

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)	
Power Company for Approval of Full Legal)	Case No. 12-1126-EL-UNC
Corporate Separation and Amendment to its)	
Corporate Separation Plan)	

COMMENTS ON AEP OHIO'S CORPORATE SEPARATION APPLICATION
BY CONSTELLATION NEWENERGY, INC.
AND EXELON GENERATION COMPANY, LLC

Constellation NewEnergy, Inc. and Exelon Generation Company, LLC (collectively "Exelon") respectfully submit the following comments in response to the Columbus Southern Power Company and Ohio Power Company's (collectively, "AEP Ohio's") March 30, 2012 Application for Approval of Full Legal Corporate Separation and Amendment to its Corporate Separation Plan (the "Application").

* * * *

Exelon supports AEP Ohio's request for corporate separation as a necessary attribute of a well-functioning competitive retail market and as another important step towards the goal of a fully competitive retail and wholesale market structure within the AEP Ohio service territory. That said, Exelon takes issue with one aspect of AEP Ohio's Application.

In AEP's pending ESP II proceeding (Case No. 11-346-EL-SSO) Exelon proposed that AEP Ohio's first SSO auction for capacity and energy be advanced to June 1, 2014. (*See* Exelon's Initial Post-Hearing Brief at 5-6; Direct Testimony of David Fein at 14-15.) As articulated in that proceeding, among other reasons, this accelerated auction date is appropriate because corporate separation and termination of the AEP East Pool, which AEP has always claimed were preconditions to the auction, are scheduled to occur no later than January 1, 2014—well in advance of Exelon's proposed date. (*See id.* at 5).

In its Application for corporate separation in this proceeding, AEP Ohio proposes that AEP Genco will provide capacity and energy up to the January 1, 2015 auction, and that it will provide capacity up to the June 1, 2015 auction. (*See* AEP Application at 15-16; AEP's Modified Plan of Separation at Section 4). But there is no compelling reason—and certainly no evidence in the record here or in ESP II—to postpone the auctions in the manner suggested by AEP Ohio. (*See* Exelon's Initial Brief at 5-6.) What the evidence does show, is that advancing the energy and capacity auction to June 2014 would be pro-competitive and in the best interests of consumers in AEP Ohio's service territory. (*Id.*).

Under these circumstances, if the Commission adopts the earlier auction date proposed by Exelon in the ESP II proceeding (or any other earlier date), then it should also require that the proposed SSO Contract with AEP Genco be modified to allow for the provision of capacity and energy by AEP Genco only up to the earlier auction date.

Dated: July 27, 2012

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by electronic mail upon counsel for all parties of record in this case on the 27th day of July, 2012.

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I hereby certify that a copy of the Motion for Intervention was served by electronic mail upon counsel for all parties of record in this case on the 27th day of July, 2012.

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APPENDIX

- 1. Initial Post-Hearing Brief of Constellation NewEnergy, Inc., Constellation Energy Commodities Group, Inc., Exelon Energy Company, Inc., Exelon Generation Company, LLC.**
- 2. Direct Testimony of David I. Fein on Behalf of Intervenor Constellation NewEnergy, Inc., Constellation Energy Commodities Group, Inc., Exelon Energy Company, Inc., Exelon Generation Company, LLC.**

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)	
Columbus Southern Power Company and)	
Ohio Power Company for Authority to)	Case No. 11-346-EL-SSO
Establish a Standard Service Offer)	
Pursuant to § 4928.143, Ohio Rev. Code, in)	Case No. 11-348-EL-SSO
the Form of an Electric Security Plan.)	
)	
)	
In the Matter of the Application of)	Case No. 11-349-EL-AAM
Columbus Southern Power Company and)	
Ohio Power Company for Approval of)	Case No. 11-350-EL-AAM
Certain Accounting Authority.)	

INITIAL POST-HEARING BRIEF OF
CONSTELLATION NEWENERGY, INC.
CONSTELLATION ENERGY COMMODITIES GROUP, INC.
EXELON ENERGY COMPANY, INC.
EXELON GENERATION COMPANY, LLC

June 29, 2012

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Pursuant to Ohio Administrative Code (OAC 4909-1-12), Exelon Generation Company, LLC, Exelon Energy Company, Inc., Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, 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.

INTRODUCTION

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 NewEnergy 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 to customers located in the service territory of AEP Ohio throughout Ohio and a wholesale power provider to Ohio electric distribution companies (“EDCs”), 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 develop in the AEP Ohio service territory, 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 AEP Ohio.

Exelon was a signatory to the September 7, 2011 Stipulation ("Stipulation") that the Commission first approved and then rejected. Exelon believed that the Stipulation was a reasonable compromise of diverse issues, and that it offered a viable path forward for developing both retail and wholesale competition in AEP Ohio's service territory. The proposed ESP retains some of the important features of that Stipulation, principally a transition to full reliance upon the competitive wholesale and retail markets, separation of the generation assets from the EDU, competitive wholesale procurements to establish the standard service offer ("SSO"), a transitory capacity construct leading ultimately to the transparent competitive RPM price for capacity, and certain retail market enhancements. Unfortunately, however, the proposed ESP omits some of the positive aspects of the Stipulation. As a result, the record supports modifications to the ESP in order for the ESP to meet the statutory requirements of Section 4928.143, Revised Code, and the Commission's obligation to ensure reasonably priced retail electric service (Section 4928.02(A), Revised Code), as well as to ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs (Section 4928.02(B), Revised Code).

Exelon requests that the Commission approve the ESP, subject to the following modifications pursuant to its authority in Section 4928.143(C)(1), Revised Code. All of the suggested modifications are supported in the record by the Direct Testimony of Exelon witness David I. Fein, Exelon Ex. 101 ("Fein Testimony"):

- It should ensure that customers who shopped and entered into contracts with CRES providers at then prevailing RPM prices while the Stipulation was in effect will retain the benefits of that pricing, and not be subject to the capacity pricing embodied in the proposed ESP;
- It should accelerate the first full requirements SSO auction for energy and capacity to June 2014 from the present schedule under which the first SSO auction for energy will be conducted in January 2015 and the first RPM capacity auction in June 2015;
- To eliminate uncertainty and thereby lower costs, it should establish the rules applicable to this auction in this proceeding by, at a minimum, applying the procedures and processes applicable to the FirstEnergy and Duke auctions, but with the additional improvements Exelon recommends;
- If the Commission approves the proposed RSR, or some variant thereof, it should ensure that this generation-related cost is not imposed on shopping customers as AEP Ohio proposes; and
- To strengthen retail competition in the AEP Ohio territory, it should order the retail market enhancements recommended by Exelon and specified in Part V hereof.

The AEP Ohio witnesses have testified at length about the “balance” that the proposed ESP has struck, and how AEP Ohio would have to think “long and hard” about accepting any changes to the proposed ESP (*e.g.*, Tr. (Powers), May 17, 2012 at 51). However, the following discussion will show that these five changes proposed by Exelon

should be easy to accept as they will substantially benefit competition and customers but will cost AEP Ohio almost nothing – at least nothing that is established by the record.

ARGUMENT

I. The RPM Price Should Continue To Be Available To Customers Who Shopped While The Stipulation Was In Effect

During the ESP period, AEP Ohio proposes to make available to CRES providers capacity at two different prices: \$146 per MW-day for so-called Tier 1 customers and \$255 per MW-day for Tier 2 customers. According to AEP Ohio witness Allen, the \$146 Tier 1 price is the approximate RPM price for PJM planning year 2011-12.¹ As Mr. Fein explains, however, it would be grossly unfair as well as anti-competitive to allow AEP Ohio to charge the \$146 price to customers who signed contracts reflecting RPM pricing. Instead, the prevailing RPM-based capacity charge as it exists from time to time during the ESP period should be available to all customers who shopped during the period the Stipulation was in effect – from December 14, 2011 to February 23, 2012. Those customers entered into contracts for competitive retail supply reflecting RPM-priced capacity in reasonable reliance on what appeared to be a balanced settlement seeking an appropriate transition to the competitive market for electricity in the AEP Ohio service territory. Therefore, it is only fair and sound regulatory policy to protect those customers and maintain their access to market-based capacity beyond May 31, 2012 until all AEP Ohio customers receive RPM priced capacity – either in June 2015 as AEP Ohio proposes or in June 2014 as Exelon proposes (and explains in the discussion in the following Part of this Initial Brief). (Fein Testimony at 12:14-13:4).

¹ See Direct Testimony of William A. Allen (Mar. 30, 2012) at 7:7-9.

II. The First Full Requirements SSO Auction for Energy and Capacity Should be Advanced to June 2014 To Accelerate The Availability Of Market-Based Prices

Exelon recommends that the first SSO auction for energy and capacity be advanced to June 1, 2014. The sooner this auction is held, the earlier the customers of AEP Ohio will realize the benefits of competition denied them for so long. That much is irrefutable.

It is also clear from the evidence that no reason exists not to have this auction earlier. First, corporate separation and termination of the AEP East Pool, which AEP has always claimed were preconditions to an auction, are scheduled to be completed five months earlier by January 1, 2014 (and perhaps sooner). Second, AEP Ohio has not identified any impediment to holding this auction earlier; indeed AEP Ohio witness Powers, the Chief Operating Officer of AEP, testified that AEP Ohio's status as an FRR entity would not prohibit or prevent accelerating this auction. (*See* Tr. (Powers), May 18, 2012 at 368:5-12). Further, Mr. Powers was unaware of any discussion within AEP of how the Exelon early auction proposal might adversely affect the AEP Ohio distribution utility in 2014. (*Id.* at 367:13-20). Indeed, AEP Ohio already has committed to a full requirements SSO auction for energy in January, 2015, only seven months later.

