

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Power Company to Establish a Competitive)	Case No. 12-3254-EL-UNC
Bidding Process for Procurement of Energy)	
to Support its Standard Service Offer.)	

**INITIAL BRIEF OF
EXELON GENERATION COMPANY LLC
AND
CONSTELLATION NEWENERGY INC.**

Filed: August 16, 2013

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I. Introduction

On December 12, 2012, Ohio Power Company (“AEP”) filed an application to establish a competitive bidding process (“CBP”) for procuring energy only for its standard service offer (“SSO”). AEP filed the application after the Public Utilities Commission of Ohio (“Commission”) required AEP (a) to conduct energy-only auctions during the term of its second electric security plan (“ESP”) and (b) to propose an auction process by December 31, 2012.¹ Specifically, the Commission ordered the energy auctions to achieve the following:

- A 10 percent slice-of-system procurement for delivery commencing six months after the final order in AEP’s corporate separation case.²
- A 60% slice-of-system procurement for delivery commencing June 1, 2014.
- A 100% slice-of-system procurement for delivery commencing January 1, 2015.³

In addition to applying for the energy-only auctions, AEP also included proposed bidding rules, associated bidders’ rules, a Master Energy Supply Agreement, and communication protocols.⁴

On February 11, 2013, AEP filed a supplement to its application for the purpose of clarifying the recovery of (a) the auction clearing prices for all tranches purchased and (b) the prudent costs of conducting the auctions. Finally, AEP proposed a methodology to blend the auction clearing prices with its generation rates, and requested two new Riders – a Fixed Cost Rider and an Auction Phase-In Rider.⁵

¹ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, et al., Opinion and Order at 38-40 (August 8, 2012) and Entry on Rehearing (January 30, 2013).

² *In the Matter of the Application of Ohio Power Company for Approval of an Amendment to Its Corporate Separation Plan*, Case No. 12-1126-EL-UNC, Finding and Order (October 17, 2012) and Entry on Rehearing (April 24, 2013). An appeal is pending, but nonetheless, a final Commission order in Case No. 12-1126-EL-UNC was issued on April 24, 2013.

³ *Columbus Southern Power*, *supra*, Opinion and Order at 38-40, Entry on Rehearing at 34-39.

⁴ AEP Application Exhibits A-D; AEP Ex. 1 at 9.

⁵ AEP Application Supplement; AEP Ex. 2 at 8-10.

On March 8, 2013, Constellation NewEnergy, Inc. (“CNE”) and Exelon Generation Company, LLC (“Exelon Generation”), or jointly “Exelon,” filed to intervene in this proceeding. CNE is a certified competitive retail electric service (“CRES”) provider in Ohio and a provider of electricity and energy-related services to retail customers in 15 other states, the District of Columbia, and two Canadian provinces. In Ohio, CNE serves more than 15,000 megawatts (“MW”) of load and more than 10,000 customers. Exelon Generation is an electric generator with nuclear, fossil, hydroelectric, solar, landfill gas, and wind generation assets. Exelon Generation owns/controls the largest or among the largest nuclear assets, solar plant, hydroelectric facility and wind energy facilities. Exelon Generation markets wholesale energy and capacity products and has participated in utility default service auctions in Ohio and elsewhere. CNE and Exelon Generation were granted intervention by Entry issued May 23, 2013.

As a supplier with experience providing energy and capacity as part of an Ohio SSO auction and a potential bidder, Exelon recommends that AEP’s request to true up with suppliers on a basis other than actual deliveries be rejected. Simply put, there is no substitute for a system in which the supplier is paid for the *actual* energy delivered. Second, the Commission should not accept certain recommendations made by the Industrial Energy Users – Ohio (“IEU”), Ohio Energy Group (“OEG”), and the Ohio Consumers’ Counsel (“OCC”) in this proceeding which would set a reserve price priced at the fuel adjustment clause, or have the Commission reject a bid for reasons other than a failed auction. Exelon is sympathetic to the request of SSO customers that the nominal cost of energy not increase because of the auction process. This concern, however, can be addressed by applying the suggestion of Exelon witness Dr. Jonathan

Lesser,⁶ that the difference between the auction clearing price and wholesale market price be refunded to all customers by reducing the regulatory asset previously authorized by the Commission in Case No. 10-2929.⁷ This would place SSO customers in the same position as if the cost-of-service paradigm was in existence and AEP was practicing economic dispatch, and would address concerns that, under the well-known “regulatory compact,” SSO customers who are required to pay AEP’s embedded capacity until the end of the transition period are entitled to the energy generated by AEP’s legacy generating units at the lower of cost or market.

