

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission)	
Review of the Capacity Charges of Ohio)	Case No. 10-2929-EL-UNC
Power Company and Columbus)	
Southern Power Company)	

**MEMORANDUM CONTRA AEP OHIO'S APPLICATION FOR REHEARING
FILED BY
EXELON GENERATION COMPANY, LLC,
EXELON ENERGY COMPANY, INC.,
CONSTELLATION NEWENERGY, INC. AND
CONSTELLATION ENERGY COMMODITIES GROUP, INC.**

Pursuant to Ohio Administrative Code 4901-1-35(B), Exelon Generation Company, LLC, Exelon Energy, Inc., Constellation NewEnergy, Inc., and Constellation Energy Commodities Group, Inc. (collectively "Exelon") respectfully submit this memorandum contra Application for Rehearing of Ohio Power Company ("AEP Ohio"), which was filed in this proceeding on July 20, 2012.

* * * *

Roughly 55 pages of AEP Ohio's 65-page application for rehearing are devoted to attacking the methodology and assumptions underlying the \$147.41/MW-day energy credit adopted by the Commission in its July 2, 2012 Opinion and Order. Meanwhile, AEP Ohio says little of substance on the critically important issue addressed by Exelon in this proceeding and the related ESP case – namely, the timely, efficient, and fair transition to full

competition for energy and capacity in AEP Ohio's service territory. What AEP Ohio does say on this issue does not merit rehearing.¹

Because AEP Ohio has elected to become a RPM entity for the PJM 2015/2016 Planning Year, as of June 1, 2015 all of AEP Ohio's load will be in the RPM market and capacity will be priced at the RPM market price. Thus, the only issue in this 10-2929 case is the appropriate state compensation mechanism for capacity during the three-year transition period leading up to June 2015. While the Commission's July 2 Order adopts a compensation mechanism different than the RPM-based price advocated by Exelon in the first instance, there is no doubt that the Commission's chosen mechanism is a reasonable attempt at balancing the various interests of AEP Ohio and all other stakeholders. See 7/2/2012 Opinion and Order at 23 (articulating the Commission's "intention of adopting a state compensation mechanism that achieves a reasonable outcome for all stakeholders").

AEP Ohio may not like the result, but it offers no legitimate reason for rehearing at this time. The capacity pricing issue resolved by the July 2 Order is just one of a broad set of complex, interrelated regulatory issues being litigated before the Commission and the Federal Energy Regulatory Commission. To the extent that AEP Ohio requires additional protection (beyond that provided in the July 2 Order) to maintain its financial integrity, appropriate relief can be fashioned by the Commission in the ESP proceeding. Indeed, the Commission's July 2 Order specifically contemplates this, noting that the Commission "will

¹ Exelon is limiting its comments to just the issues described, but the silence on other issues such as AEP Ohio's requested amendments to the Commission's determination of the cost of capacity should not be interpreted as support for the AEP Ohio position.

establish an appropriate recovery mechanism for [the] deferred costs and address any additional financial considerations in the 11-346 [ESP] proceeding.” *Id.*

Lacking any complaint of substance, AEP Ohio resorts to procedural quibbles about the propriety of the Commission’s “fragmented” or “bifurcate[d]” approach, going so far as to suggest that specific issues implicated in 10-2929 cannot await determination in 11-346 because the two proceedings involve “unrelated issues.” (AEP Br. at 59). But this position is directly contrary to what AEP Ohio told the Commission in September 2011 when it sought to consolidate the two cases for purposes of hearing. *See* Joint Motion to Consolidate (filed 9/8/2011) at 5 (acknowledging “related issues” and concluding that “consolidation would prevent the potential for inconsistent decisions among the cases, or failure to assess the consequences of one issue upon the others”). In the end, the Commission’s approach is ultimately sensible: rather than deciding these interrelated issues in piecemeal fashion (as AEP Ohio apparently *now* prefers), the Commission can address AEP Ohio’s claim for “additional financial considerations” as part of a comprehensive resolution of all issues in the ESP proceeding which, in all likelihood, will be resolved sooner than the rehearing requested by AEP Ohio here.

AEP Ohio’s application for rehearing should be denied.

Dated: July 30, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served upon the following persons via e-mail this 30th day of July, 2012.

/s/ M. Howard Petricoff

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Summary: Memorandum Contra AEP Ohio's Application for Rehearing electronically filed by M HOWARD PETRICOFF on behalf of Exelon Generation Company, LLC and Exelon Energy, Inc. and Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.