Third, the record evidence affirmatively demonstrates that accelerating the energy and capacity auction to June 2014 will not affect the financial condition of the AEP Ohio "wires company," which will continue to be the regulated distribution company within AEP. Post-corporate separation, any harm from selling generation competitively will accrue to the AEP Genco. (Tr. (Powers), May 17, 2012 at 257:2-8). AEP Ohio witness Allen confirmed that the earlier auction would have no real effect on the earnings of the AEP

Ohio wires utility. (Tr. (Allen), May 23, 2012 at 1668-69). Further, AEP Ohio has introduced no evidence suggesting the extent to which, if at all, the AEP Genco might be adversely affected by accelerating the auction. AEP Ohio witness Allen confirmed that AEP Ohio has no study or analysis showing any adverse effect on either the AEP Ohio wires company or the AEP Genco that might result from moving the auction forward to June 2014. (*Id.* at 1666-67, 1671).

Even under AEP Ohio's proposal, the AEP Genco will assume the risk of selling the output of its generation in the competitive market, after May 31, 2015, at whatever prices it can obtain. (Tr. (Powers), May 17, 2012 at 245:9-14). Nothing in the record supports a conclusion that requiring AEP Genco to bear those same risks after May 31, 2014 will put the Genco in any worse position than under AEP Ohio's own proposal.

Again, the record affirmatively reflects that no harm to the AEP Genco is likely to result from accelerating the auction to June 2014. In 2011, AEP Ohio's earned return on equity was greater than 12% even though it charged RPM prices for capacity and had no RSR or similar mechanism. (Allen Direct at 14:6, WAA-6). For the PJM planning year 2014/15 RPM prices will be at the level of approximately \$125 per MW-day,² only slightly less than the \$146 charged through the last seven months of 2011.

² See "2014/2015 Base Residual Auction Results" at <http://pjm.com/markets-and-operations/rpm/rpm-auction-user-info.aspx#Item08>.

III. The Commission Should Direct AEP Ohio To Conduct Its Competitive Bid Process (CBP) In A Manner That Is Consistent With The Most Recent Successful Auctions In Ohio And That Ensures The Best Possible Outcome For Consumers

As Mr. Fein explains, resolving the competitive procurement process details now, in this case, will help expedite AEP Ohio's transition to full competition, whereas setting these issues for separate hearing would cause unnecessary delays and uncertainty. In general, Exelon recommends that AEP Ohio should establish a CBP that is consistent with the statutory directives in Section 4928.142, Revised Code, including:

- an open, fair, and transparent competitive solicitation;
- clear product definitions;
- standard bid evaluation;
- oversight by an independent third party that designs the solicitation, administers the bidding, and ensures that the first three criteria above are met;
- evaluation of the bids submitted prior to the selection of the least-cost bid winner or winners; and
- membership in a Regional Transmission Organization ("RTO") with a market monitor function and the ability to take actions to identify and mitigate market power.

The earlier that the Commission can approve all aspects of a procurement process, including an SSO agreement, credit requirements and forms, detailed timeline, bidder information process, communications protocols and other matters, the better. In addition, to ensure the greatest possible level of auction participation, AEP Ohio should ensure that

the dates for future procurement events do not conflict with the dates for other default service procurements conducted by other EDUs in PJM, MISO, and New England. (Fein Testimony at 21:19-22:4).

It is critical that substantive aspects of the competitive procurement process are not left open to determination or interpretation by AEP Ohio, the CBP Manager, or post-event Commission action. In the May 2009 FirstEnergy auction, open issues such as phase-ins deferrals, and the use of a reservation price, to name a few, increased uncertainty and potential risks. These additional risks undermine the effectiveness of the auction and can lead to *less* robust bidder participation, and *less* efficient prices. High degrees of transparency and confidence in the rules and the design ensure potential suppliers possess all of the necessary information to participate successfully. (Fein Testimony at 22:8-16).

AEP Ohio should be directed by the Commission to use the same processes that Duke Energy and FirstEnergy used in their most recent, successful Ohio procurements, which mirror the processes used in numerous other restructured electric markets (including MISO and PJM). The important features of these procurement processes include:

- The provision of a wide range of data and information for interested bidders;
- The use of an independent manager for the CBP;
- The creation of a website that is dedicated to the CBP that will contain necessary information about the CBP and allow bidders and stakeholders

to receive updates, ask questions, and have access to data that will better assist participants in the formulation and evaluation of bids.

Further, Exelon recommends that AEP Ohio be required to provide certain data and information to potential participants in the CBP³ and to successful bidders.⁴ Put simply, the provision of this additional data and information will allow potential CBP participants to provide more accurate and competitive bids, and will allow winning CBP suppliers to better manage the risks of supplying load on a going-forward basis. All of this will lead to more competitive bidding and bid prices. In recognition of this reality, prospective bidders and winning suppliers get most, if not all, of this type of data and information in CBPs in

³ This data would include:

- (1) Monthly information specific to municipal opt-out aggregation programs that includes peak load, hourly consumption, and population statistics for existing programs and programs that are proposed for commencement during the term of an SSO;
- (2) Hourly load data for eligible and SSO load by customer class as close as practical in time to the auction date;
- (3) Customer counts, peak demand and NSPL for eligible and SSO load by customer class as close as practical in time to the auction date;
- (4) For NITS charges, the expected allocation (below 138 kV) by rate class;
- (5) Historical distribution losses and any allocated Unaccounted for Energy (if applicable);
- (6) For the larger nonresidential customer base, a distribution of the number of customers above and below 500kW within a rate class; and
- (7) Hourly consumption, customer counts, peak demand broken out by customer class as close as practical in time to the auction date (*e.g.*, a maximum of a 1 or 2 month lag) separated by eligible load and load served by CRES providers.

⁴ This information would consist of:

- (1) Peak load (or hourly consumption) data that is updated monthly beginning after the execution of the SSO MSA that shows eligible load and load taking service from a CRES provider;
- (2) Initial settlement hourly data;
- (3) From the time that the MSAs are executed, daily estimations for the capacity peak load contribution data seven days forward; and
- (4) To the extent available, the energy and capacity information that Ohio Power provides to PJM related to suppliers' SSO obligations.

other states, including New Jersey, Maryland, Pennsylvania and Delaware. (Fein Testimony at 23:10-25:17).

Finally, Exelon recommends improvements in three other, related areas. *First*, based on its experience with the FirstEnergy and Duke auctions, Exelon recommends that the CBP Manager (or AEP Ohio) should not be allowed to develop a “reservation price” as part of the CBP, because doing so increases uncertainty regarding the approval process, which in turn increases risks to bidders and the prices they are able to offer. The CBP Manager should be required to notify winning bidders when the Report has been delivered to the Commission, thereby allowing winning bidders to have an additional piece of information regarding the timing associated with potential action by the Commission and reducing uncertainty. Finally, the CBP Manager should be required to provide responses to FAQs within two business days of submission, as opposed to following an unpredictable or *ad hoc* schedule. (Fein Testimony at 25:19-27:13).

Second, AEP Ohio should be required to use a Master Supply Agreement (“MSA”) that is consistent with the one adopted for Duke Energy Ohio and consistent with other industry-standard agreements for wholesale supply. The Commission should recognize that suppliers have an increasing array of opportunities and markets within which to sell their products, and should accordingly make Ohio as attractive a jurisdiction into which to sell as possible. To that end, Mr. Fein recommends that the Commission review and compare the procurement contracts and credit requirements of other utilities and other jurisdictions to ensure that AEP Ohio’s CBP and MSA are at least equally – or even more – attractive to potential bidders. Specifically in this regard, Mr. Fein suggests excluding NITS,

Generation Deactivation Charges, and Economic Load Response costs (under FERC Order 745) from the auction product, as these non-market charges are neither easily predicted nor managed by suppliers and thus would reduce supplier participation and/or increase prices. (See Fein Testimony at 28:16-29:4). Notably, the auction products in both Duke's and First Energy's ESPs exclude virtually all of these non-market based charges for these very reasons. Similarly, Mr. Fein suggests removing of any Independent Credit Requirement; the implementation of a weekly settlement process; and the elimination of any compulsory "notional quantity language," as has become industry standard in most PJM states. (See Fein Testimony at 27:15-29:22).

Third, Exelon recommends the Commission require AEP Ohio to use a collaborative stakeholder process prior to any future proposals for a CBP to maximize the number of qualified participants and obtain the best offer possible. (Fein Testimony at 30:2-31:2).

IV. Any RSR Should Be Bypassable By Shopping Customers

The RSR proposed by AEP Ohio is designed to provide a revenue stream during the ESP period that would allow it to earn a 10.5% return on equity. (Allen Direct at 14:7-11, WAA-6). Exelon does not oppose affording AEP Ohio a measure of protection against adverse financial effects it may experience in transitioning to competition and it takes no position on whether the RSR ought to be approved at the level AEP proposes. Exelon firmly believes, however, that any RSR or similar mechanism should be bypassable by shopping customers, not non-bypassable as AEP Ohio has proposed.

A. A Non-Bypassable RSR Charge Would Stifle Competition

As Exelon witness Fein explained, recovering such a generation-related charge from shopping customers would stifle competition. (Fein Testimony at 13:15-16). Customers supplied by CRES providers receive all of their generation-related service from that provider. If shopping customers are forced unfairly to continue to pay the EDU for generation-related charges in addition to paying the CRES provider, they effectively pay twice for the same service. Paying the utility for a service the customer already receives from the CRES provider would likely cause shopping customers to pay more for electric power than if they had not switched, even if the CRES supplier's generation price is lower than the SSO. (*Id.* at 13:20-14-1). AEP Ohio has conducted no analysis of the extent to which a non-bypassable RSR would chill competition (Tr. (Allen), May 23, 2012 at 1666) and, in fact, it provides no evidence to refute these conclusions.