AEP’s transition period expires on May 31, 2015, less than two years from now. Between now and that expiration date, it is critical for the Commission to organize and implement a fully competitive retail auction process. This will both prepare AEP and its SSO customers for the retail market and demonstrate to suppliers throughout the country that Ohio is fully committed to a successful competitive market.

II. Reconciliations Must be Made with Actual Load

AEP proposes that there be no reconciliation unless the load amount is 20 percent greater than or less than the estimated load.⁸

Exelon recommends reconciliations be based on actual load, rather than estimated load. Using actual load as the basis for reconciliation is a better reflection of the default service being provided. Plus, use of actual load is consistent with contracts for all other competitive procurements for default service load in which Exelon has participated, including the Ohio auctions in which Exelon is a tranche supplier.⁹ The data provided for bidders is the actual

⁶ Exelon Ex. 1 at 20-24; Tr. at 256-259, 278-281.

⁷ *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Opinion and Order (July 2, 2012), hereinafter referred to as the “Capacity Case.”

⁸ AEP Application Exhibit C at 5.

⁹ Exelon was a winning supplier in a number of Ohio auctions, including: (a) the February 19, 2013 auctions for Dominion East Ohio, In the Matter of the Application of The East Ohio Gas Co. d/b/a Dominion East Ohio for

historical data, not estimated data. Suppliers likewise rely on actual data, not estimated data, in managing winning bids. If actual values are not used as a basis for settlement, suppliers will have less ability to manage that load with confidence. Variations between estimates and actuals can occur on a routine basis, but this AEP proposal will make it more difficult for suppliers to manage that risk. Moreover, using anything other than actual values will not be a true reflection of the energy provided and the associated costs. This component of AEP's proposal can be readily modified in a manner that will add great benefits to the auction process, and should be modified to do so.

In addition, Exelon proposes the following modifications to three definitions contained in the Master Energy Supply Agreement ("MESA") for settlements to be based on actual load (per the discussion above), and to provide the necessary clarity regarding the relationship between various sets of data:

"Energy Load" means "the energy requirements of AEP Ohio's SSO Customers, ~~as estimated by AEP Ohio for each hour and scheduled prior to the daily scheduling deadline established by the PJM Agreements (which generally is the close of the first Business Day following the applicable operating day).~~ Energy Load will include all transmission and distribution losses, and shall be derated by PJM for marginal losses."¹⁰

"Estimated Hourly Energy Share" means "a quantity of Energy expressed in MWh which, for any hour on any day of the Delivery Period on which Energy Supply is required to be delivered, is the preliminary calculation of the Energy Supplier's Energy Supplier Responsibility Share for that hour **of Energy Load**. The Estimated Hourly Energy Share will be determined by AEP Ohio in a commercially reasonable manner for each hour prior to the daily In Schedule

Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services, Case No. 07-1224-GA-EXM et al., Correspondence (March 12, 2013); (b) the February 8, 2011, and February 26, 2013 auctions for Columbia Gas of Ohio Inc., In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services, Case No. 08-1344-GA-EXM et al., Correspondence (March 19, 2013) and (March 14, 2011); (c) the May 22, 2012, November 15, 2012, and May 21, 2013 auctions for Duke Energy Ohio Inc., In the Matter of the Procurement of Standard Service Offer Generation for Customers of Duke Energy Ohio, Inc., Case No. 11-6000-EL-UNC, Reports of Auction Manager (June 13, 2012), (December 7, 2012) and (June 12, 2013).

