BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan.	)))))	**Case No. 13-2385-EL-SSO**
In the Matter of the Application of Ohio Power Company for Approval of Certain Accounting Authority.	)))	**Case No. 13-2386-EL-AAM**

DIRECT TESTIMONY OF

LAEL CAMPBELL

ON BEHALF OF INTERVENORS

CONSTELLATION NEWENERGY, INC.

EXELON GENERATION COMPANY, LLC

May 6, 2014

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I. **INTRODUCTION**

A. **IDENTIFICATION OF WITNESS**

Q. Please state your name and your business address.

A. My name is Lael Campbell, and my business address is 101 Constitution Avenue NW, Washington, DC 20001.

Q. By whom are you employed?

A. I am employed by Exelon Corporation.

Q. Please describe your position with Exelon Corporation.

A. I am Director, State Government and Regulatory Affairs for Exelon Corporation and for Constellation, an Exelon Corporation. In this role, I am responsible for advocating for and implementing regulatory and legislative policies for Exelon Corporation's retail marketing subsidiary, Constellation NewEnergy, Inc., and its wholesale marketing affiliate Exelon Generation Company, which owns and markets non-nuclear power generation in Ohio, Pennsylvania, Illinois, and Michigan.

Q. Please describe your educational and business experience.

A. I earned a Bachelor of Arts from Dickinson College in Carlisle, PA in 1990 and a Juris Doctorate from Washington and Lee University School of Law in 1998. I have been with Exelon and Constellation for over six years. Prior to my currently role, I served as Assistant General Counsel with Exelon where I was responsible for providing legal and regulatory support to Exelon Generation's wholesale trading and marketing business. Before that I served as Senior Regulatory Counsel for Constellation supporting the regulatory activities of the Constellation NewEnergy, Inc. retail business, in addition to Constellation's wholesale market activities before state and federal regulatory agencies across the country. My previous experience prior to joining Constellation includes over five years as a Senior Trial Attorney at the U.S. Commodity Futures Trading Commission, where I represented the agency in numerous matters relating to physical and financial commodity markets, including energy markets.

Q. On whose behalf are you testifying?

A. I am testifying on behalf of Constellation NewEnergy, Inc. and Exelon Generation Company, LLC (collectively "Exelon").

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

A. The Exelon family of companies participates in every segment of the energy marketplace, from generation to competitive energy sales to transmission to delivery. Exelon has operations and business activities in 47 states, the District of Columbia and Canada. The company is the largest competitive U.S. power generator, with approximately 35,000 megawatts ("MWs") of owned capacity, comprising one of the nation's cleanest and lowest-cost power generation fleets. Its Constellation business unit provides energy products and services to approximately 100,000 business and public-sector customers, and approximately 1 million residential customers. Exelon's utilities deliver electricity and natural gas to approximately 6.6 million customers in central Maryland, northern Illinois and southeastern Pennsylvania.

Exelon Generation Company, LLC ("Exelon Generation") is the largest competitive power generator in the U.S., with approximately 35,000 MWs of owned capacity, comprising one of the nation's cleanest and lowest-cost power generation fleets including nuclear, fossil, hydroelectric, solar, landfill gas, and wind generation assets, located in a number of organized markets. It is the nation's largest nuclear operator with 22 reactors located in Illinois, Pennsylvania, Maryland, New Jersey, and New York, and has a growing renewable energy business. It operates 44 wind projects that in total are capable of generating nearly 1,300 MWs. In addition, Exelon Generation operates the nation's largest urban solar power plant, Exelon City Solar, a 10 MW solar installation located on a 41-acre brownfield in Chicago, and two of the largest hydroelectric facilities in the Eastern United States, Conowingo Hydroelectric Generating Station and Muddy Run Pumped Storage Facility totaling nearly 1,600 MWs of capacity. Exelon Generation markets wholesale energy and capacity products to municipal, cooperative, and investor-owned utilities, retail suppliers, retail energy aggregators, merchant participants, power marketers, and major commodity trading houses. Exelon Generation has sold power to AEP Ohio, and other Ohio electric distribution utilities ("EDUs") pursuant to competitive wholesale procurement events overseen by the Public Utilities Commission of Ohio ("PUCO" or "the Commission").

