A.** Exelon agrees to not oppose the New Stipulation and will be a non-opposing party
7 to the New Stipulation, except that Exelon takes no position regarding the specific
8 provision of the New Stipulation related to the pricing and source of power for
9 PIPP customers. Exelon, as an addition to the New Stipulation, also proposes that
10 FirstEnergy, not wholesale or retail suppliers, be responsible for the new Economic
11 Load Response (“ELR”) charges that result from PJM’s implementation of its revised
12 ELR program, in compliance with FERC Order No. 745.

13 **Q. WHAT MODIFICATION OR CLARIFICATION DO YOU PROPOSE THAT THE**
14 **COMMISSION MAKE WITH RESPECT TO FIRSTENERGY’S MSA?**

15 **A.** The MSA should be revised to require that FirstEnergy, not wholesale or retail
16 suppliers, be responsible for the new Economic Load Response (“ELR”) charges that
17 result from PJM’s implementation of its revised ELR program, in compliance with
18 FERC Order No. 745. This change would be consistent with the business practices of
19 other electric utilities in Ohio, including Duke Energy, which agreed to assume this
20 responsibility in its recent ESP proceeding. This modification is necessary to bring
21 FirstEnergy’s business practices in line with the standard practices of other utility
22 companies operating within the PJM construct. This standard practice is resulting in

1 successful auctions that bring competitive benefits to customers in these utility
2 service territories. Given that adoption of standard practices in Ohio will help
3 increase the efficiency of the CBP and therefore lower supplier costs, these same
4 benefits should inure to Ohio customers as well. As such, there is no legitimate
5 reason to allow FirstEnergy to deviate from this standard practice.

6 **A. Responsibility for New ELR Charges under FERC Order 745**

7 **Q. PLEASE EXPLAIN FERC ORDER 745?**

8 **A.** On March 15, 2011, FERC issued an important order (“Order No. 745”) regarding
9 demand response compensation in organized wholesale energy markets.² As PJM
10 explains:

11 [FERC] issued Order No. 745 to establish [locational marginal price
12 (“LMP”)] as the compensation for demand response resources at
13 times when dispatch of that demand response resource is cost-
14 effective as determined by the net benefits test. Order No. 745
15 mandates that regional transmission organizations (“RTOs”) and
16 independent system operators (“ISOs”) submit a compliance filing
17 to implement [FERC]’s LMP compensation approach . . . In
18 addition, each RTO and ISO is required to demonstrate in its
19 compliance filing whether its current demand response cost
20 allocation methodology appropriately allocates costs to those that
21 benefit from demand reduction, and if not, then to propose tariff
22 revisions that implement such a methodology.³

23 In its Order No. 745 Compliance Filing (submitted July 22, 2011), PJM lays out
24 revisions to its tariff and market rules to enable ELR resources “to participate in the

² *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, III FERC Stats. & Regs., Regs. Preambles ¶ 31,322 (2011) (“Order No. 745”).

³ *Order No. 745 Compliance Filing*, FERC Docket No. ER11-4106-000 (filed July 22, 2011) (“July 2011 Compliance Filing”) (available at <http://www.pjm.com/~media/documents/ferc/2011-filings/20110722-er11-4106-000.ashx>).

1 real-time energy market in the manner contemplated by Order No. 745,”⁴ and be
2 compensated an amount based on LMP – a significant incentive over the
3 compensation previously provided to ELR resources. With respect to covering the
4 costs for such compensation, PJM explains that “Order No. 745 rejected the type of
5 cost allocation . . . that PJM currently uses”⁵

6
7 In order to comply with Order No. 745, PJM proposes to offer LMP-based
8 compensation to ELR resources that satisfy Order No. 745’s standards, where the
9 LMP is “at or above” a “net benefit threshold price,”⁶ as defined in formulaic terms
10 by FERC.⁷ PJM’s revisions will allocate the costs (“New ELR Charges”) of such
11 compensation to loads in “any area where the price [paid to an ELR resource] is at or
12 above that threshold price”⁸ PJM explains that responsibility for these New ELR
13 Charges will be “on a region-wide basis (rather than on a locational basis)”⁹ PJM
14 only very recently finalized for billing purposes the names assigned to these New
15 ELR Charges, which it now identifies as line item ID# 1242 - Day-Ahead Load
16 Response Charge Allocation, and line item ID# 1243 - Real-Time Load Response
17 Charge Allocation.