¹⁰ AEP Application Exhibit C at 4. Also, the identical definition of "Energy Load" should be included in the proposed Bidding Rules. (AEP Application Exhibit A at 6)

deadline for that hour established by the PJM Agreements (which generally is the close of the first Business Day following the operating day) using the best data then available.”¹¹

“Final Hourly Energy Share” means “a quantity of Energy expressed in MWh which, for any hour on any day of the Delivery Period on which Energy Supply is required to be delivered, is the ~~Estimated Hourly Energy Share~~ **Energy Supplier Responsibility Share of the Energy Load** for that hour, ~~adjusted for any estimation, billing or metering errors identified within sixty (60) days of the applicable operating day. For any hour in which the Final Hourly Energy Share is not less than 80% nor more than 120% of the Estimated Hourly Energy Share for that hour, The Final Hourly Energy Share shall equal~~ **be** the Estimated Hourly Energy Share **adjusted for estimation, billing, metering, and other errors.**”¹²

Although not part of the testimony, AEP agreed in its Reply Comments to these changes proposed by Exelon, stating that the recommendations are reasonable and capable of being accommodated.¹³ Therefore, AEP’s proposed MESA should be modified accordingly.

III. Opening Bids Should Not be Limited to the Fuel Adjustment Clause

The starting price in the SSO auctions must be set with reference to market prices, and must be at a level high enough to attract bidders and attract “robust excess supply” at the start of the auction.¹⁴ However, OEG, OCC and IEU suggest that the maximum starting price of the bids should be targeted to the Fuel Adjustment Clause (“FAC”) in each rate zone.¹⁵ AEP argues that setting opening bid prices to the FAC will not attract the participation and supply needed at the beginning of the auction, and thus would be detrimental to the auction process.¹⁶ Exelon agrees with AEP’s concerns.¹⁷

¹¹ AEP Application Exhibit C at 4.

¹² *Id.* at 5.

¹³ AEP Reply Comments at 7.

¹⁴ AEP Ex. 1 at 4.

¹⁵ Jt. Ex. 1 at 3-5, 18; IEU Ex. 8 at 3, 6, 8-11; Tr. at 190.

¹⁶ AEP Ex. 1 at 7-8. AEP has proposed, instead, that the auction manager establish a minimum and maximum starting price. (AEP Application, Exhibit A at 4)

¹⁷ FirstEnergy Solutions Corp. (“FES”) also believes that this recommendation from OEG and IEU should be rejected. (FES Ex. 7 at 15-19; Tr. 370-371, 373-374)

Use of the FAC as a maximum opening bid price (also called a “reserve price cap”) should be rejected for two reasons. First, imposing such a cap will discourage establishment of a fully competitive retail electric market, which is one of the Commission’s stated goals for the AEP territory. As Dr. Lesser explained, imposing the FAC as a reserve price cap will likely restrict competition for SSO customers, increase the auction clearing price, and cause greater harm to the retail market.¹⁸ More specifically, the FAC as the maximum starting price will likely cause potential suppliers to offer smaller quantities into the auction, while other suppliers will likely drop out of the auctions altogether. Furthermore, the suppliers who remain and participate will perceive greater regulatory risks in the auctions, and will increase the risk premiums in their bids to account for that regulatory uncertainty, further harming SSO customers.¹⁹

Second, imposing a reserve price at the FAC will likely impose long-run harm on SSO customers. The consequences of establishing an SSO auction that needlessly increases regulatory uncertainty and bidder risks are lasting. Consumers will suffer greater economic losses because of the “chilling effect” from a price cap that increases regulatory uncertainty, limits bidders, and restricts retail competition.²⁰

OEG and OCC argue that alleged concerns that bidder participation will be deterred if the reserve price cap is set at the FAC are “overstated.”²¹ However, these concerns are neither theoretical nor overstated. AEP witness LaCasse recalled that another reserve price cap was essentially established in FirstEnergy’s territory several years ago, and no one participated in the auction thereafter because the cap was too low.²² Moreover, the evidence in the record demonstrates that the FAC is “generally based upon economic dispatch, wherein the lowest cost

¹⁸ Exelon Ex. 1 at 12-16; Tr. at 262.

¹⁹ Exelon Ex. 1 at 14.

²⁰ Exelon Ex. 1 at 15, 16.

²¹ Jt. Ex. 1 at 19.