B. Ohio Law Precludes a Non-Bypassable RSR Charge

Moreover, the law precludes the non-bypassability of the RSR charge. In SB 221, amending Section 4928.02 (H), Revised Code, the Ohio General Assembly prohibited "the recovery of any generation-related costs through distribution or transmission rates." The RSR enables "recovery of . . . generation related costs" as it is designed to mitigate generation-related impacts from: (1) auctions before expiration of the ESP period; and (2) so-called "discounted" capacity pricing made available under the ESP. (Tr. (Powers), May 17, 2012 at 264:18-265:2). Because recovering an RSR charge from shopping customers necessarily would be through a rider connected to a distribution rate, it would violate the cited provision.

C. Non-Shopping Customers Are Not Likely to be Worse Off If the Charge Is By-passable Than Under AEP Ohio's Proposal

Accepting all of AEP Ohio's switching assumptions, the RSR would increase a residential customer's bill by about 2.1%. (Tr. (Allen), May 23, 2012 at 1664). It is true that a bypassable RSR imposed only on non-shopping customers will have a greater impact on them than would a non-bypassable RSR. The record, however, contains ample evidence indicating that AEP Ohio has overstated the magnitude of the RSR, and the RSR revenues needed to earn the target 10.5%⁵ are likely much lower than AEP Ohio has proposed. The amount of the RSR is highly dependent upon shopping assumptions, and increases as shopping increases. AEP Ohio's analysis supporting the RSR amount (submitted with the ESP application in March 2012) assumes shopping at levels of 65%, 80%, and 90% for residential, commercial and industrial customers, respectively;⁶ yet only one month earlier in 2012, at an investor forum in Japan, AEP Ohio projected shopping for only 24% of its overall load, even with an RPM capacity price for Tier I customers lower than the Tier I capacity prices embodied in the current ESP.⁷ If shopping is merely half of what AEP Ohio assumed in its analyses, the RSR's effect on shopping customers likewise will be halved.

D. Principles of Cost-Causation Do Not Require the RSR Charge to be Non-Bypassable

Although non-shopping customers arguably do not cause the anticipated loss of revenue underlying the RSR, under the two-tiered capacity proposal advanced by AEP Ohio, shopping customers will continue to pay a share of those above-market generation

⁵ Exelon takes no position on the appropriateness of a 10.5% ROE for AEP Ohio within the context of the ESP.

⁶ Allen Direct at 5:3-6.

⁷ Tr. (Sever), May 21, 2012 at 902:18-903:22 and FES Exs. 108 and 109.

costs. In a cost-based rate-making regime, regulators may apply the policy of “imposing costs on the cost causer,” but this ESP reflects no such regime. In the event of any conflict, Ohio’s statutory requirement to further competition trumps the cost-causation approach.

V. AEP Ohio Should Make Changes To Enable The Development Of The Competitive Retail Market

AEP Ohio seeks to continue tariff requirements and business practices that act as barriers to retail competition including billing limitations, a 90-day notice provision to exercise a right to select a CRES provider, and inadequate processes for the provision of necessary data and information. (Fein Testimony at 31:7-11). AEP Ohio should eliminate these barriers to competition. Specifically, the Commission should direct AEP Ohio to: (1) implement Rate Ready and Bill Ready billing; (2) implement a standard, non-recourse Purchase of Receivables program; (3) eliminate the 90-day Notice for large commercial and industrial customers; and (4) implement a process to provide CRES providers with the same data and information that the Commission recently approved in its Order regarding Duke Energy Ohio’s ESP.⁸

Moreover, the Commission should require that AEP Ohio provide CRES suppliers additional data and information. Consistent with the Order adopted in the recent Duke

⁸ Namely a Web-based, electronic system that provides access to key customer usage and account data that can be accessed via a supplier website that presents data and information in a format that can be automatically downloaded or “scraped” including the following: account numbers; meter numbers; names; service address, including zip codes; billing address, including zip codes; email address; meter reading cycle dates; meter types; indicator if customer has an interval meter; rate code indicator; load profile group indicators; peak load contribution (“PLC”) and network service peak load (“NSPL”) values (capacity and transmission obligations); 24 months of consumption data (in kWh) by billing period; 24 months of demand data (in kW); 24 months of interval data; indicator if SSO customer; and identifier as to whether customer is participating in the budget billing plan. Fein Testimony at 32:3-33:5.

Energy Ohio ESP,⁹ the following types of data should be provided via electronic data interchange ("EDI") transactions: 867 historical usage ("HU") and historical interval ("HI"); 867 monthly usage and monthly interval data; NSPL and PLC in 867 HUs, 867HIs, and 814 accepted enrollment responses; and meter read cycle and load profile segment information to be included in 867HUs no later than December 31, 2012, as agreed to in the Ohio EDI Working Group – change control #82 (current rate code already included in 867HUs). (Fein Testimony at 33:8-16). In addition, AEP Ohio should allow accounts requested together in the same EDI envelope to come back together, unless an unnecessary delay for a particular subset of accounts would result. Further, on a confidential basis, a quarterly updated sync list should be available upon request to CRES providers showing the accounts that are enrolled with the CRES provider. The list would contain information such as service start date, bill method, NSPL values, and PLC values. AEP Ohio should also confirm that validation, error detection, and editing (VEE) rules and processes are now in place and will continue to be applied to raw meter read data before AEP Ohio transmits such usage data to CRES providers via EDI. (Fein Testimony at 33:17-34:5).

Providing this information will enable CRES providers to better serve prospective customers, meet the needs of existing customers, and manage their businesses. In particular, it will facilitate making tailored competitive offers to prospective customers and checking the enrollment status of new customers, resulting in more cost efficient competition and better choices for customers of AEP Ohio. (Fein Testimony at 34:7-12).

⁹ See Opinion and Order (Case No. 11-3549-EL-SS0, November 22, 2011) at 37-38.

Any unnecessary delay in providing this data and information can adversely affect CRES providers' ability to contract with customers and can economically harm customers, as prices may change during any delays. Failure to submit timely and accurate interval data to CRES providers undermines their ability to provide customers price quotations and to issue timely invoices, thereby inconveniencing customers and increasing suppliers' costs. (Fein Testimony at 34:18-35:4). Therefore, the Commission should direct AEP Ohio to make such usage and account information available to CRES providers, including interval data, through a website or through other electronic means.

It is also important to have clear, easy-to-follow implementation tariffs addressing retail choice rules, for at least three reasons: First, it increases efficiency. Having clear tariffs lowers transaction costs for customers by avoiding wasting time and resources seeking interpretations of ambiguous tariff language. (Fein Testimony at 35:13-16). Second, tariffs that clearly describe product, rules, and contract terms minimize time consuming and costly misunderstandings. (*Id.* at 35:16-20). Third, clear tariffs provide the best, most definitive guidepost and operating manual for customers and suppliers alike to successfully navigate the competitive process. (*Id.* at 35:21-23).

In a recent CBP, the final tariff structure not only lacked clarity, but also was provided just days before the auction, and only after many requests. Greater clarity, farther in advance, would have enabled suppliers to better estimate switching risk, to provide the most efficient price possible. (Fein Testimony at 36:6-10). Therefore, the Commission should require that AEP Ohio file the applicable implementation tariffs within

thirty days of the entry of a final Order in this proceeding, but in no event less than ninety days prior to their effective date.

CONCLUSION

This case affords the Commission an historic opportunity to provide AEP Ohio customers the full benefits of competition. The modifications suggested by Exelon will transform the proposed ESP into a robust, workable plan for AEP Ohio's transition to full competition. The Commission should modify the proposed ESP as suggested by Exelon, and as supported by the evidence. Accelerating the SSO auction by five months and the RPM-based capacity pricing by twelve months would provide consumers the benefits of competition sooner without harming the regulated AEP Ohio wires company or the AEP Genco. Any economic harm that may arise during AEP Ohio's transition to full competition can be mitigated by a limited bypassable "Retail Stability Rider." Further, if the Commission approves some form of tiered above-market capacity charges, the Commission should protect those customers who signed contracts providing for RPM capacity pricing by maintaining their market pricing throughout the ESP term. The Commission also should ensure that the CBP rules are plainly delineated well before the auctions are scheduled, preferably in this proceeding, and adopt the information and contract recommendations advanced by Exelon. Finally, but not least, the Commission should also adopt retail market enhancements proposed by Exelon.

Dated: June 29, 2012

Respectfully submitted,

s/ David M. Stahl

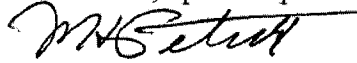
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The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 29th day of June, 2012 by electronic mail, upon the persons listed below.



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

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)	
Columbus Southern Power Company)	
and Ohio Power Company for)	Case No. 11-346-EL-SSO
Authority to Establish a Standard)	
Service Offer Pursuant to § 4928.143,)	Case No. 11-348-EL-SSO
Ohio Rev. Code, in the Form of an)	
Electric Security Plan.)	
)	
)	Case No. 11-349-EL-AAM
In the Matter of the Application of)	
Columbus Southern Power Company)	Case No. 11-350-EL-AAM
and Ohio Power Company for Approval)	
of Certain Accounting Authority.)	

DIRECT TESTIMONY OF

DAVID I. FEIN

ON BEHALF OF INTERVENORS

CONSTELLATION NEWENERGY, INC.

CONSTELLATION ENERGY COMMODITIES GROUP, INC.

EXELON ENERGY COMPANY, INC.

EXELON GENERATION COMPANY, LLC

PUBLIC VERSION

May 4, 2012

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DIRECT TESTIMONY OF DAVID I. FEIN

I. INTRODUCTION

A. Identification of Witness

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

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

² Direct Testimony of Philip J. Nelson in Supp. of AEP Ohio's Modified Elec. Sec. Plan (Mar. 30, 2012),
2

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

11 **Q. On whose behalf are you testifying?**

12 **A.** I am testifying on behalf of CNE; Constellation Energy Commodities Group, Inc.;
13 Exelon Energy Company; and Exelon Generation Company, LLC (collectively
14 "Exelon").

