

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Commission’s Investigation of Ohio’s Retail Electric Service Market</b>	) ) )	<b>Case No. 12-3151-EL-COI</b>
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**COMMENTS OF  
CONSTELLATION NEWENERGY, INC. AND  
EXELON GENERATION COMPANY, LLC**

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Pursuant to the Public Utilities Commission of Ohio’s (“PUCO”) Entry of June 4, 2013 in the above proceeding, Exelon Generation Company, LLC and Constellation NewEnergy, Inc. (collectively “Exelon”) submit these Comments in response to certain additional questions issued by PUCO in its investigation of the vitality of Ohio’s retail electric service market and actions that may be taken to enhance that market (“Investigation”).

**INTRODUCTION**

Exelon appreciates the PUCO’s continued commitment to exploring opportunities to further develop Ohio’s competitive electric markets. As noted in our Initial and Reply Comments, Exelon believes Ohio has made tremendous strides towards reaping the full benefits of competitive wholesale markets and implementing policies to develop and improve electric retail competition. As a competitive retail electric service provider (“CRES Provider”) to retail customers in Ohio and a wholesale power provider to Ohio electric distribution utilities (“EDUs”), Exelon fully supports the Commission’s plan to continue down the path to a fully functioning, robust, and sustainable competitive electric market.

All of Exelon's responses to the individual questions issued by the PUCO stem from its high level guiding principles for a fully functional competitive retail electric service market:

- **Price Transparency between CRES Provider and EDU Offerings** – There must be a true apples-to-apples Price to Compare ("PTC") with which consumers can evaluate CRES Provider offers with the EDU SSO supply option. The PTC should include all EDU costs that are avoided when a customer takes generation supply from a CRES Provider, including, but not limited to any reconciliation charges. Providing customers with full and accurate information provides complete price transparency and enables customers to make informed decisions.
- **Market Contestability, with Low Barriers to Supplier Entry and Exit** – Stable and transparent regulatory frameworks should be developed to enable CRES Providers to enter and exit the market easily and offer products to customers, without costly or overly complex restrictions.
- **Market Sustainability** – The price of any available SSO product must be sufficiently reflective of market prices by procuring supply in a competitive and transparent manner to enable stability of the competitive market.
- **Plain Vanilla SSO Product** – The EDU should only be allowed to offer a single product to customers that do not switch to a CRES Provider. The competitive market can offer green products, demand response products, time-of-use products, and other more sophisticated offerings. If EDUs are allowed to offer multiple products, it will perpetuate the existence of a number of customers remaining on the SSO.
- **Informed Customers** – Customers should be aware of their ability to choose competitive supply, informed of their choices and able to easily compare options, prices, terms and conditions.
- **Ease of switching** – Customers should be able to switch easily between SSO supply and a CRES Provider, and also to switch between CRES Providers to pursue different opportunities and offerings.
- **Non-discriminatory Access to Billing and Usage Information and Effective Affiliate Rules** – CRES Providers should have access to a robust, complete, and accurate set of customer data and billing information consistent with customer authorization, and without discrimination in favor of particular suppliers. Effective codes of conduct and other mechanisms should be in place so that there is no discrimination in favor of CRES Providers affiliated with EDUs.
- **Non-recourse purchase of receivables ("POR")** – Non-recourse POR tariff offerings should be required in order to allow CRES Providers to offer all customers – regardless of income or credit – with a full array of supply options, at a more competitive cost, placing CRES Provider offers on more equal footing compared the EDU's SSO.

It is with these general criteria in mind that Exelon replies to specific comments of certain stakeholders.

## COMMENTS

### Market Design

**(a) Comments were filed suggesting that the relationship between an incumbent electric distribution utility (EDU) and a customer should be neither terminated nor encouraged. Does this comment pertain to distribution service or to generation service?**

The EDUs have, and will continue to have, responsibility for delivery of electric service to all customers regardless of who supplies the actual commodity. Accordingly, it is necessary and appropriate that they maintain a relationship with their customers as the wires company. Exelon agrees, however, with the recommendation that the relationship between the EDU and customers with respect to generation service should not be encouraged and the EDU should do all that it can to distinguish between the two.

One of the challenges to increasing shopping for residential and small businesses is the status quo bias that customers have towards their EDU for all facets of electric service. It's certainly understandable since the EDUs have had an electric monopoly for over a century. The EDU is who most customers associate with when thinking about their electricity, and understanding that the 'supply' of electricity and the 'delivery' of electricity are now two separate and distinct services is not intuitive for most consumers. Understanding this distinction and the choices it provides not only requires education, but reinforcement from the EDUs. That reinforcement needs to come not just through words but through actions.

When an EDU is required or voluntarily offers anything other than a plain vanilla standard service offer ("SSO") product to customers, it sends the message to consumers they are

competing with CRES Providers for electric service. SSO service cannot fairly be viewed by consumers as only a last resort backstop service, as it is intended, if it offers choices for consumers that directly compete with offers from CRES Providers. The competitive market is better suited to offer green products, demand response products, time-of-use products, and other more sophisticated offerings to meet consumers' individual needs. Allowing EDUs to offer – and market – similar products will perpetuate the status quo bias and existence of customers remaining on the SSO.

**(b) If predatory pricing or other market factors become a barrier to a fully functional competitive retail electric service market, can and should the Commission regulate predatory pricing or other market factors?**

“Predatory pricing” is a legal term relating to the specific practice of selling a product or service at a below market price with the *intent* to drive competitors out of the market or create barriers to entry for potential new competitors. True predatory pricing is anti-competitive and illegal under many state and federal antitrust, conspiracy, and market manipulation laws which the PUCO does not have the authority to enforce.

