

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	
Dayton Power and Light Company for)	CASE NO. 12-426-EL-SSO
Approval of Its electric Security Plan,)	CASE NO. 12-427-EL-SSO
Approval of Revised Tariffs, Approval)	CASE NO. 12-428-EL-SSO
of Certain Accounting Authority,)	CASE NO. 12-429-EL-SSO
Waiver of Certain Commission rules,)	CASE NO. 12-672-EL-SSO
and to Establish Tariff Riders.)	

**INITIAL POST-HEARING BRIEF OF
EXELON GENERATION COMPANY, LLC
CONSTELLATION NEWENERGY, INC.**

May 20, 2013

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Pursuant to Ohio Administrative Code (OAC 4909-1-12), Exelon Generation Company, LLC, and Constellation NewEnergy, Inc. (collectively, “Constellation”) 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 (“ESP”).

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, Inc. 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 Dayton Power & Light Company (“DPL”) and a wholesale power provider to electric distribution companies (“EDCs”) throughout Ohio, Constellation 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 DPL service territory, and whether CRES providers like Constellation NewEnergy, Inc. and wholesale power providers like Exelon Generation have an opportunity to provide customers with an alternative to service from DPL.

As noted in the Direct Testimony of Constellation witness David I. Fein, Constellation Ex. 1.0 (“Fein Testimony”), the proposed ESP contains some important features that support a successful procurement process, such as:

- The provision of a wide range of data and information for interested bidders;
- The use of an independent manager for the competitive bidding process (“CBP”); and
- The creation of a website that is dedicated to the CBP that will contain necessary information, and allow bidders to receive updates, ask questions, and have access to data that will better assist them in the formulation of bids.

See Fein Testimony at 7:18-8:23.

Unfortunately, however, the proposed ESP omits some of the positive aspects of other Ohio utilities’ plans to transition to competition, and fails to take this opportunity to make improvements based upon the experiences with previous auctions in Ohio and elsewhere. As a result, the record supports modifications to the ESP in order for it to meet the statutory requirements of Section 4928.143, Revised Code and the Commission’s obligation to ensure reasonably priced, unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, and quality options they choose to meet their respective needs.¹ Constellation requests the Commission approve the ESP, subject to the following modifications pursuant to its authority in Section 4928.143 (C) (1), Revised Code:

¹ Sections 4928.02(A) and (B), Revised Code

- Improvements to the transition plan, blending period, auction products, and auction design;
- Including all DPL load in the CBP, including legacy special contract customers;
- Clarifications on the specific PJM line items included to be recovered under TCRR-N;
- Providing auction participants and winning wholesale suppliers with additional data and information to that proposed in the Application;
- Providing additional clarity regarding the authority of the CBP Manager;
- Adopting important improvements to the Master SSO Supply Agreement (“MSA”); and
- Using collaborative processes for all stakeholders to discuss potential improvements or other refinements to future CBPs.

Additionally, DPL should be prevented from taking action that would harm retail competition, and should be required to make improvements that enhance the prospects for retail competition. To that end, DPL’s proposals to impose generation-related nonbypassable charges on CRES customers should be rejected, as should DPL’s attempt to initiate a switching tracker. Instead, DPL should be required to provide data and information to CRES, and to implement business processes, that support the retail environment.

These changes proposed by Constellation will substantially benefit competition and customers in the DPL service territory.