15 **Q. Please provide some background on the Exelon Companies on whose behalf**
16 **you are testifying in the instant proceeding.**

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

1 unit provides energy products and services to approximately 100,000 business and
2 public sector customers and approximately 1 million residential customers.
3 Exelon's utilities deliver electricity and natural gas to approximately 6.6 million
4 customers in central Maryland, northern Illinois and southeastern Pennsylvania.

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

18 *Exelon Energy Company* ("Exelon Energy"), a subsidiary of Exelon Generation, is a
19 licensed competitive retail electric service ("CRES") provider in Ohio and several
20 other states. Exelon Energy has over 20,000 retail electric and gas customers across
21 this region, mainly comprising industrial and large commercial customers.

1 CNE, a subsidiary of Exelon Generation, provides electricity and energy-related
2 services to retail customers in Ohio as well as in 15 other states, the District of
3 Columbia, and two Canadian provinces and serves more than 15,000 megawatts of
4 load and more than 10,000 customers. Like Exelon Energy, CNE holds a CRES
5 license from the Public Utilities Commission of Ohio ("PUCO" or "the Commission")
6 to engage in the competitive sale of electric service to retail customers in Ohio. CNE
7 currently provides service to retail electric customers in Ohio.

8 *Constellation Energy Commodities Group, Inc* ("CCG"), a subsidiary of Exelon
9 Generation, provides wholesale power and risk management services to wholesale
10 customers (distribution utilities, co-ops, municipalities, power marketers, utilities
11 and other large load serving entities), throughout the United States and Canada, in
12 both regulated and restructured, competitive energy markets. CCG is active in the
13 PJM Interconnection, L.L.C. wholesale power markets and has sold power for
14 wholesale delivery in Ohio.

15 **Q. Have you previously submitted testimony before this Commission?**

16 **A.** Yes. I have testified before this Commission in a number of Standard Service Offer
17 ("SSO") proceedings involving AEP, FirstEnergy, Duke Energy Ohio, and Dayton
18 Power & Light Company. Most recently, I submitted Direct Testimony in the Ohio
19 Power Capacity Case proceeding (10-2929) and in the original phase of Ohio
20 Power's electric security plan ("ESP") proceeding.

21 **Q. What has been Exelon's general position in these proceedings?**

1 A. Exelon has been an active participant not only before the Commission, but also at the
2 General Assembly for a number of years. In fact, following passage of Senate Bill
3 221, Constellation advocated using a competitive procurement process to set SSO
4 rates. The FirstEnergy and Duke Energy Ohio auctions have demonstrated the
5 benefits of competitive wholesale procurement with retail rates set through robust
6 market forces; and auctions providing generation rate decreases for FirstEnergy and
7 Duke Energy Ohio consumers. Using a competitive procurement process to set retail
8 rates and eliminating legacy impediments to retail competition, enabled the retail
9 markets in the FirstEnergy and Duke Energy Ohio service territory to develop,
10 expanding customers' opportunities to choose electricity supply that meets their
11 individualized needs, while still relying on competitively-priced backstop SSO
12 supply.

13 Exelon has consistently advocated for a timely and efficient transition to full
14 competition for capacity and energy in the Ohio Power service territory on terms
15 that are fair and equitable to Ohio Power and all other stakeholders. In Exelon's
16 view, the September 7, 2011 Stipulation and Recommendation (the "Stipulation"),
17 although rejected by the Commission, struck a reasonable balance of many diverse
18 interests and benefited Ohio electricity customers. It established a capacity
19 compensation mechanism different from the Reliability Pricing Model ("RPM") price
20 for some customers in return for the settlement of a broad set of issues litigated
21 before the Commission and the Federal Energy Regulatory Commission ("FERC").
22 We believe many of the Stipulation's tenets provide a viable framework for a new
23 Ohio Power ESP.

1 **B. Summary of Position**

2 **Q. Please summarize Exelon's position in this proceeding.**

3 **A.** Exelon appreciates and supports Ohio Power's commitment to transition to fully
4 competitive wholesale and retail markets in its territory. In comparison to Exelon's
5 recommended approach, however, Ohio Power's proposed ESP represents an, unfair
6 and unnecessary step backwards. Our recommended approach would: (1) not
7 impose additional costs on Ohio Power customers that exercised their right to shop
8 and executed contracts with CRES Suppliers based on the switching thresholds and
9 associated prices in the Stipulation; (2) allow for competitive auctions to set the SSO
10 rates once Ohio Power has completed its corporate separation and termination of its
11 current buying pool; (3) allow Ohio Power to collect a reasonable transitional
12 payment, until fully competitive auctions can be implemented but only from non-
13 shopping customers; and (4) institute improved rules and processes reflecting the
14 best practices of other Ohio EDUs and successful competitive markets across the
15 country.

16 The principal problems with the current proposed ESP are the following anti-
17 competitive features: (1) excessive capacity charges for customers who engaged in
18 good faith shopping in reasonable reliance upon the Commission's approval of the
19 Stipulation between the approval of that Stipulation and the subsequent revocation
20 of that approval; (2) an unnecessary delay in the use of a competitive bid auction
21 process for energy and capacity ("CBP") to establish the SSO; and (3) the
22 establishment of the Retail Stability Rider ("RSR") as a non-bypassable charge for

1 shopping customers. These anti-competitive features are inconsistent with Ohio
2 state policy and are unnecessary for Ohio Power to transition to a fully competitive
3 market structure.

4 **C. Summary of Recommendations**

5 **Q. What are Exelon's recommendations?**

6 **A.** Without the adoption of the recommendations outlined below, the proposed ESP
7 should be rejected. Exelon recommends that the ESP be modified as follows:

- 8 • **Accelerate the Delivery Date for a CBP to June 1, 2014** – Ohio Power
9 should be required to move to a CBP to establish the SSO effective as of June
10 1, 2014, which is six months after the date by which Ohio Power has claimed²
11 that it can complete both its corporate separation and termination of the AEP
12 East Pool. Although the CBP would be for the procurement of energy and
13 capacity, capacity should be provided by Ohio Power at the prevailing RPM
14 price. This is the construct set forth in the recently Commission-approved
15 Duke Energy Ohio ESP Settlement (11-3549).
- 16 • **Implement two-tiered pricing for CRES customer capacity for the**
17 **transition period from 6/1/2012 to 5/31/2013** – Exelon would support
18 the following form of two-tiered capacity charge for shopping customers. All
19 customers who shopped in good faith and reasonable reliance on the
20 subsequently rejected Stipulation would receive Tier 1 capacity priced at the

² Direct Testimony of Philip J. Nelson in Supp. of AEP Ohio's Modified Elec. Sec. Plan (Mar. 30, 2012), at 6:6-7 ("The Applicants intend to close the Corporate Separation transaction on January 1, 2014.").

1 prevailing PJM RPM price.³ All customers that are defined in the Stipulation
2 as Tier 2 and that select a CRES provider would receive capacity priced at no
3 more than the \$255 per MW-day proposed by Ohio Power. I recognize that
4 other Tier 2 capacity charges may be proposed in this proceeding and in the
5 10-2929 case, but other witnesses in this proceeding will offer testimony on
6 those proposals and Exelon is not taking a position on those proposals at this
7 time.

- 8 • **Allow a transitional rider in the form of the proposed RSR** – If the
9 Commission determines that under the two-tiered capacity model for
10 shopping customers Ohio Power should receive additional cost recovery,
11 Ohio Power should be allowed to implement a transitional rider. The
12 Commission recently adopted a similar construct in the Duke Energy Ohio
13 ESP settlement as a transitory mechanism. In the Duke Energy Ohio ESP,
14 however, as all shopping customers received RPM-priced capacity
15 immediately the Commission did not implement two different tiers of
16 capacity-pricing. Given this major difference, any RSR for Ohio Power should
17 be bypassable and imposed only upon Ohio Power's SSO customers.
- 18 • **Develop CBP Process Rules and Parameters** – Ohio Power should be
19 required to engage stakeholders in developing the rules and parameters
20 essential to a viable, competitive wholesale energy auction: e.g., clear and

³ For purposes of this testimony, the prevailing RPM price is equal to the final zonal capacity price for the unconstrained region in PJM for the applicable RPM Planning Year.

specific bidding rules; communication protocols; master supply agreement parameters; and wholesale product definitions

- **Remove Barriers to Retail Competition** – Ohio Power should be required to implement market enhancements and remove obstacles to develop a more sustainable, robust competitive retail electric market in its service territory.

**II. THE COMMISSION SHOULD MODIFY THE APPLICABLE CAPACITY
RATE PROPOSED BY OHIO POWER FOR SHOPPING CUSTOMERS**

Q. What does Ohio Power propose to charge shopping customers for capacity?

A. The modified ESP⁴ filed by Ohio Power proposes to establish the state compensation mechanism at approximately \$146 per MW-day for some customers and \$255 per MW-day for other customers. This demonstrates that Ohio Power is willing to accept a price for capacity used to serve retail customers other than what it calculated to be its fully embedded cost, \$355 per MW-day.⁵

Q. What is the basis for the \$146 per MW-day price?

A. According to Ohio Power witness Allen, the rate of \$146 per MW-day is based on the "Final Zonal Capacity Price adjusted for the RPM Scaling Factor, the Forecasted Pool

⁴ Case No. 11-346-EL-SSO.

⁵ See also, e.g., Direct Testimony of David I. Fein on Behalf of Exelon, No. 10-2929-EL-UNC (Apr. 4, 2012), at 7:13-15 ("Clearly, the fully embedded cost rate of approximately \$355 per MW-day that AEP Ohio seeks to implement for capacity would retard retail competition in AEP Ohio's service territory during the transition period."); Direct Testimony of Jonathan A. Lesser on Behalf of FirstEnergy Solutions Corp., No. 10-2929-EL-UNC (Apr. 4, 2012), at 33:3-5 ("AEP Ohio's proposed capacity price of \$355.72 per MW-day to be charged to CRES providers is anticompetitive, unduly discriminatory, and clearly contrary to state policy promoting retail electric competition.").

