

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

**MOTION FOR LEAVE TO INTERVENE OF
EXELON GENERATION COMPANY, LLC AND
CONSTELLATION NEWENERGY, INC.**

Now come Exelon Generation Company, LLC and Constellation NewEnergy, Inc. (jointly "Exelon"), who, pursuant to Section 4903.221, Revised Code and Rule 4901-1-11 of the Ohio Administrative Code, move for intervention in the above styled proceeding as full parties of record. The reasons supporting the intervention are contained in the accompanying Memorandum in Support.

WHEREFORE, Exelon respectfully requests that the Commission grant this joint motion for leave to intervene and that Exelon be made a full party of record.

Respectfully Submitted,



M. Howard Petricoff (0008287)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P. O. Box 1008
Columbus, Ohio 43216-1008
Tel. (614) 464-5414
Fax (614) 464-6350

Attorneys for Exelon Generation Company, LLC and
Constellation NewEnergy, Inc.

**MEMORANDUM IN SUPPORT OF THE MOTION TO INTERVENE OF EXELON
GENERATION COMPANY, LLC AND CONSTELLATION NEWENERGY, INC.
AND COMMENT ON THE PROPOSED PROCEDURAL SCHEDULE**

Section 4903.221, Revised Code and Rule 4901-1-11 of the Ohio Administrative Code, establish the standard for intervention in the above-styled proceeding as a full party of record.

Rule 4901-1-11 of the Ohio Administrative Code states in part:

Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:

* * *

(2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

In addition to establishment of a direct interest, the factors that the Public Utilities Commission of Ohio (the "Commission") considers in implementing the above rule are the nature of the intervenor's interest, the extent that interest is represented by existing parties, the intervenor's potential contribution to a just and expeditious resolution of the issues involved, and whether intervention would result in an undue delay of the proceeding. (See also R.C. 4903.221(B) upon which the above rule is authorized). A review of these factors in light of following facts supports granting Constellation's intervention.

Exelon Generation Company, LLC, which owns or controls approximately 30,000 MWs of generating facilities, is a subsidiary of Exelon Corporation, which is located at 10 S. Dearborn Street, Chicago, Illinois. Exelon Power Team is the wholesale marketing division of Exelon Generation Company and is a leading power marketer throughout the country. Exelon Energy Company ("Exelon Energy") is a wholly-owned subsidiary of Exelon Generation and is (i) an electric retail service provider in Illinois, Pennsylvania and Ohio; and (ii) a gas retail service

provider in Illinois, Michigan, Ohio and Pennsylvania. Exelon Generation Company, LLC will be focused on the impact of the application on the wholesale generation market.

Constellation NewEnergy, Inc. ("CNE") provides electricity and energy-related services to retail customers in Ohio as well as in 15 other states, the District of Columbia and two Canadian provinces and serves more than 15,000 megawatts of load and more than 10,000 customers. CNE holds a certificate as a competitive retail electric supplier ("CRES") from the Commission to engage in the competitive sale of electric service to retail customers in Ohio. CNE currently provides service to retail electric customers in the FirstEnergy service territory and in the State of Ohio.

In its application, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, "FirstEnergy") is requesting Commission approval of an Electric Security Plan ("ESP") pursuant to Section 4928.141, Revised Code. FirstEnergy characterizes the newly-filed ESP as a continuation of the ESP currently in effect, with modifications including the following: 1) potentially enabling the Companies to bid demand response resources and energy efficiency resources into the PJM 2015-2016 Base Residual Auction; 2) modifying the bid schedule previously approved in the Companies' current ESP so that the bids to occur in October 2012 and January 2013 will be for a three year period rather than a one year period; and 3) extending the recovery period for renewable energy credit costs over the life of the ESP plan.

Exelon has business interests in the State that will be affected by the outcome of the proceeding. As a potential supplier of electric power and energy to customers in the FirstEnergy service territory, Exelon has an interest in the instant proceeding as the Commission assesses whether the Application is consistent with Senate Bill 221. In addition, the Commission is being

asked to make other decisions that will affect the viability of the competitive electric market in Ohio in which Exelon Generation Company, LLC provides electric power and other products and services to wholesale customers and in which Constellation NewEnergy, Inc. is a supplier of electric power and energy to retail customers.