ARGUMENT

I. Improvement Should Be Made to the CBP

A. Improvements Should Be Made to the Transition Plan, Blending Period, Auction Products, and Auction Design

Constellation recommends the transition leading to fully competitive SSO pricing be swifter allowing more customers to receive competitive pricing sooner than as proposed by DPL. Specifically, Constellation recommends that the end-state DPL has committed to beginning in June 2016 be shortened one year to begin June 2015 instead. In the interim, the CBP should have a higher percentage of load to permit more customers to realize the benefits of wholesale and retail competition. Specifically, Constellation recommends the blending period be modified as set forth below:

Period	Non-CBP%	CBP%
June 2013 - May 2014	65%	35%
June 2014 - May 2015	15%	85%
June 2015 - May 2016	0%	100%

Consistent with those recommendations, DPL should be required to complete transfer of its generating assets by no later than December 31, 2016, and neither DPL nor any affiliate should be eligible to participate in the CBP until DPL achieves full structural separation of the competitive and non-competitive business units. During such time as DPL is allowed to maintain the SSR, or any other form of rate stability rider, it should be required to sell the energy from its generation assets into the Day Ahead or Real Time PJM energy markets, or on a forward basis through a bilateral agreement. This is the same construct approved by the Commission in the recent Duke ESP proceeding.

In addition to accelerating DPL's transition for a fully competitive market in its service territory, the Commission should also require modifications to the products sought through the CBP. DPL should use a ladder approach as the ESP rate blending decreases for contracts of the following duration:

- For the initial auction, DPL should procure a 36-month contract
- For the March 2014 auction, DPL should procure a 36-month contract, and
- For the March 2015 auction, DPL should procure a 24-month contract

B. No Customers Should Be Excluded from the CBP

DPL has indicated that the load from two extremely large customers being served pursuant to legacy special contracts will be excluded from the CBP.² Excluding the special contracts from being supplied by the CBP isolates that portion of the load from the reduction in energy prices anticipated by the CBP. The effect is a lost opportunity to lower the economic development rider costs paid by all customers. The Commission should reject DPL's proposal to exclude these customers consistent with the state policy of market development as a means for economic growth.³ All customer classes receiving power from DPL should have the same blend of legacy generation and lower cost CBP power.

C. TCRR should be modified

Constellation supports the separation of the current Transmission Cost Recovery Rider ("TCRR") into a market-based bypassable Rider ("TCRR-B") and a non-market-based non-bypassable Rider ("TCRR-N") that includes certain transmission charges like Network Integration Transmission Services charges ("NITS"), as well as various other non-market

² Tr. 1414, 1418 (see In Re Caterpillar, Case No. 10-734-EL-AEC and In Re Wright Patterson Air Force Base, Case No. 11-1163-EL-AEC).

³ Section 4928-02, Revised Code.

based charges. In order to add greater clarity to the specific non-market-based charges that will be recovered under Rider TCRR-N, Constellation recommends that the tariff be revised as follows:

DESCRIPTION OF SERVICE:

This Tariff Sheet provides the Customer with retail transmission service. This Transmission Cost Recovery Rider (TCRR-N) is designed to recover transmission-related costs imposed on or charged to the Company by FERC or PJM. These costs include but are not limited to:

Network Integration Transmission Service (NITS)

Schedule 1 (Scheduling, System Control and Dispatch Service)

Schedule 1A (Transmission Owner Scheduling, System Control and Dispatch Services)

Schedule 2 (Reactive Supply and Voltage Control from Generation or Other Sources Services)

Schedule 6A (Black Start Service)

Schedule 7 (Firm Point-To-Point Service Credits to AEP Point of Delivery)

Schedule 8 (Non-Firm Point-To-Point Service Credits)

Schedule 10-NEC (North American Electric Reliability Corporation Charge)

Schedule 10-RFC (Reliability First Corporation Charge)

Schedule 10-Michigan-Ontario Interface (Phase Angle Regulators Charge)

Schedule 12 (Transmission Enhancement Charge)

Schedule 12A(b) (Incremental Capacity Transfer Rights Credit)

Schedule 13 (Expansion Cost Recovery Charge)

PJM Emergency Load Response Program – Load Response Charge Allocation

Part V – Generation Deactivation

D. **Improvements Should Be Made to the Provision of Data and Information**

It is critical that substantive aspects of the CBP are not left open to determination or interpretation by DPL, the CBP Manager, or post-event Commission action. In the May 2009 FirstEnergy auction, open issues such as phase-in deferrals, and the use of a reservation price, increased uncertainty and potential risks. These additional risks undermine the effectiveness of the auction and can lead to *less* robust bidder participation, and *higher* prices. A high degree 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.