1 Requirement and losses for the PJM planning year 2011/2012.”⁶ In short, this is the
2 current RPM price in effect from June 1, 2011 to May 31, 2012.

3 **Q. Has Ohio Power recently taken any preliminary steps to provide greater**
4 **clarity on how it plans to procure capacity in the future?**

5 **A.** Yes. As referenced in Ohio Power witness Munczinski’s testimony in the 10-2929
6 proceeding, Ohio Power will become a RPM entity for the PJM 2015/2016 Planning
7 Year, meaning, effective mid-2015, all of Ohio Power’s load will be in the RPM
8 market. RPM pricing for capacity will apply from that point on for all CRES supplied
9 and SSO customers. At issue here and in the 10-2929 proceeding is the capacity
10 price during the remaining three years in which Ohio Power remains a FRR entity
11 (from June 1, 2012-May 31, 2015).

12 **Q. What is Exelon’s recommendation on the applicable capacity rate for Tier 1**
13 **customers?**

14 **A.** We have taken the position in the 10-2929 case that the State Compensation
15 Mechanism (“SCM”) should be the RPM price. In this case, if a fair and balanced
16 settlement of the broad set of issues being litigated can be reached and the
17 Commission decides to approve a two-tier pricing structure, Exelon recommends
18 that the capacity price for Tier 1 customers, who exercised their right to shop and
19 entered into contracts with CRES Suppliers based on the switching thresholds and
20 associated prices in the Stipulation, remain at the prevailing RPM capacity price,
21 pursuant to the SCM implicitly in effect since 2007 and explicitly in effect since

⁶ Direct Testimony of William A. Allen in Supp. of AEP Ohio’s Modified Elec. Sec. Plan (Mar. 30, 2012), at 7:7-9.

1 December 8, 2010. Certainly, Ohio Power's FRR status in no way requires it to
2 provide capacity at a price other than the RPM price. This is demonstrated by Duke
3 Energy Ohio, which is an FRR entity until mid-2015, but nonetheless will provide
4 shopping customers capacity at RPM prices prior to that time.

5 **Q. How do you recommend capacity be provided to shopping customers?**

6 **A.** Exelon could support a structure for capacity charges defined by two different time
7 periods: a two-tiered price structure for the period from June 2012 to May 2014,
8 and RPM-based capacity pricing for the period from June 2014 to May 2015. The
9 pivotal date for these two proposals – June 1, 2014 – is the date six months after
10 Ohio Power claims it will complete corporate separation and termination of the AEP
11 East Pool.

12 **Q. What are Exelon's recommendations for the applicable capacity charges for**
13 **shopping customers for the period between June 1, 2012 and May 31, 2014?**

14 **A.** Regardless of any decisions to implement the RSR, for the period between June 1,
15 2012 and May 31, 2014, the prevailing RPM-based capacity charge should be
16 available to all customers who shopped in good faith and reasonable reliance on the
17 rejected Stipulation. Reasonably relying in good faith on what appeared to be a
18 balanced settlement seeking an appropriate transition to the competitive market for
19 electricity in the Ohio Power service territory, these customers entered into
20 contracts for competitive retail supply with RPM-priced capacity. Therefore, it is
21 wholly appropriate to maintain such customers' access to market-based capacity
22 beyond May 31, 2012 until all customers in the Ohio Power service territory receive

1 capacity at the prevailing RPM price. Once the Commission ensures that these
2 customers are not harmed by the outcome of this proceeding, a decision can be
3 made as to whether Ohio Power requires rider-based above market capacity cost
4 recovery.

5 However, if a higher-than-RPM price were adopted, Exelon would recommend
6 increasing the threshold of shopping customers that receive capacity at prevailing
7 RPM prices above those set forth in Ohio Power's proposed ESP, in recognition of
8 Ohio Power customers' demonstrated strong interest in accessing competitive retail
9 markets.

10 **Q. What is Exelon's position regarding the RSR that Ohio Power has proposed as**
11 **part of the ESP?**

12 **A.** Although Exelon supports Ohio Power receiving a fair transitional payment as it
13 moves to a fully competitive model, consistent with PUCO treatment of other EDUs
14 such as Duke Energy Ohio, we believe this payment should be recovered only from
15 non-shopping customers. To allow recovery from shopping customers would stifle
16 competition. When a customer takes supply from a CRES provider, that customer
17 receives all of its generation-related service from that CRES. If a shopping customer
18 is forced unfairly to continue to pay the EDU for generation-related charges in
19 addition to paying the CRES provider, the customer is effectively paying twice for
20 the same service. Paying the utility for a service the customer is already receiving
21 from the CRES would likely cause the customer to pay more for electric power than
22 had the customer not switched to the CRES, even if the CRES supplier's generation is

1 at a lower cost than the SSO. Moreover, the Ohio General Assembly prohibited “the
2 recovery of any generation-related costs through distribution or transmission rates”
3 when, in S.B. 221, it amended Section 4928.02 (H), Revised Code. Recovery of an
4 RSR charge from shopping customers would necessarily be through a rider
5 connected to a distribution rate, in apparent violation of the cited provision.

6 **Q. What is Exelon’s proposed recommendation for capacity pricing for all Ohio**
7 **Power customers for the period after June 1, 2014?**

8 **A.** Exelon recommends that capacity pricing on and after June 1, 2014 for all customers
9 in the Ohio Power service territory should be set to the prevailing RPM price.

10 **Q. What is the basis for Exelon’s recommendation that Ohio Power be required to**
11 **implement RPM-priced capacity, as well as the CBP, beginning on June 1, 2014?**

12 **A.** We believe that RPM-pricing for capacity could be implemented in conjunction with
13 the CBP for Ohio Power’s SSO load on June 1, 2014 and should be ordered by the
14 Commission for four principal reasons. First, Ohio Power has confirmed that it will
15 have achieved corporate separation and termination of its current pool by January 1,
16 2014. Second, this Commission clearly signaled that Ohio Power should utilize the
17 competitive RPM price following its December 10, 2010 order. Third, Ohio Power
18 was offered and rejected competitive offers to provide capacity starting in June
19 2014. Fourth, Ohio Power has offered in the modified ESP proposal to accelerate the
20 establishment of a CBP to January 2015, demonstrating that it can have a CBP while
21 still an FRR entity.

1 **Q. Please explain the first reason: completing corporate separation and**
2 **termination of the current pool by January 1, 2014.**

3 **A.** Ohio Power has consistently maintained that it could not feasibly participate in
4 competitive wholesale procurement as long as the AEP East Power Pool agreement
5 remained effective. Exelon accepts that Ohio Power needs an appropriate amount of
6 time to accomplish this transition. Ohio Power has said it expects issues relating to
7 corporate separation and Pool termination to be resolved by January 1, 2014.⁷ Thus,
8 after that date, the continued existence of the AEP East Pool should no longer
9 present an obstacle to the CBP of SSO supply and the provision of market-priced
10 capacity.

11 **Q. Please explain the second reason: switching to RPM following the**
12 **Commission's December 2010 order finding RPM as the state compensation**
13 **method.**

14 **A.** Ohio Power has had ample opportunity to avail itself of competitive opportunities
15 and was on notice for months, if not years, that it should have done so. This
16 Commission's order in the 10-2929 proceeding, entered in December 2010
17 ("December 2010 Order"), explicitly established the RPM price as the state
18 compensation mechanism for establishing a capacity charge and, in fact, Ohio Power
19 has been using the RPM price as the capacity price since 2007. Despite Ohio Power's
20 numerous and persistent efforts, both here and at the FERC, to avoid or nullify that
21 order and its implications, it has been unsuccessful in doing so. As a result, Ohio

⁷ See Note 2, *supra*.

1 Power has been on notice for at least 18 months that a competitive rate for capacity
2 would continue to be applied. Shortly after that order, Ohio Power had an
3 opportunity to enter the PJM Base Residual Auction ("BRA") scheduled in May 2011
4 to procure competitively priced capacity for delivery for the period from June 1,
5 2014 to May 31, 2015. Notwithstanding this, Ohio Power still failed to seize that
6 opportunity. Instead, in April 2011, Ohio Power submitted its FRR commitment
7 plan with PJM for that June 1, 2014 to May 31, 2105 PJM planning year. By failing to
8 switch to RPM in the May 2011 auction, Ohio Power lost a valuable opportunity to
9 secure access to less expensive capacity for Ohio Power customers. Had Ohio Power
10 availed itself of that opportunity, it would have provided its customers the benefits
11 of competitively priced capacity on June 1, 2014. Given that Ohio Power could, and
12 in light of the December 2010 Order should, have elected to participate in the PJM
13 BRA for delivery in 2014, this Commission should now require Ohio Power to rely
14 upon competitive wholesale procurements for SSO supply and capacity on June 1,
15 2014. This will allow Ohio Power to take advantage, and permit customers within
16 Ohio to realize the benefit, of persistent low natural gas and correspondingly low
17 energy prices.

18 **Q. Does Ohio Power's status as an FRR Entity prevent it from availing itself of**
19 **other competitive opportunities or require it to provide capacity only from its**
20 **owned generation?**

21 **A.** No. As an FRR entity, Ohio Power elects to self-supply capacity in its zone. However,
22 nothing prevents Ohio Power from procuring some of that capacity from others in
23 the market (a wise choice in an environment where surplus capacity could have

1 been purchased at prices of around \$20 per MW-day during 2012 and 2013).⁸ In
2 fact, nothing in the PJM Tariff prohibits an FRR entity from making bilateral
3 purchases from the market in order to meet its capacity needs. To date, Ohio Power
4 has ignored these lower cost competitive alternatives. Instead, Ohio Power
5 designated only its own plants as capacity resources at prices well over \$300 per
6 MW-day, thereby protecting its ability to earn a generous return on its plants while
7 keeping 100% of the benefits of off-system sales from those plants. In Ohio Power's
8 view, the FRR status allows it to charge customers in its service territory its
9 proprietary capacity costs irrespective of less costly alternatives.