²² Tr. at 46.

generation is allocated to meet customer load.”²³ Thus, as the maximum opening bid, the FAC (the lowest cost generation) will not be at a level high enough to attract bidders and attract “robust excess supply.” If market forces are to work properly, the opening bid price caps cannot be set at the FAC values. OEG/OCC witness Kollen also argued that, even if no supplier bids into AEP’s upcoming auctions due to setting the starting price at the FAC rate, the objective of ensuring reasonably priced retail electric service would be fulfilled.²⁴ This is incorrect. If no competitive suppliers participate in the auctions because the *Commission* sets the maximum starting price at the FAC, then there will be no competition for the SSO portion of the market (and the Commission will then be regulating retail rates once again). Under such circumstances, there will not be a fully competitive retail market in AEP’s territory. The Commission should recognize that the recommendation by OEG, IEU, and OCC squarely conflicts with the Commission’s goals and its earlier statement in January 2013 that it is trying to provide customers with the opportunity to take advantage of *market-based* prices (not Commission-based prices) in AEP’s service territory and that the Commission will not interfere with the competitive markets.²⁵

The appropriate opening bid price should be left to the discretion of the auction manager, in conjunction with the Commission. AEP proposes to have National Economic Research Associates Inc. (“NERA”) be the auction manager.²⁶ NERA has been an auction manager, and worked with electric utilities in Pennsylvania and New Jersey (other PJM states) with CBPs for procuring default service.²⁷

²³ AEP Ex. 7 at 2-3.

²⁴ Jt. Ex. 1 at 20.

²⁵ *Columbus Southern Power, supra*, Entry on Rehearing at 35, 36.

²⁶ AEP Application at 8-9.

²⁷ AEP Ex. 1 at 2.

OEG and IEU further argue that, without the cap, it is possible that “the same utility provides the same energy to the same customers, but at a higher price” because AEP or its affiliate may be a winning bidder.²⁸ However, that fear should not be a consideration for the initial auctions because AEP and its affiliates may not participate in the auctions until corporate separation is complete.

In sum, the Commission should not attempt to guarantee any specific outcomes from the CBP through imposition of a reserve price cap. Rather, the Commission should focus on ensuring a fully competitive process with maximum auction participation in order to achieve 100 percent competition for the SSO load beginning January 1, 2015.

IV. Rejecting Auction Results is Appropriately Addressed in AEP’s Proposal

AEP proposes that, after the auctions, the Commission not only review the auction results, but have the opportunity to reject the auction results.²⁹ AEP proposes that the Commission be able to take such action only under the following, very limited circumstances:

- If the auction manager or Commission consultant determines that the auction violated a specific CBP rule “in such a manner so as to invalidate the auction.”
- The auction was not oversubscribed on the basis of the indicative offers received in the Part 2 Application.
- There were not four or more bidders.
- A bidder won more than 80% of the tranches available at the start of the auction.³⁰

OCC has argued that the Commission should also be able to reject the auction results in situations beyond the four prescribed by AEP.³¹ OCC does not indicate how the current criteria are deficient, nor does OCC set forth a clear recommendation that would give prospective bidders any comfort that the auction would result in contracts that will be honored.

²⁸ OEG Initial Comments at 1; IEU Ex. 8 at 10-11.

²⁹ AEP Application Exhibit A at 21.

³⁰ *Id.*

³¹ OCC Initial Comments at 4.

Moreover, OCC's proposal could create a very real risk or the perception of a risk – which yields the same result – that the auction may not clear, and that the auction was based on hidden, subjective factors. As Dr. Lesser stated, for the fullest possible participation, “potential bidders much have confidence that the ‘rules won’t change’ *ex post facto*.”³² Assessing the regulatory risk that bids may be rejected is always a factor for prospective bidders when they decide whether to actually bid in a particular procurement. Even if prospective bidders do bid, they may add an additional risk premium into their calculation. Additionally, other Ohio auctions have been successful without OCC's broader “discretion” in place, and there is no basis to conclude that AEP's auctions will bear a different result.

If the proposed auction rules – including Bidding Rules and Communication Protocols – are followed as set forth by AEP, the bids (and resulting rates) will reflect competitive market prices, and should be free from interference. For all of these reasons, this OCC recommendation should be rejected.

V. The Auction Product Should Not be Split into Smaller Components

OCC recommends that the 22-month product be split into a 10-month product and a 12-month product:

This modified structure offers a couple of advantages. * * * By procuring the 12-month portion at a later date, the modified structure reduces the time between procurement and start of delivery for the 6/2014-5/2015 portion of the 22-month product proposed by AEP. Reducing the time between procurement and delivery for this 12-month portion should reduce load and price uncertainty, and thus reduce risk premiums assessed by bidders when they bid on this portion as a separate 12-month product. In other words, OCC's proposed approach should save money for consumers.