Constellation NewEnergy, Inc. ("CNE"), a subsidiary of Exelon Generation, provides electricity and energy-related services to retail customers in Ohio as well as in 15 other states, the District of Columbia, and two Canadian provinces, and serves more than 15,000 MWs of load and more than 10,000 customers. CNE holds a competitive retail electric service ("CRES") license from the PUCO to engage in the competitive sale of electric service to retail customers in Ohio. CNE currently provides service to over 26,000 residential and small commercial customers and over 700 larger commercial and industrial customers in Ohio.

B. SUMMARY OF POSITION

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

A. Exelon has been an active participant before the Commission and the General Assembly for a number of years. In fact, Constellation was an ardent advocate in the wake of the passage of Senate Bill 221 for the use of a competitive procurement process as a better means for setting the rates that would be charged to Standard Service Offer ("SSO") customers, and has participated in every Electric Security Plan ("ESP") and Market Rate Offer case since that time.

I developed my testimony and recommendations based upon that history and longstanding advocacy for the advancement of competitive markets as well as a desire to effectuate the goals of Section 4928.02 of the Ohio Revised Code to establish Ohio's policy to support retail competition and avoid anti-competitive subsidies.[1] Consistent with this background, the purpose of my testimony is to outline our support for a number of provisions contained in the ESP proposed by Ohio Power Company ("AEP Ohio"). In addition, I will explain why certain aspects of the AEP Ohio proposed ESP should be accepted, explain why certain aspects of the ESP should be rejected, and explain how the Commission should modify AEP Ohio's proposal to maintain and enhance the

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[1] Section 4928.02 of the Ohio Revised Code provides, in relevant part, the following:

> "It is the policy of this state to do the following throughout this state: ...(B) 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 need;... [and] (H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates...."

competitive wholesale and retail markets consistent with the policy goals contained in Ohio law.

C. Summary of Conclusions and Recommendations

Q. Please summarize your conclusions.

A. First, Exelon **supports** certain elements of AEP Ohio's ESP that continues down the path toward a more competitive retail and wholesale market environment. These include:

- AEP Ohio's proposed Purchase of Receivables program, which is a key for bringing the benefits of retail competition to residential customers and small commercial customers that are not participating in a governmental aggregation program;
- Phase out of AEP Ohio Time-Of-Use Price Offers, as this and more innovative products are best addressed by the market through CRES providers; and
- The inclusion of certain non-market-based PJM transmission charges in a non-bypassable rider applicable to all customers, which recognizes the concern of both wholesale and retail suppliers in managing these unhedgeable costs.

Second, there are a number of problems associated with the proposed Rider PPA as it runs completely counter to the tremendous progress that the State of Ohio, the PUCO, and AEP Ohio have made towards the transition to full retail and wholesale competition. Those problems are not just limited to the proposed treatment of AEP Ohio's share of Ohio Valley Electric Cooperative generation entitlement ("OVEC entitlement") but extend to the provisions of Rider PPA that would allow AEP Ohio to include additional

PPAs. AEP Ohio claims that Rider PPA will serve as a "hedge" to market volatility. To the extent Rider PPA will provide "rate stability", as will be discussed below, it will do so at a higher price than the competitive market could otherwise offer. As such, AEP Ohio has presented an alternative that will likely increase costs to both shopping and non-shopping customers, with the benefits going solely to AEP Ohio's generation affiliate and/or corporate parent.

Third, even if Rider PPA is to be approved to address the OVEC entitlement issue, AEP Ohio's proposal to potentially include additional PPAs under Rider PPA must be rejected. Any additional PPAs that potentially could be added to Rider PPA could effectively erase all progress to date on the path toward robust competition in the AEP Ohio service territory and the State of Ohio. Allowing above-market subsidies for generation units to be embedded in non-bypassable surcharges to shopping customers would establish a horrible policy precedent. Other utilities in Ohio will soon be lining up to receive similar treatment through the imposition of non-bypassable surcharges and subsidies. Below, I will address additional factual, policy, and legal reasons that support rejection of the provisions of Rider PPA that allow additional future PPAs to become part of Rider PPA.

