

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Commission's  
Investigation of Ohio's Retail Electric  
Service Market**

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**Case No. 12-3151-EL-COI**

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**REPLY COMMENTS OF  
CONSTELLATION NEWENERGY, INC. AND  
EXELON GENERATION COMPANY, LLC**

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Pursuant to the Attorney Examiner's Entry of January 24, 2013 in the above proceeding, Exelon Generation Company, LLC and Constellation NewEnergy, Inc. (collectively "Exelon") submit these Reply Comments in response certain Initial Comments to the Public Utility Commission of Ohio's ("Commission") December 12, 2012 Order to investigate the health, strength, and vitality of Ohio's retail electric service market and actions that may be taken to enhance that market ("Investigation").

**INTRODUCTION**

Exelon appreciates the opportunity to reply to the numerous comments filed in this proceeding to assist the Commission's further development of Ohio's competitive electric markets. As noted in our Initial Comments, Exelon believes Ohio has made tremendous strides towards reaping the full benefits of competitive wholesale markets and implementing policies to develop and improve electric retail competition. As a competitive retail electric service provider ("CRES Provider") to retail customers in Ohio and a wholesale power provider to Ohio electric

distribution utilities (“EDUs”), Exelon fully supports the Commission’s plan to continue down the path to a fully functioning, robust, and sustainable competitive electric market.

Nothing in the Comments filed by the many stakeholders interested in this proceeding has altered Exelon’s recommendations in its Initial Comments, and they are accordingly adopted herein. For convenience, Exelon reiterates its guiding principles for a fully functional competitive retail electric service market:

- **Price Transparency between CRES Provider and EDU Offerings** – There must be a true apples-to-apples Price to Compare ("PTC") with which consumers can evaluate CRES Provider offers with the EDU SSO supply option. The PTC should include all EDU costs that are avoided when a customer takes generation supply from a CRES Provider, including, but not limited to any reconciliation charges. Providing customers with full and accurate information provides complete price transparency and enables customers to make informed decisions.
- **Market Contestability, with Low Barriers to Supplier Entry and Exit** – Stable and transparent regulatory frameworks should be developed to enable CRES Providers to enter and exit the market easily and offer products to customers, without costly or overly complex restrictions.
- **Market Sustainability** – The price of any available SSO product must be sufficiently reflective of market prices to enable stability of the competitive market.
- **Plain Vanilla SSO Product** – The EDU should only be allowed to offer a single product to customers that do not switch to a CRES Provider. The competitive market can offer green products, demand response products, time-of-use products, and other more sophisticated offerings. If EDUs are allowed to offer multiple products, it will perpetuate the existence of a number of customers remaining on the SSO.
- **Informed Customers** – Customers should be aware of their ability to choose competitive supply, informed of their choices and able to easily compare options, prices, terms and conditions.
- **Ease of switching** – Customers should be able to switch easily from SSO supply to a CRES Provider, and also to switch between CRES Providers to pursue different opportunities and offerings.
- **Non-discriminatory Access to Billing and Usage Information and Effective Affiliate Rules** – CRES Providers should have access to a robust, complete, and accurate set of customer data and billing information consistent with customer authorization, and without discrimination in favor of particular suppliers. Effective codes of conduct and other

mechanisms should be in place so that there is no discrimination in favor of CRES Providers affiliated with EDUs.

- **Non-recourse purchase of receivables (“POR”)** – Non-recourse POR tariff offerings should be required in order to allow CRES Providers to offer all customers – regardless of income or credit – with a full array of supply options, at a more competitive cost, placing CRES Provider offers on more equal footing compared the EDU’s SSO.

It is with these general criteria in mind that Exelon replies to specific comments of certain stakeholders.

### **COMMENTS**

At the outset, Exelon would caution the Commission to make a determination, as some have urged, that market enhancements are not currently needed as evidenced by shopping statistics in Ohio. While the overall percentage of customers receiving electricity from CRES providers has increased markedly over the last several years, there is none that would disagree that the vast majority of switching among residential customers is due almost exclusively to opt-out government aggregation. Regardless of whether a stakeholder is neutral, in favor of, or opposed to government aggregation, switching as a result of these programs is not indicative of market rules that foster robust and sustainable individual choice of electricity supplier. The Commission should ensure that the right rules are in place to provide all Ohio consumers the ability to independently and easily make informed decisions about the competitive electricity product that best meets their needs, as well as support CRES providers’ ability to fairly and equally compete for their business.