Second, with only ten tranches on offer in the June 2013 auction, bidding may not be robust enough to support competitive pricing for a 22-month product, especially given the delivery risk for the longer-term product

³² Exelon Ex. 1 at 6.

noted above. Shortening the term of the product to ten months may increase bidder interest and promote competitive pricing, or at least limit the damage to consumers from inefficient pricing.³³

Such modification of the auction product as the OCC proposes is ill-advised for several reasons. First, with the 22-month product, there is less laddering and more stability in rates than would occur if the commodity is purchased at different times, as OCC proposes. Second, procuring energy more frequently during the period likely will not be beneficial to customers price-wise because more frequent procurements (a) may lead to lower participation by prospective bidders and (b) would lower the number of tranches available. As Dr. Lesser explained, OCC's suggestion does not consider the administrative costs of a full second round of bidding, which in his expert opinion would likely reduce bidder participation and raise bid prices.³⁴ Dr. Lesser further stated that, if the 22-month product were split as OCC recommends, the available tranches would not be as favorable – the megawatt-hour (“MWh”) size of the initial 10-tranche auction would be reduced by more than half, while the MWh size of the June 2014 auction would be increased by a much smaller percentage. Dr. Lesser concluded that the adverse effects on the initial 10-month auction would likely be worse than the benefits of a greater number of tranches in the June 2014 auction.³⁵ Third, the Commission should recognize that time has passed since the application and proposals were filed with the Commission. Given the amount of time remaining, OCC's suggestion to split the product would result in even smaller products, which is unwise. The Commission should not add greater risks to the auction process by adopting OCC's suggestion.

³³ OCC Initial Comments at 3- 4.

³⁴ Exelon Ex. 1 at 8. AEP and FES disagree with this OCC proposal for similar reasons. (AEP Ex. 1 at 11; FES Ex. 7 at 14)

³⁵ Exelon Ex. 1 at 8.

VI. Auctions Should Not be Separated By AEP Rate Zone

AEP proposes a CBP involving procurement of tranches of AEP's SSO load. AEP does not separate that SSO load into rate zones.³⁶

OEG and OCC suggest that separate, simultaneous auctions be held for each AEP rate zone because the FACs for the two AEP rate zones differ, with the FAC for the Ohio Power rate zone being lower than the FAC for the Columbus Southern rate zone.³⁷ OEG stated that the clearing price *may* lead to unreasonably high energy rates for the Ohio Power rate zone because of the FAC rate difference.³⁸ However, OEG's and OCC's position is speculative. OEG/OCC witness Kollen testifies that a reasonable expectation of such simultaneous auctions is very similar, if not identical, results.³⁹ There is no evidence of any *appreciable* difference between what a bidder would bid into each zone. The FAC would merely either increase or decrease by the same proportion in each of the zones. Therefore, separating the product by rate zone would likely not yield any value in the auction.

Additionally, it must be noted again that the more auctions held during this brief period, the greater the administrative costs of participation will be for bidders and the lower the expected returns for bidders. Some potential bidders may either forego participation entirely or partially, or increase the prices at which they bid.⁴⁰

Without evidence of a discernible benefit to hosting two auctions simultaneously, Exelon recommends that the auction product be system-wide and the Commission not split out the auction for each of AEP's rate zones.

³⁶ AEP Application Supplement at 2, footnote 1; AEP Ex. 2 at 10. *See, also*, AEP Application, Exhibit A at ¶ I.2.2. and ¶ III.1.1, and Exhibit C at Article I.

³⁷ Joint Ex. 1 at 5, 23; Tr. at 195. OEG made this same argument in AEP's ESP proceeding, and the Commission deferred the question to this matter. *Columbus Southern Power, supra*, Entry on Rehearing at 34-35.

³⁸ Jt. Ex. 1 at 23.

³⁹ Tr. at 199-200.

⁴⁰ Exelon Ex. 1 at 7.

