

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals.))))	Case No. 10-2376-EL-UNC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power 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. 11-346-EL-SSO Case No. 11-348-EL-SSO
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority.))))	Case No. 11-349-EL-AAM Case No. 11-350-EL-AAM
In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders.))))	Case No. 10-343-EL-ATA
In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders.)))	Case No. 10-344-EL-ATA
In the Matter of the Commission Review Of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.))))	Case No. 10-2929-EL-UNC
In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144)))))	Case No. 11-4920-EL-RDR
In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144)))))	Case No. 11-4921-EL-RDR

**EXELON GENERATION COMPANY, LLC'S
REPLY BRIEF IN SUPPORT OF THE
STIPULATED ELECTRIC SECURITY PLAN PROVIDED IN THE
STIPULATION AND RECOMMENDATION FILED SEPTEMBER 7, 2011**

November 18, 2011

Exelon Generation Company, LLC (“Exelon Generation”) hereby submits this reply brief in response to the initial post-hearing briefs filed on behalf of FES, IEU and OCC¹ on November 11, 2011. In this response, Exelon Generation addresses two broad themes in those briefs: (1) that the Commission should reject the Stipulated ESP and instead choose “more” and “sooner” competition; and (2) that the Stipulated ESP cannot or should not be approved, because analyses show the ESP is not “quantitatively” better than a MRO. Exelon Generation continues to recommend that the Stipulated ESP be approved.

ARGUMENT

I. The Non-Signatory Parties Offer a False Choice to the Commission

The briefs filed by the Non-Signatory Parties posit a choice that is not before the Commission, *i.e.*, to choose more competition, or a better electricity market, on a faster time frame, than is offered by the Stipulated ESP. If that were a viable choice, Exelon Generation would have been among the first to sign up for that better world, and would not have supported the Stipulated ESP. That, however, is not the choice confronting the Commission or any party to this proceeding. The Commission has an historic opportunity to materially improve the electricity market in Ohio, and its attention should not be diverted from that opportunity by false choices.

All parties appear to agree that greater competition in Ohio electricity markets is the desired end state. The difference between the Signatory Parties and the Non-Signatory Parties appears to be that, while the Signatory Parties believe that the Stipulated ESP makes substantial progress towards achieving that goal, the Non-Signatory Parties seem to

¹ All abbreviations and other defined terms used in this Reply have the same meaning as defined in Exelon Generation’s initial brief.

believe that greater competition can be achieved more quickly if approval of the Stipulated ESP is denied and/or the Commission modifies the Stipulated ESP to achieve more competition by fiat. FES, for example, cites the testimony of its witness, Tony Banks, to the effect that FES is aware of the benefits that “can be received by Ohio customers through an open and full competitive market.” (FES Br. at 144.) One thing that FES does not explain, however, is how denial of the Stipulated ESP will help to bring about the benefits of an “open and full competitive market.” That is because it simply will not. The Commission’s rejection of this Stipulation would instead force all parties back to square one and ensures that AEP Ohio’s current ESP – which lacks any meaningful competition – will remain in place for the foreseeable future. Conversely, Mr. Banks expresses concern over the competitive “barriers” “proposed” in the Stipulated ESP. (*Id.*) But these are barriers that long pre-dated the Stipulated ESP, and indeed the Stipulated ESP begins the long-overdue process of dismantling those barriers. Denial or disapproval of the Stipulated ESP will simply reinforce the mortar holding those barriers in place.

Further, FES details a litany of enhancements to the Stipulated ESP that it encourages the Commission to “incorporate,” such as that “[t]he proposed ESP should incorporate wholesale competition now.” (FES Br. at 150.) That is a good slogan, and an even better objective, but unfortunately it is not an outcome that can be achieved by a wave of the Commission’s wand in this case at this time. Once again, the reality is that the Commission is unlikely to achieve “wholesale competition now” or more and enhanced competition of any kind by adding conditions to its approval of the Stipulated ESP, but rather, it likely will result in a reversion to the status quo of AEP Ohio’s existing ESP. Even if the Commission were inclined to accept FES’ invitation to “incorporate” more

competitive features into the ESP, the governing statute reserves to AEP Ohio the right to reject that invitation. Beyond a point that only AEP Ohio knows, Commission-inspired modifications are certain to be rejected. Once again, the result of that action would be a continuation of the status quo. Through its own experience with AEP Ohio at the negotiating table, Exelon Generation does not believe that it would be wise for the Commission to take a gamble on the future by taking a chance that AEP Ohio will accept whatever modifications a Non-Signatory Party proposes.