**I. Market Sustainability – The price of any available SSO product must be sufficiently reflective of market prices to enable stability of the competitive market.**

While overall switching statistics are not dispositive, in and of themselves, of market rules that foster robust and sustainable shopping, a comparison of those statistics in territories that use competitive bid processes for EDU standard service offer (“SSO”) versus those that do not is very informative. As shown in FirstEnergy Solutions’ (“FES”) comments, the number of customers shopping in the FirstEnergy and Duke Energy Ohio service territories – the only two EDUs to implement a fully market-based SSO – is dramatically higher in all customer classes than in the service territories of the remaining EDUs.<sup>1</sup> Additionally, the residential price to compare (“PTC”) in territories using CBP is drastically lower than in those that do not.<sup>2</sup>

Exelon has long been an advocate of market reflective pricing for SSO customers and agrees with the many stakeholders that support prompt implementation of competitive procurements for SSO by all EDUs. As noted by Duke Energy Retail (“DER”) and Duke Energy Commercial Asset Management (“DECAM”), further requiring the CBP to be grouped by uniform customer classes among the EDUs would make the outcomes more consistent with retail offerings allowing customers to more accurately compare pricing and make informed decisions.<sup>3</sup>

**II. Price Transparency between CRES Provider and EDU Offerings**

In addition to competitively setting the SSO, there must be a true apples-to-apples PTC with which consumers can evaluate CRES Provider offers against the EDU SSO supply option. The PTC should include *all* EDU costs that are avoided when a customer takes generation supply

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<sup>1</sup> Comments of FirstEnergy Solutions Corp., p. 5.

<sup>2</sup> Id. at p. 4.

<sup>3</sup> Comments of DER and DECAM at p. 5.

from a CRES Provider, including, but not limited to any reconciliation charges. Providing customers with full and accurate information provides complete price transparency and enables customers to make informed decisions.

Exelon was pleased that many parties supported this guiding principle. DER and DECAM stated that “for default service to stand as a valid comparison to retail service offerings, default service pricing must reflect all of the same costs – *e.g.*, generation and transmission, acquisition, and administrative – and all the same risks – *e.g.*, bad debt, attrition, market exposure – that DRES providers must build into their offers.”<sup>4</sup> Interstate Gas Supply, Inc. (“IGS”) noted that “many of the costs of providing generation service continued to be embedded in base rates, paid for by all base rate paying customers....including those ratepayers who have elected to purchase commodity for a certified competitive supplier.”<sup>5</sup> FES points out in its Comments that the “failure of all Ohio EDUs to separate their competitive generation service from their non-competitive distribution service has a number of significant ripple effects” and notes that these improperly allocated costs are frequently permitted through vaguely defined nonbypassable surcharges.<sup>6</sup> The Retail Energy Supply Association (“RESA”) observed that “the CRES provider must reflect all of its customer care costs, credit costs, capital costs and general overhead expenses, such as salaries, facility costs, etc. in its competitive offers.”<sup>7</sup> RESA aptly explained that until an extensive cost unbundling is undertaken to remove these types of charges from the EDUs’ regulated distribution rates and allocate them to default service rates, Ohio EDUs will continue to have a competitive advantage over CRES providers.

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<sup>4</sup> Id. at p. 3.

<sup>5</sup> Comments of IGS at p. 2.

<sup>6</sup> Comments of FES at p. 9.

<sup>7</sup> Comments of RESA at p. 9-10.

### **III. Plain Vanilla SSO Product**

In addition to properly allocating all generation supply related costs, the EDU should only be allowed to offer a single product to customers that do not switch to a CRES Provider. The competitive market can offer green products, demand response products, time-of-use products, and other more sophisticated offerings. If EDUs are allowed to offer multiple products, it will perpetuate the existence of a number of customers remaining on the SSO. As aptly stated by Hess Corporation, the role of default service in a competitive retail market should be a backstop only to retail choice for customers. “In order to achieve this balance, default service must be a simple, ‘plain vanilla’ service in contrast to the differentiated, specialized and innovative product alternatives provided by CRESs.”<sup>8</sup>