VII. The Base Generation Rate Must Comply with the Prior Commission Ruling

AEP proposes to charge its current base generation charge until January 1, 2015, but then uniformly reduce the base generation rates for all customers by 40 percent.⁴¹ AEP explained that after applying the Commission-ordered capacity charge of \$188.88 per megawatt-day directly to its load information filed in the ESP proceeding, the resulting reduction to base generation rates commencing January 2015 is 40 percent (dropping the rate from \$22.50 per megawatt-hour to \$13.05 per megawatt-hour).⁴²

However, the Commission has already decided that AEP's base generation rates are supposed to change as the auctions take place. In the ESP proceeding, AEP espoused that it would be unreasonable to adjust the SSO base generation rates during the auctions and that they should be frozen during that time period. In its January 2013 Entry on Rehearing in AEP's ESP case, the Commission stated the following:

We find that AEP-Ohio's request to continue to freeze base generation rates through the auction process is inappropriate and should be rejected. The entire crux of the [ESP] Opinion and Order was the value in providing customers with the opportunity to take advantage of market-based prices and the importance of establishing a competitive electric marketplace. AEP-Ohio's proposal is completely inconsistent with the Commission's mission and would preclude AEP-Ohio customers from realizing any potential savings that may result from its expanded energy auctions. This is precisely the reason why the Commission expanded and accelerated the CBP in the first place. Further, we find that AEP-Ohio's fear of adverse financial impacts is unfounded, as the RSR will in part ensure AEP-Ohio has sufficient funds to efficiently maintain its operations.⁴³

⁴¹ AEP Application Supplement at 5; AEP Ex. 2 at 5-6; Tr. at 102-103.

⁴² AEP Ex. 2 at 6-7; Tr. at 92-93, 140.

⁴³ *Columbus Southern Power*, *supra*, Entry on Rehearing at 36-37.

FES concurs that AEP's proposal does not comport with the Commission's ruling in the ESP proceeding.⁴⁴

In addition to not complying with the Commission's decision, Dr. Lesser contends that AEP's base generation rate in this proceeding represents capacity costs only, while in the ESP proceeding, AEP's base generation rates⁴⁵ involved capacity costs, energy, and ancillary services.⁴⁶ Thus, AEP has not presented its base generation rates consistently in the two dockets.

With this new proposal, AEP will prevent SSO customers from receiving potential savings.⁴⁷ Plus, this AEP proposal will skew the "price to compare" for customers who are considering whether to purchase electricity from CRES providers, thereby adversely affecting retail market competition.⁴⁸ The Commission should reaffirm its previous rejection of AEP Ohio's proposal to freeze its base generation rates throughout the entire term of the ESP.

VIII. The Above-FAC Concerns Can Be Remedied Effectively

As mentioned earlier, OEG and IEU are concerned that, without a cap on the maximum opening bid, the auctions will result in above-FAC auction prices.⁴⁹ Dr. Lesser acknowledged that the auction clearing prices could be higher than the FAC, and, if that occurred, SSO customers would pay market prices for energy and pay the embedded cost of capacity for AEP's generating assets.⁵⁰ To address the concern with above-FAC auction prices during the transition to competition for AEP, Dr. Lesser recommended that the Commission implement a crediting mechanism that will reduce the regulatory asset the Commission previously authorized for AEP

⁴⁴ FES Ex. 7 at 5-8, 11; Tr. at 357.

⁴⁵ *Columbus Southern Power, supra*, Entry on Rehearing at 36.

⁴⁶ Tr. at 273.

⁴⁷ Exelon Ex. 1 at 16-17.

⁴⁸ *Id.*

⁴⁹ Jt. Ex. 1 at 3-4, 18; IEU Ex. 8 at 8-11.

⁵⁰ Exelon Ex. 1 at 20.

in the Capacity Case to collect embedded capacity costs.⁵¹ Unlike the OEG/IEU reserve price cap proposal, Dr. Lesser's crediting mechanism will not adversely affect the competitiveness or results of the SSO auctions, and still will recognize that retail customers who have paid for AEP's legacy generating asset capacity should be able to benefit from that capacity's relatively low variable operating costs.⁵² In addition, this mechanism recognizes that the portion of SSO load previously served by AEP will be available for sale into the market. Dr. Lesser is not imposing any obligation on AEP to sell the power into the wholesale market.⁵³