18

⁴ July 2011 Compliance Filing at p.10.

⁵ July 2011 Compliance Filing at p.10.

⁶ July 2011 Compliance Filing at p.22.

⁷ July 2011 Compliance Filing at p.11.

⁸ July 2011 Compliance Filing at p.22.

⁹ July 2011 Compliance Filing at p.22.

1 **Q. DOES EXELON HAVE A RECOMMENDATION REGARDING HOW ELR CHARGES**
2 **ARE COLLECTED?**

3 **A.** Yes, Exelon believes that the ELR charges should be collected through the NMB
4 rider.

5 **Q. WHY DO YOU RECOMMEND THAT THESE NEW CHARGES BE RECOVERED**
6 **THROUGH THE NMB RIDER INSTEAD OF FROM CBP BIDDERS?**

7 **A.** Exelon is concerned that the effects of this significant change in market structure to
8 promote ELR participation are unknown at this time, and will be difficult for
9 potential CBP Bidders to predict and manage as part of their bids to provide the
10 electric utilities' wholesale supply requirements. If such charges are not recovered
11 under the NMB Rider, CBP Bidders arguably will bear the risk that if the new change
12 in ELR compensation results in significant immediate increases in ELR market
13 participation – as may be desired by regulators – and if the new ELR Charges to
14 cover those costs are allocated to CBP Bidders as the entities supplying the electric
15 utilities that serve customer load rather than directly “among all customers who
16 benefit” (*i.e.*, the electric utilities' customers),¹⁰ such CBP Bidders may bear
17 significant increases in their costs to supply default service.

18 As with all other non-market based charges, if CBP Bidders – rather than electric
19 utilities – are responsible for these unknown and unpredictable New ELR Charges
20 that *may* occur, then, in order to account for such risk, CBP Bidders will need to
21 factor a premium into their default service bids for such *potential* charges *regardless*
22 of the frequency and extent to which such New ELR Charges *actually* occur. Prudent

¹⁰ Order No. 745 at ¶ 5.

1 bidders would have to consider the costs that they *could* incur for compensating ELR
2 participants taking advantage of the new opportunity provided under Order No.
3 745. To be sure, if the new ELR structure *does not* elicit robust participation over
4 the course of the three years covered by a SMA entered into pursuant to the DSP's
5 Auctions, absent Exelon's suggested clarification, FirstEnergy's consumers may –
6 through costs embedded in default service bids – pay for desired market benefits
7 which were never *actually* realized.¹¹

8
9 Under these circumstances, the default service product – absent Exelon's suggested
10 clarification – potentially raises the ultimate costs for default service supply for
11 consumers. Exelon's suggested clarification, on the other hand, would be more
12 likely to result in more competitive default service supply costs for consumers. As
13 FERC intended for New ELR Charges to be borne by loads in the various
14 RTOs/ISOs,¹² it is appropriate that such customers bear any *actual* costs for the
15 revised ELR program *directly*, rather than leaving default service bidders
16 responsible for trying to predict the success and impacts of a newly developed and
17 implemented, significant market structural change.

¹¹ FirstEnergy-PA recognized this concern with respect to all other NMB Charges:

[I]t is very difficult for [CBP Bidders] to financially hedge NMB charges because of how those charges are calculated and imposed By having [FirstEnergy-PA] provide NMB services and recover the costs from all customers through a rider that imposes a reconcilable, non-bypassable charge, competitive neutrality can be maintained and all customers should benefit.

See Direct Testimony of Charles V. Fullem (Pa. Public Utility Comm., No. P-2011-2273650) at p.9:12-19.

¹² See, e.g., Order No. 745 at ¶¶ 5, 99-102.