The Office of Ohio Consumers’ Counsel (“OCC”) provided the example of how EDU interruptible rates crowd out competitively offered products due to the above market capacity payments made by the EDU to industrial customers. “Marketers find it difficult to compete with the subsidized non-market rates for capacity.”<sup>9</sup> The OCC likewise cautioned the Commission to ensure that energy efficiency programs developed and offered by the EDUs do not unfairly impede independent third party providers.<sup>10</sup> FES noted how some EDU dynamic pricing pilot programs currently prohibit participants from shopping altogether.<sup>11</sup> RESA likewise urged the Commission to ensure that default service remain a “plain vanilla option” in the event EDUs remain as the provider of default service.<sup>12</sup>

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<sup>8</sup> Comments of Hess Corporation at p. 4.

<sup>9</sup> Comments of the OCC at p. 20.

<sup>10</sup> Id. at p. 21.

<sup>11</sup> Comments of FES at p. 18.

<sup>12</sup> Comments of RESA at p. 20.

#### **IV. Non-discriminatory Access to Billing and Usage Information and Effective Affiliate Rules**

CRES Providers should have access to a robust, complete, and accurate set of customer data and billing information consistent with customer authorization, and without discrimination in favor of particular suppliers. As noted by the National Energy Marketers Association (“NEMA”), “seamless, low-cost, efficient data and information exchange is the key to lowering the cost of energy and related services as well as enhancing reliability in a competitive retail marketplace.”<sup>13</sup>

For example, Dominion Energy Solutions (“DES”) notes that under current rules, the EDUs are not required to include account numbers as part of the information contained in the eligible-customer lists provided to CRES suppliers.<sup>14</sup> This poses a significant barrier for CRES providers trying to enroll customers. Most customers don’t know their account numbers nor have easy access to a bill to obtain the account number, without which they cannot be enrolled for CRES service. Exelon agrees with DES’ recommendation that Ohio follow in the footsteps of Pennsylvania and modify the rules to allow account numbers to be made available to CRES providers. “Pennsylvania has long recognized that making account number available to competitive suppliers facilitates enrollment by reducing costs and error and generally results in better customer service.”<sup>15</sup>

As suggested in its Initial Comments, Exelon recommends the account numbers, along with additional necessary data, be made available by EDUs through a secure web-based system. That recommendation is supported by several parties. DER and DECAM request the web-based system “provide the same data and information relevant to choice, where such data and

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<sup>13</sup> Comments of NEMA at p. 9.

<sup>14</sup> See Rule 4901:1-10-29(E), OAC.

<sup>15</sup> Comments of DES at p. 9.

information includes, but is not limited to, meter numbers, types, reading cycle dates; service and billing addresses; rate code indicators; designation of whether a customer is shopping; consumption, demand, and interval data; losses; and peak load contribution data.”<sup>16</sup> Likewise, RESA urges the Commission to implement rules that give CRES providers equal access and control over necessary data through (1) the development of a secure web-based system; (2) enhanced EDI transactions; and (3) monthly updated sync lists.

#### **V. Market Contestability, with Low Barriers to Supplier Entry and Exit, and Ease of Switching**

Stable and transparent regulatory frameworks should be developed to enable CRES Providers to enter and exit the market easily and offer products to customers, without costly or overly complex restrictions. Additionally, customers should be able to switch easily from SSO supply to a CRES Provider, and also to switch between CRES Providers to pursue different opportunities and offerings. A persistent challenge to robust and sustainable competitive markets is a lack of consistency across the state regarding requirements imposed on CRES providers and customers wishing to exercise their right to choose. Uniform and stable rules create the regulatory certainty needed to encourage investment by CRES providers in the market.

Exelon supports DER and DECAM’s recommendation that such uniformity should at a minimum include: (1) no minimum stay provisions; (2) no switching fees imposed by EDUs; and (3) statewide purchase of receivables program.<sup>17</sup> FES also urges the Commission under its existing authority to “ensure consistency in the development and application of rules and requirements....ensuring that the retail market is transparent and more attractive for competitive

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<sup>16</sup> Comments of DER and DECAM at p. 3.