DPL should be directed by the Commission to use the same processes that Duke Energy and FirstEnergy have used in their 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.

The specific data Constellation recommends DPL be required to provide to potential participants in the CBP is:

- Monthly information specific to the PIPP load in its service territory, including peak load, hourly consumption, and population statistics;
- Monthly information specific to a municipal opt-out aggregation program 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;
- Network service peak load (“NSPL”) data for non-shopping and shopping customers on an aggregate basis;
- Peak load contribution (“PLC”) and historical hourly load data for non-shopping and shopping customers on a customer class basis;
- Historical daily zonal scaling factors for the last 3 years;
- A transparent methodology for how PLC and NSPL are calculated for all customers;
- Hourly load data for eligible and SSO load by customer class as close as practical in time to the auction date;
- Customer counts, peak demand and NSPL for eligible and SSO load by customer class as close as practical in time to the auction date;
- For NITS charges, the expected allocation (below 138 kV) by rate class;
- Historical distribution losses and any allocated Unaccounted for Energy (if applicable);

- For the larger nonresidential customer base, a distribution of the number of customers above and below 500kW within a rate class; and
- 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. [Fein Direct, 13:26-18:16]

Constellation also requests that DPL be required to provide the following information to successful bidders:

- 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;
- Initial settlement hourly data;
- From the time that the MSAs are executed, daily estimations for the capacity peak load contribution data seven days forward; and
- To the extent available, the energy and capacity information that Ohio Power provides to PJM related to suppliers' SSO obligations. [Fein Direct, 13:26-18:16].

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 other states, including New Jersey, Maryland, Pennsylvania and Delaware. Fein Testimony at 16:18-17:9.

E. Clarity Is Needed Regarding the Authority of the CBP Manager

Finally, Constellation recommends improvements in three other, related areas. First, based on its experience with the FirstEnergy and Duke auctions, Constellation recommends that the CBP Manager in conjunction with DPL should not be allowed to develop a “reservation price” as part of the CBP, because doing so increases uncertainty regarding the approval process, which 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 17:12-19:19.

F. Improvements to the Master Supply Agreement Are Needed

DPL should be required to use a MSA that is consistent with or improves upon the one adopted for other Ohio utilities, and is 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 strive to make Ohio an attractive opportunity to compete for service,.

Constellation supports excluding NITS 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 20:16-22. For similar reasons, 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 21:7-22:12; 23:21-30:13.

Constellation also recommends certain non-credit-related improvements to the MSA. These include: revising the MSA to remove or make optional the “notional quantity language” as has become industry-standard in most PJM states; changes to the product delineated and provisions included in the MSA; clarifications needed regarding the Events of Default that have been included at MSA Article 5; changes to the “Sample PJM Invoice” included at MSA Appendix G which are necessary to clear up ambiguities and make the items in the Sample PJM Invoice consistent with provisions elsewhere in the MSA; and finally, a number of miscellaneous and general clarifications and edits. *See* Fein Testimony at 22:16-23:2; 31:17-40:43.

G. Future Collaborative Processes Should Be Established

Constellation also recommends that the Commission require DPL 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 41:2-42:5.

II. DPL Proposals That Impose Generation-Related Charges on CRES Customers Should Be Rejected Should Be Eliminated.

A. Generation-Related Riders Should Be Bypassable By CRES Customers

DPL claims the Rider RR allows it to recover certain costs associated with providing SSO service, including CBP auction costs, CBP consultant fees, and PUCO consultant fees. Customers that are not taking SSO service from DPL should not have to pay DPL for costs associated with SSO service, and those charges included in Rider RR should therefore be bypassable for customers taking service from a CRES provider. *See* Fein Testimony at 42:11-19.