Dr. Lesser also explained that the crediting mechanism will not penalize AEP if the auction clearing prices are above or below the FAC. If the clearing prices are above the FAC, AEP will be able to sell the additional energy that otherwise would have been sold to SSO customers at the FAC price and still receive that price. If the clearing prices are below the FAC, no additional crediting will occur as such energy would have been subject to being provided by economic dispatch.⁵⁴ The proponents of a reserve price or Commission rejection of the auction results if the auction price for energy exceeds the otherwise applicable FAC price are looking for a very specific result – namely, no further increases for energy. While that is an understandable goal, it goes beyond the standard rule for pricing energy under the cost-of-service paradigm. For 70 years under Section 4909.18, Revised Code, electric utilities received a return on their rate base investment, but only reimbursement of their variable costs for generation. Further, as AEP witness Roush testified, if AEP can purchase energy for less than running its units (economic dispatch), it is obligated to do so.⁵⁵ In other words, even before restructuring, SSO customers

⁵¹ Exelon Ex. 1 at 20-24; Tr. at 305-306. The reduction would be based on the difference between the auction clearing price and the FAC, multiplied by the SSO load served by the auction suppliers. (Exelon Ex. 1 at 21)

⁵² Exelon Ex. 1 at 20-24; Tr. at 279-280.

⁵³ Tr. at 303-304.

⁵⁴ Exelon Ex. 1 at 23; Tr. at 259.

⁵⁵ Tr. at 68.

were not strictly tied to the cost of energy from the legacy utility generation units. Dr. Lesser's proposal merely carries and utilizes that concept with a restructured auction environment, namely that SSO customers who are required to pay for AEP's embedded capacity costs should pay the lower of the variable cost of energy from the legacy units or the market (economic dispatch price) for energy. Dr. Lesser's proposal is consistent with the well-known "regulatory compact." In Dr. Lesser's opinion, this crediting mechanism is the most straightforward and administratively easy way to credit back additional revenues received by AEP. Additionally, Dr. Lesser's proposal is consistent with standard ratemaking principles.⁵⁶ AEP opposes Dr. Lesser's crediting mechanism, arguing that the proposal is flawed for multiple reasons.⁵⁷ At the most basic level, AEP argued that the crediting mechanism is flawed because it is too complicated.⁵⁸ A review of the AEP tariffs shows that simplicity has never been a guiding force in setting AEP's regulated rates.

A prime example of the complexity of AEP's rates is the fact that, even in the FAC, there are capacity costs. AEP now asks that these fixed capacity costs in the existing FAC be charged separately. AEP is concerned that Dr. Lesser has not done so in his proposal. However, Dr. Lesser does not oppose treating the capacity costs in the FAC as capacity costs, and thus no part of his crediting back to customers consists of AEP's return on its fixed assets, thus addressing one of AEP's other criticisms. Further, it should be noted that the crediting is only to the standard service load. Thus, on the more than 49.4 percent of the load that is shopping,⁵⁹ Dr.

⁵⁶ Tr. at 257, 258, 300-301.

⁵⁷ AEP Ex. 7 at 2-4.

⁵⁸ Tr. at 458.

⁵⁹ Public Utilities Commission of Ohio, *Summary of Switch Rates from EDUs to CRES Providers in Terms of Sales for the Month Ending March 31, 2013*, <http://www.puco.ohio.gov/puco/index.cfm/industry-information/statistical-reports/electric-customer-choice-switch-rates/> (accessed August 16, 2013).

Lesser's crediting mechanism would not apply and AEP can earn a margin in the market if its energy is competitively priced.

In sum, AEP's list of flaws is unconvincing and is simply designed to allow AEP to further increase its profits during the remaining transition period. Dr. Lesser's credit mechanism is a fair and workable means for addressing concerns that the auctions will result in above-FAC clearing prices during the transition period.

IX. AEP should Comply with the Prior Commission Decision when Charging Capacity Costs between January and May 2015

AEP Ohio proposes in this proceeding to recover capacity costs based on "December 2014 cost levels."⁶⁰ The Commission should reject AEP Ohio's proposal to charge SSO customers for capacity costs "based on December 2014 cost levels," because the Commission stated in January 2013 that AEP Ohio is required to charge SSO customers \$188.88/MW-day for capacity during the January 1, 2015 through May 31, 2015 period.⁶¹ In particular, the Commission stated, "In light of the Commission's decisions in the Capacity Case, which determined \$188.88/MW-Day would allow AEP Ohio to recover its embedded capacity costs without overcharging customers, it would be unreasonable for us to permit AEP-Ohio an amount higher than its cost of service."⁶²

Dr. Lesser explained that, with a 100 percent SSO auction as of January 1, 2015, and full corporate separation accomplished, there should be no FAC rider whatsoever (whether it remains bundled or gets unbundled as proposed by AEP), except to the extent of any over- or under-recoveries.⁶³ But if the specific "Non-Energy (Fixed)" component of the FAC is allowed to continue past January 1, 2015, AEP would effectively double-recover some of its capacity costs,

⁶⁰ AEP Application Supplement at 5.