10 Ohio Power had noticed the low PJM RPM capacity price and apparently concluded it
11 was a problem for its shareholders, when it should have seen an opportunity for its
12 customers.

13 **Q. Please explain the third reason: less expensive alternatives existed for Ohio**
14 **Power to meet its FRR obligations starting on June 1, 2014.**

15 **A.** I will direct you to one such example of a lower cost alternative that was presented
16 to and rejected by American Electric Power Service Corporation ("AEPSC"), a
17 subsidiary of American Electric Power Company Inc. Exelon Generation made a
18 confidential offer to AEPSC for energy and capacity that could be used to serve Ohio
19 Power's default customers for the period June 1, 2014 through May 31, 2016.
20 Exelon Generation also made a stand-alone capacity offer to AEPSC for *****

21

⁸ See 2012/2013 Base Residual Auction Report Document (May 15, 2009), at 1 ("The 2012/13 Reliability Pricing Model (RPM) Base Residual Auction (BRA) cleared 136,143.5MW of unforced capacity in the RTO at a Resource Clearing Price of \$16.46/MW-day"), available at [http://www.pjm.com/markets-and-operations/rpm/~media/markets-ops/rpm/rpm-auction-info/2012-13-base-residual-auction-report-document-pdf.ashx](http://www.pjm.com/markets-and-operations/rpm/~/media/markets-ops/rpm/rpm-auction-info/2012-13-base-residual-auction-report-document-pdf.ashx).

***** for the same time

period.

Exelon Generation's offer of ***** of capacity for the period June 1, 2014 through May 31, 2016 ***** per MW-day ***** of Ohio Power's proposed rate of \$355 per MW-day, which it is seeking in the 10-2929 case. AEPSC rejected this offer. This was a lost opportunity for Ohio Power consumers, because ultimately this lower cost capacity was committed into PJM's May RPM auction instead of having been made available to Ohio Power. After AEPSC rejected the ***** MWs of capacity that Exelon Generation offered *** per MW-day, Exelon Generation committed that capacity into the PJM RPM auction, which cleared at \$126 per MW-day. Thus, not only did AEPSC fail to act on an offer that is far more favorable than Ohio Power's own proposed capacity prices, it failed to act on an offer that was ***** per MW-day cheaper than the then-prevailing PJM RPM capacity prices. To be clear, nothing in the PJM Tariff prohibits an FRR entity from making bilateral purchases from the market in order to meet its capacity needs. To date, Ohio Power has ignored these lower cost competitive alternatives.

Q. To your knowledge, did Ohio Power ever advise the Commission of this offer?

A. Not only did AEPSC reject Exelon Generation's offer, but to my knowledge, this Commission was never made aware of this offer by Ohio Power, or AEPSC's decision to reject this offer on behalf of Ohio Power. Ohio Power never offered to recalculate its SSO rates or its requests under the modified ESP proposal to reflect the lower price. To protect customer interests, AEPSC should not have been making capacity

1 decisions involving hundreds of millions of dollars without advising the
2 Commission. The issue is not whether Exelon Generation's offer was the most
3 favorable for consumers, but rather that no process existed to ensure the most
4 economic capacity decisions for customers. A competitive procurement process,
5 which can be achieved by June 1, 2014, and which will have the oversight of this
6 Commission, will ensure that Ohio Power consumers can reap the benefits of the
7 best possible price for power.

8 **Q. Please explain the fourth reason: Ohio Power has offered to start SSO auctions**
9 **while it is a FRR entity.**

10 **A.** Ohio Power has itself proposed full energy auctions beginning January 1, 2015⁹ and
11 because its corporate separation and pool termination will be completed by then, we
12 believe it is appropriate that the Commission accelerate the auction schedule by
13 only seven months before Ohio Power has proposed the auction process, to June 1,
14 2014.

15 **Q. Please summarize the bases for your position why the CBP for setting the SSO**
16 **price should be required to begin on June 1, 2014.**

17 **A.** As I describe above, Ohio Power has had ample opportunities to procure
18 competitive power but has failed to take advantage of those opportunities. This has
19 caused great economic loss to its customers. The Commission can remedy this
20 situation by ordering Ohio Power to establish a CBP to procure the requirements for
21 its SSO load by June 1, 2014. Ohio Power has claimed that it needed to accomplish

⁹ Direct Testimony of Robert P. Powers in Supp. Of AEP Ohio's Modified Elec. Sec. Plan (March 30, 2012), 19:19-20-4 and Ex. RPP-1.

1 corporate separation and terminate its power pool arrangement before conducting a
2 CBP. By its own admission, these will have been completed by June 1, 2014. In spite
3 of the Commission's clear direction, in its December 2010 order, which would have
4 enabled Ohio Power to establish a CBP on June 1, 2014, Ohio Power voluntarily
5 elected not to procure power through competitive means. Ohio Power also had
6 access to competitive offers that could have provided lower cost capacity starting on
7 June 1, 2014, but rejected those opportunities without even informing, much less
8 consulting with, the Commission of these alternatives. Finally, under its modified
9 ESP proposal, Ohio Power has demonstrated it can conduct a CBP while remaining a
10 FRR entity. Given Ohio Power's actions, and the choices that it has made to serve its
11 own best interests, all of which have been at the expense of its SSO customers, the
12 Commission is justified in ordering, and should order, Ohio Power to establish a CBP
13 on June 1, 2014.

14 **III. THE COMMISSION SHOULD DIRECT**
15 **OHIO POWER TO CONDUCT ITS COMPETITIVE**
16 **BID AUCTION PROCESS IN A MANNER THAT IS**
17 **CONSISTENT WITH THE MOST RECENT SUCCESSFUL AUCTIONS IN OHIO**

18 **Q. Why does Exelon believe that it is necessary and desirable to establish CBP**
19 **processes in this proceeding?**

20 **A.** As a practical matter, resolving the competitive procurement process details now, in
21 this proceeding, will help expedite Ohio Power's transition to full competition.
22 Setting these issues for separate hearing would cause unnecessary delays.

1 **Q. What are some of the issues and details regarding the CBP that you**
2 **recommend the Commission resolve in this proceeding?**

3 **A. In general, Exelon recommends that Ohio Power should establish a CBP that is**
4 consistent with the statutory directives in Section 4928.142, Revised Code,
5 including:

- 6 • an open, fair, and transparent competitive solicitation;
- 7 • clear product definitions;
- 8 • standard bid evaluation;
- 9 • oversight by an independent third party that designs the solicitation,
10 administers the bidding, and ensures that the first three criteria above are
11 met;
- 12 • evaluation of the bids submitted prior to the selection of the least-cost bid
13 winner or winners; and
- 14 • membership in a Regional Transmission Organization ("RTO") with a market
15 monitor function and the ability to take actions to identify and mitigate
16 market power.

17 **Q. What general observations do you have about the timing associated with any**
18 **procurement activities?**

19 **A. The earlier the Commission can approve all aspects of a procurement process,**
20 including an SSO agreement, credit requirements and forms, detailed timeline,
21 bidder information process, and communications protocols, and other matters, the

1 better. In addition, to ensure the greatest possible level of participation, Ohio Power
2 should ensure that the dates for future procurement event(s) do not conflict with
3 the dates for other default service procurements conducted by other "EDUs in PJM,
4 MISO, and New England. Further, the timing of any future competitive procurement
5 should coordinate with the respective RTO's modeling requirements.

6 **Q. What other important considerations regarding the design of the CBP should,**
7 **in your opinion, the Commission consider?**

8 **A.** It is critical that substantive aspects of the competitive procurement process are not
9 left open to determination or interpretation by Ohio Power, the CBP Manager, or
10 post-event Commission action. In the May 2009 FirstEnergy auction, open issues
11 such as phase-ins / deferrals, and the use of a reservation price, to name a few,
12 increased uncertainty and potential risks. These additional risks undermine the
13 effectiveness of the auction and can lead to *less* robust bidder participation, and *less*
14 efficient prices. High degrees of transparency and confidence in the rules and the
15 design ensure potential suppliers possess all of the necessary information to
16 participate successfully.

17 **Q. Should the Commission, in your opinion, direct Ohio Power to use specific**
18 **competitive procurement processes to ensure the most efficient results for**
19 **customers?**

20 **A.** Yes, Ohio Power should be directed to use the same processes that Duke Energy and
21 FirstEnergy used in their most recent, successful Ohio procurements, processes used

1 as well in numerous other restructured electric markets (including MISO and PJM).

2 The important features of these procurement processes include:

- 3 • The provision of a wide range of data and information for interested bidders;
- 4 • The use of an independent manager for the CBP;
- 5 • The creation of a website that is dedicated to the CBP that will contain
- 6 necessary information about the CBP and allow bidders and stakeholders to
- 7 receive updates, ask questions, and have access to data that will better assist
- 8 participants in the formulation and evaluation of bids.

9 **A. Improvements to the Provision of Data and Information**

10 **Q. Do you have any recommendations for what specific information should be**
11 **provided to potential participants in the CBP?**

12 **A.** Yes. Exelon requests that Ohio Power provide the following data and information to
13 potential bidders:

- 14 (1) Monthly information specific to municipal opt-out aggregation programs that
15 includes peak load, hourly consumption, and population statistics for existing
16 programs and programs that are proposed for commencement during the
17 term of an SSO;
- 18 (2) Hourly load data for eligible and SSO load by customer class as close as
19 practical in time to the auction date;
- 20 (3) Customer counts, peak demand and NSPL for eligible and SSO load by
21 customer class as close as practical in time to the auction date;

- 1 (4) For NITS charges, the expected allocation (below 138 kV) by rate class;
- 2 (5) Historical distribution losses and any allocated Unaccounted for Energy (if
- 3 applicable);
- 4 (6) For the larger nonresidential customer base, a distribution of the number of
- 5 customers above and below 500kW within a rate class; and
- 6 (7) Hourly consumption, customer counts, peak demand broken out by customer
- 7 class as close as practical in time to the auction date (*e.g.*, a maximum of a 1
- 8 or 2 month lag) separated by eligible load and load served by CRES providers.