1
2 **Q. HAVE ANY OTHER UTILITIES PROCURING THE EQUIVALENT OF DEFAULT**
3 **SERVICE TAKEN STEPS TO MOVE TO CLARIFY THAT THEY WILL BE**
4 **RESPONSIBLE FOR THESE NEW ELR CHARGES?**

5 **A.** Yes. As these charges were only very recently defined and identified by PJM, most
6 utilities have not had the chance to consider how they should be recovered.
7 However, Duke Energy Ohio ("Duke Ohio") recently identified in its Standard Service
8 Offer CBP that Duke Ohio will be responsible for these New ELR Charges that result
9 from PJM's implementation of its revised ELR program, in compliance with FERC
10 Order No. 745.¹³

11 **Q. WHAT IS FIRSTENERGY'S POSITION RELATED TO THESE CHANGES TO THE**
12 **MSA?**

13 **A.** FirstEnergy's position on ELR as described above is one of the subjects of a letter
14 agreement ("Letter Agreement") between Exelon and FirstEnergy, in this
15 proceeding, which Exelon executed on May 31, 2012. That Letter Agreement is
16 Attachment A to my testimony.

17 **B. Data Made Available to Bidders**

18 **Q. ARE THERE ANY OTHER TERMS OF THE LETTER AGREEMENT THAT ENHANCE**
19 **THE COMPETITIVENESS OF THE WHOLESALE PROCUREMENT?**

¹³ See *Duke Ohio CBP Website FAQs* at <http://www.duke-energyohiocbp.com/FAQ.aspx>, FAQ number AGR 00005.

1 A. Yes. FirstEnergy has agreed to provide enhanced data and information for
2 prospective bidders and winning suppliers, which is basic market information
3 that is necessary for competing bidders to formulate their bids and most
4 effectively serve SSO customers.

5 **C. Retail Market Enhancements**

6 **Q. ARE THERE ADDITIONAL COMPONENTS OF THE LETTER AGREEMENT?**

7 A. Yes, there are. At Exelon's urging FirstEnergy has agreed to make certain
8 modifications to its existing retail tariffs and business practices so that CRES
9 providers are provided with certain additional data and information. With this
10 information made available in the manner prescribed in the Letter Agreement, CRES
11 providers will be better able to offer services to prospective customers, better able
12 to meet the needs of existing customers, and better able to manage their businesses
13 by aligning data exchange standards across Ohio and other states with competitive
14 electric markets. Further, provision of this type of data and information allows a
15 CRES Provider to provide a prospective customer with a competitive offer for
16 electric service, check the enrollment status of a new customer, and perform other
17 functions designed to better serve customers. The process efficiency and
18 standardization should ultimately result in more efficient pricing for Ohio
19 customers, and facilitate the development of retail competition in the
20 FirstEnergy service territory.

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

22 A. Yes, it does.

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David,

Thank you for taking the time to renew our settlement conversations regarding the ESP 3 for Ohio Edison, Toledo Edison, and CEI (the "FirstEnergy Utilities"). As discussed, if both Exelon Generation Company, LLC and Constellation New Energy, Inc. (collectively referred to as "Constellation") agree to sign the Stipulation filed on April 13, 2012 as non-opposing parties and withdraw portions of the prefiled testimony filed on May 21, 2012 on their behalf prior to June 4, 2012¹, the FirstEnergy Utilities would agree to the following:

1. As discussed in April, the FirstEnergy Utilities would commit to posting the following two FAQ questions and answers to the CRA International Competitive Bidding Process website by June 15, 2012, and would provide the requested information no later than September 1, 2012. The September 1 date is significantly prior to the auction which is to be held October 23, 2012.

Q. Could you provide the historical daily NSPLs for both shopping and non-shopping customers by class consistent with how you currently provide the capacity PLS data?

A. Yes. As soon as practical, but no later than September 1, 2012 we will start posting the historical daily NSPLs for both shopping and non-shopping customers by class in the same format we currently provide the capacity PLS data.

Q. Could you provide the monthly information specific to the PIPP load that includes peak load, hourly consumption, and population statistics?

A. Yes. As soon as practical, but no later than September 1, 2012, we will start posting the requested PIPP information on the auction web-site under "Load and Other Data" located within "Documents". Specifically, the PLS and NSPL for PIPP customers will be posted, the hourly information for PIPP load will be posted and the number of PIPP customers will be posted.