Rider AER-N seeks to recover costs associated with a proposed solar generating facility. As this is a generation-related charge, it is inappropriate to make it non-bypassable for shopping customers. The Commission similarly rejected attempts by AEP to improperly impose a generation-related charge on shopping customers associated with the Turning Point solar project. *See* Fein testimony at 42:21-43:2.

Similarly, the Commission should reject DPL's proposal that certain riders that DPL is now collecting may become non-bypassable, and go through the reconciliation rider. [Seeger-Lawson, Rebuttal, Transcript, 2238:9-2243:5] The affected riders are FUEL, RPM, TCRR, AER, and CBT, all of which are associated with provision of service to SSO customers [*Id.*], and none of which should be imposed on customers taking service under competitive supply.

B. A Non-Bypassable Switching Tracker Would Stifle Competition

As described by DPL witness William Chambers, the Switching Tracker is designed to reimburse DPL its lost revenues if additional switching continues, beyond the August 30,

2012 switching rate of 62%.⁴ According to DPL, “[s]uch switching reduces DPL’s retail load, thereby reducing its revenues as it sells more of its power at wholesale (lower) rates.”⁵

As Constellation witness Fein explained, the costs associated with generation should be paid for by DPL’s supply customers alone. Fein Testimony at 43:11-44. 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 DPL 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. This proposal is a clear example of inappropriate cross-subsidies between DPL’s distribution business and its generation fleet. As is evident from Mr. Chambers’ testimony, DPL is in this position due solely to the fact that it is currently charging its customers above-market generation rates, and stands to lose if more customers make economic decisions. This proposal should be rejected.

III. **DPL Should Make Changes To Enable The Development Of The Competitive Retail Market**

Certain facets of the ESP affirmatively support the continuing development of the competitive retail electric market. Constellation supports the various data enhancements proposed by Dona Seger Lawson at pages 13-14 of her Direct Testimony. Constellation recommends that DPL modify their existing retail tariffs and business practices so that

⁴ Second Revised Testimony of William J. Chambers, pp. 25-26.

⁵ *Id.* at 25.

CRES providers are provided with the following data and information to better enable the development of retail competition in the following ways:

1. That the proposed Web-based, electronic access to key customer usage and account data that DPL is going to develop, allow CRES provider to access via a supplier website that presents data and information in a format that can be automatically scraped;
2. Data access, including access to the types of data identified in the direct testimony of David Fein. *See* Fein testimony at 48:1-50:9.

Additionally, the Commission should: (1) direct DPL to implement a standard, non-recourse Purchase of Receivables program; (2) notify CRES providers before a drop occurs, providing the CRES providers the ability to cure the situation; (3) provide legacy customer numbers, in the event of changes to a customer account number or meter number; (4) provide regular electronic mail notifications of tariff supplements, modifications, or changes when filed with the Commission, and (5) conduct semi-Annual or quarterly meetings or conference calls with CRES providers to discuss proposed tariff changes, business practices, or other information. *See* Fein testimony at 50:19-52:10

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. Therefore, the Commission should require that DPL 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. *See* Fein testimony at 52:12-53:14.

CONCLUSION

This case affords the Commission an historic opportunity to provide DPL customers the full benefits of competition. The modifications suggested by Constellation will transform the proposed ESP into a robust, workable plan for DPL's transition to full competition. The Commission should modify the proposed ESP as suggested by Constellation, and as supported by the evidence. Accelerating the capacity auction by twelve months would provide consumers the benefits of competition sooner without harming the regulated DPL wires company or the DPL Genco. Any economic harm that may arise during DPL'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: May 20, 2013

Respectfully submitted,

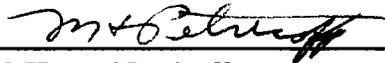


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 20th day of May, 2013 by electronic mail upon the persons listed below.


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