<sup>17</sup> Comments of DER and DECAM at p. 2-3.



suppliers.”<sup>18</sup> While Exelon doesn’t agree with Duke Energy Ohio’s (“DEO”) claim that no barriers exist to retail competition in its service territory, it does agree with DEO’s belief that the key to maintaining a robust competitive environment is consistency in rules throughout the state.<sup>19</sup> Specifically DEO stated “there needs to be parity, predictability and some consistent degree of certainty in order for a utility, or any business to make any significant investment.”<sup>20</sup>

## **VI. Non-recourse purchase of receivables (“POR”)**

As noted above, one of the rules that should be developed is a consistently applied non-recourse POR program to allow CRES Providers to offer all customers – regardless of income or credit – with a full array of supply options, at a more competitive cost, placing CRES Provider offers on more equal footing compared the EDU’s SSO. Many stakeholders, including IGS, DER and DECAM, Hess, RESA, DES, and NEMA all recommend a POR program be implemented in Ohio.

As explained by IGS, implementation of POR programs is necessary to place EDUs and CRES providers on a level competitive playing field. EDUs are able to recover the costs associated with managing the accounts receivables and slow paying and non-paying customers, disconnections, and related items through base rates or uncollectible expense riders.<sup>21</sup> NEMA points out that POR provides consumers with greater access to competitive offerings because it significantly minimizes consumer credit ratings as an impediment in customer enrollment.<sup>22</sup> Hess notes that programs have been successfully implemented in many competitive retail electric states including New York, Pennsylvania, Maryland, Connecticut, Illinois, and of course in the

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<sup>18</sup> Comments of FES at p. 17.

<sup>19</sup> Comments of DEO at p. 2.

<sup>20</sup> Id. at p.3.

<sup>21</sup> Comments of IGS at p. 2.

<sup>22</sup> Comments of NEMA at p. 8.

DEO service territory in Ohio.<sup>23</sup> RESA clarifies in its Initial Comments that it is not asking the Commission to implement a unique or new POR program across Ohio, but rather, simply implement consistently what is has already been approved and is working in DEO's service territory. It's worth noting, that in addition to DEO, *all* Ohio natural gas companies with Choice programs offer POR, so the Commission is clearly aware of its benefits to retail competition and Exelon urges it to extend this policy statewide for electric consumers as well.

## **VII. Informed Customers**

Last, but most certainly not least, is consumer education. Perhaps the one criteria of effective competition that all stakeholders agree is critical to success. Customers cannot take advantage of that with which they are not aware. They must be not only aware of their ability to choose competitive supply, but informed of their choices and able to easily compare options, prices, terms and conditions.

Exelon agrees with the recommendations of RESA that the Commission adopt programs to increase the level of customer education about CRES service. Specifically, RESA recommended the development of: (1) a robust PUCO website that allows suppliers to post offers available for residential and small commercial customers, such as those developed in Pennsylvania, Texas, Illinois, and New York; (2) a prominent section on the EDU website that directs customers to the PUCO website; (3) a process to allow customers to learn about competitive offers when contacting the EDU customer service center; and (4) a process to allow customers to select a CRES provider at the time of new service initiation and when customers move service to a new location. Exelon believes it is particularly important to have the EDUs, as well as the Commission, play a prominent role in consumer education, as it assuages any concerns some

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<sup>23</sup> Comment of Hess at p. 11.

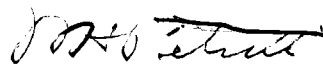
customers may have about “leaving” their EDU for a CRES provider. Assurances that delivery and reliability will continue seamlessly and that EDUs support choice is a powerful message. Additionally, having EDU programs that educate consumers about their choice for competitive supply *before* they become utility default customers is a simple and cost effective tool that can prevent utility status quo bias from occurring in the first place.

### CONCLUSION

Exelon appreciates this opportunity to submit its Reply Comments to the Commission and looks forward to continued discussions on these and any new issues raised in the context of the Commission’s investigation of Ohio’s competitive electric market. Exelon is confident that its recommendations will promote robust continued development of the State’s competitive retail markets, for the ultimate benefit of Ohio’s consumers and the Ohio economy.

Dated: April 5, 2013

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was served by electronic mail this 5<sup>th</sup> day of April, 2013 upon the persons listed below.



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Summary: Comments Reply Comments electronically filed by M HOWARD PETRICOFF on behalf of Constellation NewEnergy, Inc. and Exelon Generation Company, LLC