9 **Q. If Exelon is a successful bidder and becomes a winning supplier, would you**

10 **still like to obtain the same data and information with the same frequency?**

11 **A.** Yes. In addition, Exelon would also like to request that Ohio Power provide the

12 following additional data to winning CBP suppliers:

- 13 (1) Peak load (or hourly consumption) data that is updated monthly beginning
- 14 after the execution of the SSO MSA that shows eligible load and load taking
- 15 service from a CRES provider;
- 16 (2) Initial settlement hourly data;
- 17 (3) From the time that the MSAs are executed, daily estimations for the capacity
- 18 peak load contribution data seven days forward; and
- 19 (4) To the extent available, the energy and capacity information that Ohio Power
- 20 provides to PJM related to suppliers' SSO obligations.

21 **Q. How will the provision of this other data and information assist suppliers?**

1 **A.** The provision of this additional data and information will allow potential CBP
2 participants to provide more accurate and competitive bids and will allow winning
3 CBP suppliers to better manage risks of supplying the load on a going-forward basis.
4 Moreover, by knowing up front that winning CBP suppliers will receive such
5 information on a going-forward basis to assist in meeting their SSO supply
6 obligations, bidders will perceive less risk, leading to more competitive bidding and
7 bid prices. Furthermore, since a certain amount of load may be taking service
8 pursuant to various large scale government aggregation programs, winning
9 suppliers should receive more precise dates regarding when the government
10 aggregation accounts are leaving (and potentially returning) to SSO. Such
11 information will allow winning suppliers to better manage their positions and
12 reduce significant risks.

13 **Q.** **Do CBP Managers and/or EDUs in other states provide this type of information**
14 **to CBP participants?**

15 **A.** Yes. Prospective bidders and winning suppliers get most, if not all, of this type of
16 data and information in the CBP utilized in states including, but not limited to, New
17 Jersey, Maryland, Pennsylvania, and Delaware.

18 **B. CBP Process Improvements**

19 **Q.** **Do you have any recommendations regarding any of the associated tasks and**
20 **duties of the CBP Manager?**

21 **A.** Yes. Exelon recommends that:

1 (1) The CBP Manager and/or Ohio Power should not be allowed to develop a
2 "reservation price" as part of the CBP.

3 (2) The CBP Manager should be required to notify winning bidders when the
4 required Report has been transmitted to the Commission.

5 (3) The CBP Manager should commit to providing responses to FAQs within two
6 business days of submission.

7 **Q. Please explain why you single out these three aspects of the CBP.**

8 **A.** Our experience with the FirstEnergy and Duke Energy auctions administered by
9 CRA in Ohio has shown us that these recommendations are critical to achieving a
10 transparent competitive auction outcome, for specific reasons I explain below. In
11 addition, these recommendations are designed to provide greater regulatory
12 certainty. While some level of uncertainty always exists, the Commission should
13 strive to reduce that uncertainty to the greatest extent possible.

14 **Q. Why do you oppose the use of a reservation price?**

15 **A.** A reservation price increases uncertainty regarding the approval process, which
16 necessarily increases the risks to bidders, and consequently the prices that bidders
17 are able to offer. Due to the combination of that uncertainty, the lack of any
18 established benefit, the fact that this is not an attribute of other successful CBPs used
19 in other jurisdictions, and the potential for Ohio Power to play an inappropriate role
20 in setting the reservation price, Exelon does not support using a reservation price.

1 Q. Why do you recommend that the CBP manager notify winning bidders when
2 the required Report has been delivered to the Commission?

3 A. This allows winning bidders to have an additional piece of information regarding the
4 timing associated with potential action by the Commission, reducing uncertainty
5 regarding the process and the likely timing for Commission review and approval of
6 results.

7 Q. Why do you recommend that Responses to FAQs be provided within two
8 business days?

9 A. It was our experience in the FirstEnergy auction process, and to some degree in the
10 Duke Energy process, that the timing of responses to FAQs was unpredictable.
11 Requiring the CBP manager to adhere to a "2 business day" response time will
12 improve the efficiency of the process and enable potential suppliers to better
13 prepare for the bidding process.

14 C. The Master SSO Supply Agreement ("MSA")

15 Q. What are your recommendations regarding an appropriate MSA?

16 A. Ohio Power should be required to utilize a MSA that is consistent with the MSA
17 adopted for Duke Energy Ohio and consistent with other industry-standard
18 agreements for wholesale supply. Doing so will promote more robust competition
19 from the broadest array of qualified suppliers, thereby improving the likelihood of
20 the most competitive SSO prices for Ohio Power's consumers.

21 Q. Do you wish to comment on any specific aspects of such an MSA?

1 A. Yes. CBPs are being considered and implemented in multiple jurisdictions, including
2 in many large utility zones throughout PJM. As CBPs become more widespread as a
3 best practice for utility load procurement, wholesale suppliers have an increasing
4 number of opportunities to compete to serve load under wholesale contracts such as
5 the SSO MSA. As these opportunities increase, wholesale suppliers will be required
6 to carefully manage their portfolios and develop effective risk management
7 strategies to provide cost effective service; this includes deciding which utilities'
8 procurements represent the best opportunities to serve wholesale standard service
9 load. This has become an increasing concern in the present global economic
10 environment. In order to ensure the most robust participation in Ohio Power's
11 auctions – and, in turn, the most competitive SSO price for consumers – the
12 Commission must be careful to compare the procurement contracts and credit
13 requirements of other utilities and other jurisdictions, to ensure Ohio Power's CBP
14 and MSA are *at least* equally – or even *more* – attractive to potential bidders .

15 Specifically, Exelon recommends the following:

- 16 • The exclusion of NITS from the auction product. NITS charges are not
17 charges that are easily predicted, hedged, or managed by wholesale
18 suppliers. If wholesale suppliers are responsible for NITS as part of the
19 auction product, they will raise bid prices to account for the inherent risk and
20 uncertainty of that service, so excluding those costs and charges would
21 benefit SSO customers.

- 1 • The exclusion of Generation Deactivation Charges from the auction product
2 for the reasons noted above;
- 3 • The exclusion of costs imposed for Economic Load Response under FERC
4 Order 745 from the auction product for the reasons noted above;
- 5 • The removal of any Independent Credit Requirement;
- 6 • The implementation of a weekly settlement process consistent with PJM
7 practices, or inclusion of provisions to accelerate payments from Ohio Power
8 on a weekly basis if it falls below investment grade; and
- 9 • The removal or elimination of any compulsory “notional quantity language”,
10 as has become industry-standard in most PJM states.

11 Credit ratings agencies carefully watch wholesale suppliers’ risk exposure as their
12 obligations under wholesale standard service contracts increase. When a significant
13 portion of a wholesale supplier’s transactions are subject to counterparty credit risk,
14 without the benefit of appropriate credit protection within the contract, as may be
15 the case under the MSA, credit ratings agencies are likely to view the wholesale
16 supplier as having more risk, and the supplier’s credit ratings could suffer. When
17 this occurs, wholesale suppliers’ costs to serve load will increase, in turn increasing
18 customers’ costs. Moreover, if wholesale suppliers limit their own participation in
19 the CBP’s auctions to limit their exposure in MSAs without the benefits of
20 appropriate credit protection, customers will not receive the benefits of the most
21 robust participation in the auctions, further increasing the chances that customers’
22 costs may increase.

1 **D. Use of Future Collaborative Processes**

2 **Q. Do you have any final recommendations regarding the CBP and the MSA?**

3 **A.** Yes. The Commission should require Ohio Power to utilize a collaborative
4 stakeholder process prior to any future proposals for a CBP. Various products and
5 approaches to conducting competitive bidding meet the SSO requirements of the
6 Ohio electric utilities. However, the goals of any competitive process should be to
7 attract the maximum number of qualified participants and to solicit the best offer
8 possible from those participants. Our experience is that an open, collaborative
9 stakeholder process helps ensure this outcome.

10 **Q. What types of issues could be addressed in such an informal stakeholder**
11 **process?**

12 **A.** Through a stakeholder collaborative, those with experience in many markets can
13 share their wealth of data, information, and insight with the Commission and other
14 stakeholders, including what kind of data will be made available to suppliers prior
15 to the bidding process, the financial security to be posted by would-be bidders,
16 credit requirements, standard contracts, terms and conditions. Well-crafted bidding
17 rules will also attract a larger and more diverse set of suppliers which, in turn,
18 would lead to a more competitive procurement process. Thus, Exelon suggests that
19 the Commission require that a collaborative stakeholder process be conducted prior
20 to Ohio Power (or any other electric utility for that matter) submitting a CBP plan
21 under an ESP (or MRO). In this collaborative stakeholder conference, the potential
22 bidders and others can be consulted as to what pre-bid information needs to be

1 made available, as well as other key terms associated with competitive wholesale
2 procurement, including the MSA.

3 **IV. THE COMMISSION SHOULD DIRECT OHIO POWER TO MAKE CERTAIN**
4 **CHANGES TO ENABLE THE DEVELOPMENT OF THE COMPETITIVE RETAIL MARKET**

5 **Q. What are some of the existing barriers to retail competition in Ohio Power's**
6 **service territory?**

7 **A.** Ohio Power seeks to continue a number of tariff requirements and business
8 practices that act as barriers to retail competition. Those barriers include:

- 9 • Billing limitations;
- 10 • A 90-day notice provision to exercise a right to select a CRES provider; and
- 11 • Inadequate processes for the provision of necessary data and information.