Note, the first is the same Q&A we had proposed in April, which I believe was satisfactory, and we have now added the second Q&A which will also be posted and the referenced information provided.

2. The FirstEnergy Utilities further agree to support Constellation's efforts to obtain Commission approval in the Opinion and Order approving ESP3 for the FirstEnergy

¹ Prefiled testimony that was filed in Case No. 12-1230-EL-SSO shall be withdrawn consistent with deletions reflected in the attached.

Utilities to be responsible effective June 1, 2014 for all economic demand response settlements as a result of economic demand response activity pursuant to PJM's compliance with FERC Order No. 745, so long as the FirstEnergy Utilities receive full cost recovery through Rider NMB. For purposes of this agreement, Constellation and the FirstEnergy Utilities agree that Constellation will propose this change in its testimony filed on May 21, 2012. The FirstEnergy Utilities agree to have discussions with Signatory Parties to explain the issue and to not file testimony in opposition to the proposed change.

3. Regarding the Requested Data and Information Enhancements for CRES Providers, you had listed a number of requested enhancements. FirstEnergy Utilities will commit to implement the following:

Data and Information Enhancements for CRES providers:

- a. Prior to December 31, 2012, the FirstEnergy Utilities will add the following segments to the PTD*FG loop of the 867HU in Ohio, (identical to PA/NJ/MD).
 - i. REFLF=Loss Factor
 - ii. REFLO=Load Profile
 - iii. REFNH=LDC Rate Class
 - iv. REFBF=LDC Bill Cycle
 - v. REFSV=Service Voltage

The FirstEnergy Utilities will add "REFKY=Special Meter Configuration" by December 31, 2012.

- b. By December 31, 2012, Auto cancel Supplier 810 when FE cancels customer usage in Ohio will be implemented.
- c. By July 1, 2013, the FirstEnergy Utilities will adopt PA EDEWG EDI Change Control 85/90 – adds notification (REFKY) to Supplier a net meter is present or added to a customer account.
- d. By December 31, 2013, the FirstEnergy Utilities will cease sending negative KWH consumption in the PTD*SU (summary) loop of the EDI 867 Monthly/Interval Usage when customer generation is greater than consumption. The KWH in the SU (summary) loop should be zero when this situation occurs FE should pass the net customer generation consumption as a positive number with the applicable QTY qualifier to denote the excess customer generation (87 or 9H).
- e. By December 31, 2013, the FirstEnergy Utilities will support supplier bill messaging on EDU consolidated billing via the NTE segment (minimum two lines of 60 characters each) in the bill ready 810 guidelines in Ohio. The content of the bill messaging will be subject to review by the FirstEnergy Utilities and any

review or approvals required by the Public Utilities Commission of Ohio or its Staff.

- f. By December 31, 2013, support supplier drop rescission request via supplier initiated EDI 814 Reinstatement.
4. The FirstEnergy Utilities will also agree to conduct a collaborative meeting with Suppliers and other interested stakeholders prior to filing for approval of any subsequent standard service offer. The purpose of the collaborative will be to discuss any possible enhancements to the future use of a competitive bid process to procure generation supply for the standard service offer.

Of course, the foregoing is contingent on the Public Utilities Commission of Ohio approving the ESP 3 Stipulation and it being accepted by the FirstEnergy Utilities. If the Commission does not approve the Stipulation, or if the FirstEnergy Utilities do not accept the order, as entered, this entire agreement is null and void.

We look forward to your response, and to Constellation agreeing to become a non-opposing party to the ESP3.

Sincerely,

James W. Burk
Managing Counsel

UNDERSTOOD, ACKNOWLEDGED, AND AGREED:



David I. Fein


On behalf of and as authorized representative for
Constellation NewEnergy, Inc. and
Exelon Generation Company, LLC

5-31-12

Date

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served via electronic mail this 4th day of June, 2012 upon the persons listed below.



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Summary: Testimony Direct Testimony of David I. Fein on Behalf of Intervenors Constellation NewEnergy, Inc. and Exelon Generation Company, LLC electronically filed by M HOWARD PETRICOFF on behalf of Constellation NewEnergy, Inc. and Exelon Generation Company, LLC