The consequence of a reversion to the status quo through a rejection by the Commission of the Stipulated ESP or a series of modifications rejected by AEP Ohio would be that AEP Ohio would go “back to the drawing board” and either reformulate a new ESP or a MRO.² If AEP Ohio does neither, then – as acknowledged in FES’ own brief – customers are left with the current ESP. (FES Br. at 129.) At best, if AEP Ohio “tries again,” the clock would begin to run anew as all stakeholders examine their litigation options and plan to advance new arguments and testimony in favor of their respective outcomes. Exelon Generation believes that all stakeholders and the State of Ohio would be far better served if the parties were able instead to examine their *competitive* options and plan to advance their *marketing strategies*, rather than focus on unrealistic positions that are litigation

² FES claims that AEP Ohio could fully transition to market “in as little as two years under an MRO.” (FES Br. at 79.) But even the decision that FES cites to support this proposition makes clear that any proposed MRO *must* contain a five year blending period and the Commission will not even consider applications that have a faster transition. Entry on Rehearing, *In the Matter of the Application of Duke Energy Ohio for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications, & Tariffs for Generation Service*, Case No. 10-2586-EL-SSO, at ¶¶ 20, 25 (May 4, 2011). While Section 4928.142(E) of the Revised Code gives the Commission the authority to alter the blending period, “such deliberation may not take place until the second year of the MRO.” *Id.* at ¶ 25. Unlike the Stipulation, which eliminates uncertainty and commits AEP Ohio to a full transition by June 1, 2015, there is no guarantee that AEP Ohio would request a shorter transition in year two of a MRO let alone that the Commission would grant it.

driven. The Stipulated ESP allows those more constructive activities to begin. Without it, the parties will once again face significant regulatory uncertainty that could continue for years. And, as detailed in Exelon Generation's initial brief, the continuation of multiple proceedings before the Commission and FERC impedes economic activity and prevents consumers from realizing the benefits of full competition.

II. The Commission Should Not Focus on Quantitative Analyses to the Detriment of Achieving Real Competitive Progress

The Non-Signatory Parties make much of the fact that Exelon Generation, like other Signatory Parties, did not conduct its own quantitative analysis of the relative costs of the Stipulated ESP and a MRO. It is true that Exelon Generation did not do so. It is equally true that had Exelon Generation done so, the only result is that another set of estimates would be in the record. Exelon Generation recognizes that the statute requires that for the Commission to approve it, it must find that the Stipulated ESP is expected to be more favorable in the aggregate than a MRO. But the Commission should not be diverted from seizing actual tangible opportunities presented by the Stipulated ESP on the basis of uncertain quantifications of the future costs of those two scenarios.

FES' own estimates of the differential appear to range between \$350 and \$800 million, depending upon assumptions made. (FES Br. at 13-14.) The range of the differentials in the comparisons between the MRO and ESP presented by all parties is staggering, ranging from \$104.7 million (AEP Ohio) to more than \$1.2 billion (IEU). (FES Br. at 11-14.) The Commission, through long institutional experience, knows how rapidly and drastically today's cost estimates can lead to incorrect policy choices for the future. Moreover, the calculated differences, though seemingly large in absolute terms, are relatively small. FES witness Michael Schnitzer's mid-point estimate (\$575 million), for

example, represents only a *de minimis* percentage of the total costs of the Stipulated ESP that he calculates. Notably, no party presenting any of these estimates has referred in its brief to any statistical test in the record showing the degree of confidence that should be ascribed to those wildly varying estimates. In the absence of such evidence the Commission should be exceptionally wary of sacrificing immediate and important competitive gains and opportunities on the altar of quantification.³

Those immediate and important competitive gains and opportunities include the following:

- Establishing a wholesale procurement process to meet 100% of AEP Ohio's SSO needs by the end of the ESP plan and specifying protocols to ensure that the process is workable and efficient;
- Removing significant non-bypassable generation-related riders that preclude the realization of customer choice;
- Providing certainty regarding the capacity charge for CRES providers and a

³ In addition, the Commission should not accept at face value all of the representations in the FES and IEU briefs. For example, IEU claims that Exelon Generation witness Dominguez "conceded" on cross-examination that the Stipulation would not require a competitive bid procurement in AEP Ohio's next ESP. (IEU Br. at 29, n. 82.) In fact, the page of the transcript cited by IEU reveals that Mr. Dominguez testified exactly to the opposite with respect to AEP Ohio's capacity procurement:

"Q. Isn't it true that the next ESP does not require a competitive bidding process per the stipulation? There's nothing in the stipulation as to that, correct?

A. And I'm saying no, that's not true. The competitive bidding process for capacity will continue and it will cover planning years all the way through '20. The competitive bidding process for energy as opposed to capacity you're exactly right about."