12 **Q. Do you have any recommendations regarding these barriers to retail**
13 **competition?**

14 **A.** Yes. The Commission should direct Ohio Power to eliminate these outdated, flawed
15 tariff and business practice requirements. Specifically, the Commission should
16 direct Ohio Power to:

- 17 • Implement Rate Ready and Bill Ready billing;
- 18 • Implement a standard, non-recourse Purchase of Receivables program;
- 19 • Eliminate the 90-day Notice for large commercial and industrial customers;
- 20 and

- 1 • Implement a process to provide CRES providers with the same data and
2 information that the Commission recently approved in its Order regarding
3 Duke Energy Ohio's ESP. Namely a Web-based, electronic system that
4 provides access to key customer usage and account data that can be accessed
5 via a supplier website that presents data and information in a format that can
6 be automatically downloaded or "scraped" including the following:
 - 7 ○ account numbers;
 - 8 ○ meter numbers;
 - 9 ○ names;
 - 10 ○ service address, including zip codes;
 - 11 ○ billing address, including zip codes;
 - 12 ○ email address;
 - 13 ○ meter reading cycle dates;
 - 14 ○ meter types;
 - 15 ○ indicator if customer has an interval meter;
 - 16 ○ rate code indicator;
 - 17 ○ load profile group indicators,
 - 18 ○ peak load contribution (PLC) and network service peak load (NSPL)
19 values (capacity and transmission obligations);
 - 20 ○ 24 months of consumption data (in kWh) by billing period;

- 24 months of demand data (in kW);
- 24 months of interval data;
- indicator if SSO customer; and
- identifier as to whether customer is participating in the budget billing plan.

Q. Should the Commission, in your opinion, direct Ohio Power to provide any other data and information?

A. Yes. Consistent with the Order adopted in the recent Duke Energy Ohio ESP, the following types of data should be provided via electronic data interchange (EDI) transactions:

- 867 historical usage (HU) and historical interval (HI);
- 867 monthly usage and monthly interval data;
- NSPL and PLC in 867HUs, 867HIs, and 814 accepted enrollment responses;
- meter read cycle and load profile segment information to be included in 867HUs no later than 12/31/12, as agreed to in the Ohio EDI Working Group - Change Control #82 (current rate code already included in 867HUs),

In addition, Ohio Power should allow accounts requested together in the same EDI envelope to come back together, unless there would be an unnecessary delay for a particular subset of accounts. Further, Ohio Power should make available, upon request, a quarterly updated sync list to CRES providers on a confidential basis showing the accounts that are enrolled with the CRES provider. The list would

1 contain information such as service start date, bill method, NSPL values, and PLC
2 values. Ohio Power should also confirm that validation, error detection, and editing
3 (VEE) rules and processes are now in place and will continue to be applied to raw
4 meter read data before Ohio Power transmits such usage data to the CRES providers
5 via EDI.

6 **Q. Why is it important that such information be provided to CRES Providers?**

7 **A.** By having this type of data and information, CRES providers will be better able to
8 provide services to prospective customers, better able to meet the needs of existing
9 customers, and better able to manage their businesses. Further, provision of this
10 type of data and information allows a CRES Provider to provide a prospective
11 customer with a competitive offer for electric service, check the enrollment status of
12 a new customer, and perform other functions designed to better serve customers.
13 The Commission should direct Ohio Power to allow CRES Providers to obtain such
14 usage and account information, including interval data through a website or through
15 other electronic means.

16 **Q. What harm can result if this type of data and information is not provided on a**
17 **timely basis?**

18 **A.** Unnecessary delays in the provision of this data and information can adversely affect
19 CRES providers' ability to contract with customers, render invoices, and provide
20 other services to consumers. Ultimately, as pricing may change during the
21 intervening time, a customer may be economically harmed.

1 If CRES providers do not receive timely and accurate delivery of interval data, this
2 not only impacts suppliers' ability to provide price quotations to customers, but
3 also frustrates their ability to issue an invoice to a customer on a timely basis,
4 which inconveniences customers and increases suppliers' costs.

5 **Q. Do you have any final recommendations regarding Ohio Power's ESP that are**
6 **important to the successful implementation of customer choice and retail**
7 **competition in the Ohio Power service territory?**

8 **A.** Yes. The Commission should require Ohio Power to file the applicable
9 implementation tariffs within thirty (30) days of the entry of a final Order in this
10 proceeding, but in no event less than ninety (90) days prior to their effective date. It
11 is important for at least three reasons that specific implementation tariffs
12 addressing the attendant rules regarding retail choice are submitted in a clear and
13 easy to follow manner. First, it increases efficiency. Having clear tariffs will help to
14 avoid unnecessary expenditures of time and effort seeking interpretations and
15 clarifications to ambiguous tariff language, thereby lowering transaction costs for
16 customers. Second, tariffs can identify, and therefore allow customers to avoid,
17 potential problems with their electricity products, contracts, and invoices. A lack of
18 clarity can create significant problems for Ohio business and residential customers.
19 These problems can include misunderstandings about product or contract terms,
20 market rules, and energy costs. These problems may also create cost impacts that
21 hurt their business, their owners, and their employees. Third, tariffs will be the best,
22 most definitive guidepost and operating manual for customers and suppliers alike to
23 navigate this new process in the Ohio Power territory.

1 **Q. Are there corresponding benefits to winning SSO suppliers in receiving a**
2 **complete set of tariffs?**

3 **A.** Yes. While such tariffs may not include actual prices, given that they are dependent
4 upon the results of the CBP, having a complete set of the tariffs including the
5 structure, associated rate designs, retail rate translation mechanisms, and other
6 terms and conditions would benefit suppliers. In a recent CBP, the final tariff
7 structure lacked clarity, and was ultimately provided only days before the auction,
8 after many requests. Greater certainty regarding that structure would have enabled
9 suppliers to better estimate switching risk, and therefore allow them to properly
10 construct their bids and provide the most efficient price possible.

11 **V. CONCLUSION AND SUMMARY OF RECOMMENDATIONS**

12 **Q. Please summarize your recommendations regarding Ohio Power's ESP?**

13 **A.** By adopting Ohio Power's ESP, with the recommended modifications discussed
14 herein, the Commission will establish a framework that will better support the
15 continued development of retail competition, large-scale government aggregation,
16 and competitive wholesale electric markets. As a general matter, Ohio Power's ESP
17 proposal, with the modifications discussed herein, is the best means for establishing
18 an SSO, for providing the benefits of wholesale competition to non shopping
19 customers and for promoting development of a competitive retail electric market in
20 Ohio Power's territory.

21 Consistent with the recommendations herein, Ohio Power should revise its ESP
22 application as follows:

- 1 • Expand the RPM-based shopping levels in the interim period June 1, 2012
2 through May 31, 2014;
- 3 • Allow all customers who entered into contracts after the PUCO's December
4 2011 approval of the Stipulation, but before revocation of that approval ,to
5 continue to have access to RPM-priced capacity;
- 6 • Procure all energy and capacity competitively for the delivery period
7 beginning June 1, 2014;
- 8 • Modify Ohio Power's proposed RSR so that it does not interfere substantially
9 with the development of a robust competitive retail market;
- 10 • Direct Ohio Power to structure a competitive wholesale procurement process
11 which builds upon the successful auctions conducted by FirstEnergy and
12 Duke Energy Ohio and contains the following attributes:
 - 13 ○ The provision of a wide range of data and information for interested
14 bidders;
 - 15 ○ The use of an independent manager for the competitive procurement
16 process;
 - 17 ○ The creation of a website dedicated to the CBP, which contains all
18 necessary information about the CBP, and enables participants to
19 receive updates, ask questions, and access data to assist in formulating
20 bids.

- 1 ○ The CBP Manager and/or Ohio Power should not be allowed to
2 develop a “reservation price” as part of the CBP.
- 3 ○ The CBP Manager should be required to notify winning bidders when
4 the required Report has been transmitted to the Commission.
- 5 ○ The CBP Manager should commit to providing responses to FAQs
6 within two business days of submission.
- 7 ○ The MSA should be developed to:
 - 8 ▪ Exclude NITS from the auction product.
 - 9 ▪ Exclude Generation Deactivation Charges from the auction
10 product;
 - 11 ▪ Exclude any costs imposed for Economic Load Response under
12 FERC Order 745 from the auction product;
 - 13 ▪ Eliminate any Independent Credit Requirements;
 - 14 ▪ Move toward a weekly settlement process consistent with PJM
15 practices, or add provisions to accelerate payments from Ohio
16 Power on a weekly basis if it falls below investment grade; and
 - 17 ▪ Remove or make optional any “notional quantity language” as
18 has become industry-standard in most PJM states.
- 19 ○ Use collaborative processes for all stakeholders to discuss potential
20 improvements or other refinements to a future CBP.

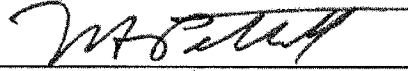
- 1 • Direct Ohio Power to take additional steps to promote a more robust retail
- 2 electric market for the benefit of Ohio Power's consumers, including, but not
- 3 limited to:
- 4 ○ Implement Rate Ready and Bill Ready billing;
- 5 ○ Implement a standard, non-recourse Purchase of Receivables program;
- 6 ○ Eliminate the 90-day Notice for large commercial and industrial
- 7 customers; and
- 8 ○ Implement a process in order to provide CRES providers with the same
- 9 data and information that the Commission recently approved in its Order
- 10 regarding Duke Energy Ohio's ESP.

11 **Q. Does this conclude your direct testimony?**

12 **A. Yes, it does.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 4th day of May, 2012 by electronic mail, upon the persons listed below.



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