Regarding “other market forces” Exelon believes creating a regulatory structure that allows competitive markets to work as intended, with only limited government oversight, is the best way to create a fully functional competitive retail market. True market forces should be left to operate on their own to keep downward pressure on prices and drive efficiency and creativity in product and service offerings. Regulatory uncertainty or mid-stream changes of market rules deter competitive investment.

Before retail electric competition can bring full benefits to consumers, however, artificial barriers that exist as a result of the electric market having been a traditional monopoly for so long must be addressed. For example, when customers first initiate electric service, there is no

reason they shouldn't be permitted to immediately sign with a CRES provider as opposed to the EDU for what is supposed to be only a "default" service. Additionally, for as long as the EDU retains responsibility for metering and controls the customer's metering data, greater and easier access to that information must be provided to CRES Providers in order to facilitate enrollment of customers at competitive prices. Furthermore, unnecessary and discriminatory tariff rules that deter shopping, such as switching fees and generation related non-bypassable surcharges, must be eliminated.

**(c) In a fully functional retail market, with no merchant or wholesale based default service, should the Commission and/or an independent market monitor have the ability to regulate market power?**

Under traditional monopoly regulation, exclusive monopoly franchise rights were granted to electric utilities and regulation was the means to control price and ensure quality of service. In a competitive environment where market forces dominate and regulatory oversight is removed or significantly diminished, market power must be monitored to ensure it doesn't hinder the development of the marketplace. Transmission and generation assets and owners that are part of a regional wholesale competitive market, like PJM, are supervised for market power under the jurisdiction and authority of FERC. With respect to PJM specifically, they are examined by an independent and external market monitor. Competitive generators cannot maintain the authority to sell their electricity at market based rates without demonstrating tri-annually that they do not possess market power.

Even if there is no traditional "default" service provided in a competitive electric retail market, there will still be merchant and/or wholesale based generation that provides the electricity ultimately sold to retail consumers. That generation is, and will continue to be, monitored for market power by FERC, regardless of whether there is a "default" service.

**(d) Regarding government aggregation, should the Commission require public disclosure of any information in addition to commodity pricing, such as inducements or incentives related to commodity contracts? In general, should the Commission require public disclosure of any information in addition to commodity pricing, such as inducements, incentives, or broker commission related to commodity contracts?**

Exelon supports free and open competition in wholesale and retail electric markets, which requires transparency. Transparency in products and pricing is necessary for suppliers to develop the most competitive and innovative products and services for consumers. Consumers, in turn, require transparency in order to effectively evaluate competitive offers that best suit their needs. The right regulatory framework ensures appropriate transparency, built on access to accurate and timely information, while protecting the legitimate rights of consumers to privacy and competitors to proprietary information.

**(e) Would a time-differentiated standard service offer (“SSO”) rate cause more shopping based upon customer preference for avoiding uncertainty?**

No. “Time-differentiated” rates cover a variety of pricing structures that can include, but are certainly not limited to, real time pricing, rates based on peak and off-peak usage, or prices that reflect changing seasonal rates. Regardless of the particular structure, Exelon believes these innovative product offerings are best provided by competitive suppliers. SSO is intended to be a default product only to ensure customers maintain uninterrupted electricity supply even if they fail to choose a competitive supplier. Encouraging or mandating EDUs to offer time-differentiated SSO rates places these products in direct competition with CRES Provider offerings. Competition among CRES Providers is a good thing for consumers and should be encouraged, but CRES Providers cannot equitably compete against an incumbent EDU that has *regulated* rate recovery of the costs for functions required to market and implement new products. SSO should be

plain vanilla only in order to ensure it does not compete unfairly with CRES Provider products and stifle retail competition.

**(f) Are CRES providers better positioned to manage uncertainty in a retail market than EDUs that offer a flat SSO rate?**

Yes. Competitive suppliers must be able to quickly adapt to changing market conditions and technology advancements in order to survive. In order to remain competitive, CRES Providers are not looking to just manage market uncertainty, but to leverage their expertise by finding ways to provide more innovative and competitively priced products and enhanced consumer service to gain and retain customers. Competition is indisputably the best tool to drive innovation and efficiency in all markets, and electricity is no exception.

**(g) Is integrated resource planning compatible with a retail market construct? If yes, how can such planning be done, given the current construct of functionally separated business units? If no, how can investment in transmission, generation, and demand management be co-optimized?**

No. As noted above, Ohio is a participant in PJM, a regional transmission organization with responsibility for the coordination and flow of electricity across parts of 13 states and the District of Columbia. States that are part of PJM are subject to their regional resource transmission planning and wholesale competitive markets that obviate the need for utility or state specific integrated resource planning. Investment in transmission and supply resources, including traditional generation as well as demand side resources, is addressed through regional planning and market price signals derived through the energy and capacity markets.

**(h) Could integrated resource plans be done on a statewide basis? If so, how would such planning be accomplished? Could the Commission be helpful in facilitating this type of planning?**

See answer to question (g) above.

## **CONCLUSION**

Exelon appreciates this opportunity to submit its comments to certain additional questions issued by PUCO in its investigation of the vitality of Ohio's retail electric service market. Exelon looks forward to discussions on many of these important market enhancements at the scheduled workshops and is confident that its recommendations will promote continued development of robust competitive retail markets for the ultimate benefit of Ohio's consumers and the Ohio economy.

Dated: July 8, 2013

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing document was served by electronic mail this 8th day of July 2013 upon the persons listed below.

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Summary: Comments Comments electronically filed by M HOWARD PETRICOFF on behalf of Constellation NewEnergy, Inc. and Exelon Generation Company, LLC