⁶¹ *Columbus Southern Power, supra*, Entry on Rehearing at 37.

⁶² *Columbus Southern Power, supra*, Entry on Rehearing at 37.


⁶³ Exelon Ex. 1 at 24-25; Tr. at 307.

which is inconsistent with basic cost-of-service ratemaking.⁶⁴ AEP admits that the “energy” portion of the FAC should be eliminated by January 1, 2015.⁶⁵ Therefore, AEP has not sustained its burden of proof to recover capacity costs based on “December 2014 cost levels.”

X. Conclusion

For the foregoing reasons, OPC’s application in this matter should be modified consistent with Exelon’s recommendations. Additionally, the Commission should reject the proposals made by IEU, OEG and OCC set forth above.

Respectfully submitted,



M. Howard Petricoff, Counsel of Record
Gretchen L. Petrucci
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
614-464-5414
614-719-4904 (fax)
mhpetricoff@vorys.com
glpetrucci@vorys.com

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

⁶⁴ Exelon Ex. 1 at 24-25.

⁶⁵ AEP Ex. 7 at 2.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief was served this 16th day of August 2013, via email, on the parties listed below.



M. Howard Petricoff

<u>On Behalf of Ohio Power Company</u> Steven T. Nourse American Electric Power Service Corporation 1 Riverside Plaza, 29 th Floor Columbus, Ohio 43215 stnourse@aep.com Daniel R. Conway Porter, Wright, Morris & Arthur LLP 41 South High Street Columbus, Ohio 43215-6194 dconway@porterwright.com	<u>On Behalf of Ohio Consumers' Counsel</u> Maureen R. Grady Assistant Consumers' Counsel Office of the Ohio Consumers' Counsel 10 West Broad Street, Suite 1800 Columbus, Ohio 43215-3485 grady@occ.state.oh.us
<u>On Behalf of FirstEnergy Solutions Corp.</u> Mark A. Hayden FIRSTENERGY SERVICE COMPANY 76 South Main Street Akron, OH 44308 haydenm@firstenergycorp.com James F. Lang Laura C. McBride N. Trevor Alexander CALFEE, HALTER & GRISWOLD LLP The Calfee Building 1405 East Sixth Street Cleveland, OH 44114 jlang@calfee.com lmcbride@calfee.com tallexander@calfee.com	<u>On Behalf of the Industrial Energy Users – Ohio:</u> Samuel C. Randazzo Frank P. Darr Joseph E. Olier Matthew R. Pritchard MCNEES WALLACE & NURICK LLC 21 East State Street, 17TH Floor Columbus, OH 43215 sam@mwncmh.com fdarr@mwncmh.com joliker@mwncmh.com mpritchard@mwncmh.com

<p><u>On Behalf of Ohio Energy Group:</u></p> <p>David F. Boehm Michael L. Kurtz Jody Kyler Cohn Boehm, Kurtz & Lowry 36 East Seventh Street, Suite 1510 Cincinnati, Ohio 45202 dboehm@BKLLawfirm.com mkurtz@BKLLawfirm.com jkyler@BKLLawfirm.com</p>	<p><u>On Behalf of Exelon Generation Company LLC and Constellation NewEnergy Inc.:</u></p> <p>David I. Fein Vice President, State Government Affairs - East Exelon Corporation 550 West Washington Blvd., Suite 300 Chicago, IL 60661 david.fein@exeloncorp.com</p> <p>Cynthia Brady Assistant General Counsel Exelon Business Services Company 4300 Winfield Road Warrenville, IL 60555 cynthia.brady@constellation.com</p>
<p><u>On Behalf of the Staff of the Public Utilities Commission of Ohio:</u></p> <p>Stephen Reilly Assistant Attorney General Public Utilities Section 180 East Broad Street Columbus, Ohio 43215 stephen.reilly@puc.state.oh.us</p>	<p><u>Attorney Examiners:</u></p> <p>jonathan.tauber@puc.state.oh.us sarah.parrot@puc.state.oh.us</p>

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