FirstEnergy is seeking Commission action essentially on the face of the Application, without the customary time that is allotted for testimony, hearings, or briefings in ESP cases. To that end, FirstEnergy has filed a Motion for Waiver of Rules, Request for Expedited Treatment, in which it seeks Commission action by May 2, 2012, and in no instance later than June 20, 2012. FirstEnergy contends that the Stipulation included in its Application resolves the vast majority of issues and concerns.

The desire for quick action in this case must be weighed against the fact that parties are being asked to forgo any changes to the FirstEnergy market structure for an additional two years. Although Exelon Generation appreciates and respects the stated goal of the expedited process, the Stipulation does not address any lessons learned or seek to make improvements to the competitive wholesale procurement process, and does not address any potential enhancements to the rules and regulations that govern the retail electric market structure. For example, with simple changes to the auction construct and the terms included in the Master Supply Agreement, the competitiveness of the auction and the prices of winning bids can be improved, which will ultimately inure to the benefit of Ohio consumers. Additionally, modifications can and should be made on the data, information, and operational issues that affect the viability and competitiveness of the retail electric market, similarly benefiting customers. The instant proceeding provides the Commission with an opportunity to address such issues for the improvement of the competitive retail and wholesale market. However, if the Commission chooses to approve the Stipulation for

the overarching reasons articulated by the Applicants, the Commission should establish a means by which these issues can be addressed and resolved, whether it be through a separate docketed proceeding or through some other forum or process in which the Commission retains oversight.

This motion for intervention precedes any intervention deadline, which has not yet been set by the Commission, and should not unduly delay the instant proceedings. Finally, because of its unique expertise and participation in the competitive retail and wholesale markets in Ohio and across the country, Exelon will be able to assist in the development of a full and complete record to assist the Commission in its consideration of the Application.

WHEREFORE, Exelon respectfully requests that the Commission grant this motion for leave to intervene and that Exelon be made a full party of record. For purposes of receiving service in the proceeding, in addition to the undersigned, Exelon requests that the following persons be placed on the official service list:

Stephen Bennett
Retail Policy Manager
Exelon Generation Company, LLC
300 Exelon Way
Kennett Square, PA 19348
Stephen.bennett@exeloncorp.com

David I. Fein
Vice President, State Government Affairs - East
Exelon Corporation
550 West Washington Blvd., Suite 300
Chicago, IL 60661
david.fein@constellation.com

Sandy I-ru Grace
Assistant General Counsel
Exelon Business Services Company
101 Constitution Ave., N.W.
Washington DC 20001
Sandy.grace@exeloncorp.com

Cynthia Brady
Senior Counsel
Constellation Energy Resources, LLC
550 West Washington, Blvd., Suite 300
Chicago, IL 60661
cynthia.brady@constellation.com

Respectfully Submitted,



M. Howard Petricoff (0008287)
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P. O. Box 1008
Columbus, Ohio 43216-1008
Tel. (614) 464-5414
Fax (614) 464-6350

Attorneys for Exelon Generation Company, LLC and
Constellation NewEnergy, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 16th day of April, 2012 by electronic mail or, where indicated, by regular U.S. mail, postage prepaid, upon the persons listed below.



M. Howard Petricoff

Asim Z. Haque
Ice Miller LLP
250 West Street
Columbus, OH 43215
asim.haque@icemiller.com

Matthew S. White
IGS
6100 Emerald Parkway
Dublin, OH 43016
mwhite@igsenergy.com

Colleen L. Mooney
OPAE
1431 Mulford Road
Columbus, OH 43212
cmooney2@columbus.rr.com

Joseph M. Clark
Direct Energy / Vectren Source
6641 North High Street, Suite 200
Worthington, OH 43085
jmclark@vectren.com

Laura McBride
Calfee, Halter & Griswold LLP
1400 KeyBank Center
800 Superior Avenue
Cleveland, OH 44114
lmcbride@calfee.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/16/2012 5:02:02 PM

in

Case No(s). 12-1230-EL-SSO

Summary: Motion Motion for Leave to Intervene electronically filed by M HOWARD PETRICOFF on behalf of Exelon Generation Company, LLC and Constellation NewEnergy, Inc.