(Tr. Vol. VI at 1052:9-18.) Similarly, FES finds it significant that Mr. Dominguez did not see Appendix C to the Stipulation until the day before the Stipulation is filed. (FES Br. at 147.) Whatever limited significance that fact may have is diminished to the point of irrelevancy because Mr. Dominguez testified that he was relying on both Mr. Petricoff and Stephen Bennett of Exelon Retail, working with RESA, to assure that this document was appropriate. (Tr. Vol. VI at 1040:13-24.)

transition to full RPM capacity pricing;

- Removing barriers to shopping contained in AEP Ohio's tariffs; and
- Perhaps most important of all, securing AEP Ohio's *willing and committed* participation in this transition, rather than forcing AEP Ohio's unwilling cooperation through litigation, with all the attendant delays, uncertainties and disruptions.

As explained in the testimony of Commission Staff witness Robert Fortney, Exelon Generation witness Joseph Dominguez and others, the benefits of AEP Ohio's change to a competitively bid SSO – while “impossible to quantify”⁴ – weigh heavily in favor of approving the Stipulated ESP.

CONCLUSION

FES suggests that Exelon Generation supports the Stipulated ESP only because it is “one of AEP Ohio's largest counterparties in power transactions.” (FES Br. at 122, n. 563.)⁵ This simplistic rhetoric may appeal to FES, but it is a disservice to the Commission and to those parties legitimately concerned about the future of competitive markets in Ohio.

⁴ Tr. Vol. X at 1751 (Fortney); *see also* Tr. Vol. VI at 1066-67 (Dominguez).

⁵ The full testimony is worth quoting as it offers a perspective dramatically different from the “spin” offered by FES:

“AEP is one of our biggest wholesale trading partners, so we routinely trade energy, transmission, other things with AEP. We have made offers to them, substantial offers, for capacity that weren't within the originally filed ESP period but would be within the extended ESP period that is reflected in the stipulation. . . . I think there has been an effort by [AEP Ohio] to use its own resources to supply capacity in the zone and that the company might have looked at cheaper alternatives to do that and has failed to do so. *The stipulation will require them to do so.*”

(Tr. Vol. VI at 1056: 2-18 (emphasis added) (question by counsel omitted).)

Exelon Generation's business relationships with AEP Ohio were insufficient to prevent it from being one of the most outspoken opponents of the ESP submitted initially by AEP Ohio, and recommending that the Commission reject that ESP. (*See* Exelon Ex. 1 at 1:5-8.) Indeed, Exelon Generation witness Joseph Dominguez did not mince any words in his criticism of that anti-competitive plan: "[T]he central problem with AEP Ohio's filed ESP was twofold: (1) it continued to rely on a flawed, non-market based approach to procuring energy and capacity for default customers; and (2) it included numerous non-bypassable generation-related riders that would impede retail shopping." (*Id.* at 2:16-19.) He further testified on cross-examination that he was of the opinion that AEP Ohio's opposition to shopping, especially shopping based on an RPM capacity price, formed the basis of AEP Ohio's initial ESP. (Tr. Vol. VI at 1036.)⁶ Mr. Dominguez went on to explain that the Stipulated ESP remedies the major defects in the initial ESP: "The Stipulation . . . memorializes a fundamental change in AEP Ohio's business model under which . . . AEP Ohio's standard service offer ('SSO') rate will be based on costs associated with capacity and energy procured through competitive means. The Stipulation eliminates the significant proposed non-bypassable generation-related riders, preserves and expands the ability for customers to shop for competitive retail supply, and protects customers from uneconomic generation investment costs." (Exelon Ex. 1 at 2:21-3:4.)

For the reasons set forth above, and those expressed in Exelon Generation's initial brief and in the briefs of the other Signatory Parties, the Commission should approve the

⁶ In the same breath that FES asks the Commission to infer that Exelon Generation is currying favor to AEP Ohio because of alleged business relationships, FES also concedes that Mr. Dominguez testified that Exelon Generation would be in any AEP Ohio proceeding opposing AEP Ohio's efforts to build new generation in Ohio. (FES Br. at 137, citing Tr. Vol. VI at 1039.)

Stipulated ESP so that all Ohioans can begin to receive the benefits of competition in the markets for electric power.

Dated: November 18, 2011

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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11/18/2011 3:53:57 PM

in

Case No(s). 10-2376-EL-UNC, 11-0346-EL-SSO, 11-0348-EL-SSO, 11-0349-EL-AAM, 11-0350-EL-AAM

Summary: Reply Reply Brief in Support of the Stipulated Electric Security Plan Provided in the Stipulation and Recommendation Filed September 7, 2011 electronically filed by M HOWARD PETRICOFF on behalf of Exelon Generation Company, LLC