

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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|--|---|-------------------------|
| 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 |) | Case No. 12-1230-EL-SSO |
| a Standard Service Offer Pursuant to R.C. § |) | |
| 4928.143 in the Form of an Electric Security |) | |
| Plan. |) | |

INITIAL POST-HEARING BRIEF OF

EXELON GENERATION COMPANY, LLC

AND CONSTELLATION NEWENERGY, INC.

Pursuant to Ohio Administrative Code (OAC 4909-1-12), Exelon Generation Company, LLC and Constellation NewEnergy, Inc. (collectively "Exelon") hereby submit this post-hearing brief in the above-captioned proceeding to establish a standard service rate offer in the form of an electric security plan (the "FirstEnergy ESP 3" proceeding).

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Exelon Generation Company, LLC and its subsidiary Constellation NewEnergy, Inc. are part of a family of companies that participate in every segment of the energy marketplace, from generation to competitive energy sales to transmission to delivery, in 47 states, the District of Columbia and Canada. Exelon Generation is the largest competitive U.S. power generator, with approximately 35,000 megawatts of owned capacity comprising one of the nation's cleanest and lowest-cost power generation fleets. Constellation provides energy products and services to approximately 100,000 business and public

sector customers and approximately one million residential customers, including to retail customers in Ohio.

As both a competitive retail electric service (“CRES”) provider and wholesale power provider to customers located in the service territories of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively “FirstEnergy”) Exelon has a substantial interest in this ESP proceeding. The decisions that the Commission makes in this proceeding will determine whether retail and wholesale competition can remain viable in the FirstEnergy service territories, and whether CRES providers like Constellation and wholesale power providers like Exelon Generation have an opportunity to provide customers with an alternative to service from FirstEnergy.

Exelon does not object to the Stipulation filed by FirstEnergy, Staff and numerous other signatories (not including Exelon) on April 12, 2012, recommending approval of the ESP 3 as set forth in the Stipulation. This non-objection is the result of a letter agreement between Exelon and FirstEnergy (dated May 31, 2012), which accomplished two objectives: (1) provided that Exelon would not oppose the Stipulation; and (2) withdrew portions of Exelon witness David Fein’s Testimony (filed May 21, 2012) concerning issues no longer in dispute between Exelon and FirstEnergy. The May 21, 2012 Testimony was withdrawn, and was replaced by the Direct Testimony of David I. Fein filed on June 4, 2012 (Exelon Ex. 1).

Under the terms of the Letter Agreement, FirstEnergy agreed to certain provisions that are designed to make the retail market for energy in the FirstEnergy service area more competitive than it presently is. Under these provisions FirstEnergy has agreed to: (1) provide certain information to potential bidders in connection with the auction to be held

October 23, 2012; (2) support Exelon's proposal that FirstEnergy be responsible, effective June 1, 2014, for economic load response ("ELR") charges imposed pursuant to FERC Order 745, so long as FirstEnergy is allowed to obtain recovery of those charges through its Rider NMB; (3) commit to implement certain information and data enhancements for CRES providers by specified dates between December 31, 2012 and December 31, 2013; and (4) conduct a collaborative meeting with suppliers and other stakeholders before filing for approval any subsequent standard service offer to discuss possible enhancements for a future competitive bid process to obtain generation supply. Each of these important commitments is effective only if the Commission accepts the Stipulation concerning FirstEnergy's ESP 3.

Of the four commitments made by FirstEnergy, only one is dependent upon Commission action other than approval of the ESP 3 Stipulation, and that is the commitment relating to FirstEnergy's responsibility in the first instance for the FERC Order 745 charges. The Testimony of Exelon witness David Fein filed on June 4, 2012 (Exelon Ex. 1), replacing the withdrawn May 21 testimony, explains why this commitment is in the public interest and should be approved by the Commission. This change, which would be embodied in FirstEnergy's Master Service Agreement ("MSA"), would align practices for FirstEnergy with those of other electric utilities in Ohio, including Duke Energy, which agreed to assume this responsibility in its recent ESP proceeding¹, as well as with those of other utilities operating in PJM. (Exelon Ex. 1 at 5:18-22)

Moreover, as Mr. Fein explains, FERC Order 745 represents a significant change in market structure. The effects of this change are unknown at this time and it will be difficult

¹ See In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer (PUCO Case No. 11-3549-EL-SS0).

for potential CBP Bidders to predict and manage these effects in formulating their bids to provide the electric utilities' wholesale supply requirements. If these ELR charges are not recovered under the NMB Rider, "among all customers who benefit,"² and if instead those costs are allocated to CBP Bidders as the entities supplying the electric utilities that serve customer load, such CBP Bidders will bear what may be significant increases in their costs to supply default service. This in turn will require the CBP Bidders to factor a premium into their default service bids for such potential charges regardless of the frequency and extent to which such new charges actually occur, raising costs for FirstEnergy's customers. Indeed, if the new market structure envisioned by FERC Order 745 does not elicit robust participation, FirstEnergy's consumers may wind up paying for desired market benefits which will never be realized.³ (Exelon Ex. 1 at 8:7-9:7)

Exelon's proposal on this issue, on the other hand, would be more likely to result in more competitive default service supply costs for consumers. As FERC intended for new ELR charges to be borne by loads in the various RTOs/ISOs,⁴ it is appropriate that such customers bear any actual costs for such charges directly, rather than leaving default service bidders responsible for trying to predict the success and impacts of a newly developed and implemented, significant structural market change.

² FERC Order 745 at ¶ 5.

³ The FirstEnergy affiliate in Pennsylvania 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 Util. Comm., No. P-2011-2273650) at 9:12-19.

⁴ See, e.g., FERC Order 745 at ¶¶ 5, 99-102.

In conclusion, Exelon does not object to the Stipulation. Further Exelon respectfully requests that the Commission, in the event it approves FirstEnergy's ESP 3, order FirstEnergy 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 745, and provide that FirstEnergy will receive full cost recovery through Rider NMB. Providing for FirstEnergy's Ohio electric distribution utilities to directly assess the FERC Order 745 charges directly will assist price transparency for retail customers, avoid a different payment regime among the Ohio electric utility distribution companies that have payment provisions for FERC Order 745 charges and likely result in lower overall auction bids by removing a FERC mandated charge which is beyond the control of the bidding suppliers.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served via electronic mail this 22d day of June, 2012 upon the persons listed below.



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Summary: Brief Initial Post-Hearing Brief of Exelon Generation Company, LLC and Constellation NewEnergy, Inc. electronically filed by M HOWARD PETRICOFF on behalf of Exelon Generation Company, LLC and Constellation NewEnergy, Inc.