Fourth, the proposed Unilateral Termination right of AEP Ohio must be rejected as inequitable and creating uncertainty that will be disruptive to customers, suppliers and the competitive market.

Finally, the AEP Ohio ESP can be improved by including other unhedgeable, non-market based PJM charges, such as the Generation Deactivation fee, into a non-bypassable rider, which would level the playing field for SSO customers and shopping customers alike, and better align AEP Ohio with all other EDUs in Ohio.

Q. Given those conclusions, what are Exelon's recommendations?

A. Exelon recommends that the Commission adopt a modified ESP that contains the following elements:

- **Approve AEP Ohio's proposed Purchase of Receivables program with Bad Debt Rider, subject to the clarifications noted below;**
- **Phase out AEP Ohio's Time-Of-Day price offers;**
- **In addition to including NITS charges, PJM Generation Deactivation charges should also be recovered via a non-bypassable rider applicable to SSO customers and shopping customers alike;**
- **Eliminate AEP Ohio's Unilateral Right to Terminate the ESP prior to the end of the third year of the ESP; and**
- **Reject Rider PPA in its entirety.** There is no justification in this case for contemplating any PPAs other than OVEC or creating a non-bypassable rider that would allow for future PPAs. AEP Ohio should not be permitted to create a non-bypassable rider for OVEC costs. There are other, more appropriate means of accounting for AEP Ohio's OVEC participation than the AEP Ohio proposal.

By adopting AEP Ohio's proposed ESP, with the modifications recommended herein, the PUCO can maintain the progress made to date. Without these recommendations, AEP Ohio's ESP will constitute an unnecessary step backwards from the transition to full competition ordered by the Commission. These anti-competitive elements of the ESP should be eliminated.

II. CERTAIN ELEMENTS OF AEP OHIO'S ESP SHOULD BE APPROVED

Q. Does AEP Ohio's ESP continue the transition to a fully competitive retail and wholesale market?

A. Yes, in certain respects it does. First, AEP Ohio continues to rely upon a competitive procurement process for the purchase of electricity for customers who do not choose to take service from a CRES Provider. Second, as will be discussed below, AEP Ohio proposes certain retail market enhancements that should lead to further growth and sustainability of the competitive retail market. The Commission has taken great strides over the last few years to transition all of the Ohio EDUs towards a fully competitive retail and wholesale market. AEP has played a material role in the success of the transition thus far. For example, since their previous ESP, AEP has divested its generation assets, transitioned to PJM's Reliability Pricing Model for procuring capacity, and participated for the first time in PJM's most recent Base Residual Auction for capacity. However, despite these steps AEP has made in furtherance of a transition to a fully competitive market, there are certain aspects of the AEP ESP that, if implemented, could result in a giant stride backwards. In this proceeding, the Commission should remain vigilant to continue down that path and reject proposals that would stymie that transition or take steps in the opposite direction.

A. Purchase of Receivables/Bad Debt Rider Should Be Implemented

Q. AEP Ohio has included a Purchase of Receivables/Bad Debt Rider within its Application. What is Exelon's view of AEP Ohio's proposal?

A. Exelon supports AEP Ohio's proposal. As AEP Ohio's Application notes, the "Commission directed AEP Ohio to evaluate a POR program as a means of supporting Ohio Choice" (Application, p. 14), AEP Ohio took that direction to heart, providing analysis and a well-thought-out proposal that can realistically expand the smallest customers' options for their supplier of electric power and energy, giving them access to a wide range of products that best meets their needs. Exelon commends AEP Ohio for advancing a workable proposal, even before the Commission's Order in the Retail Market Investigation docket was published (Case No. 12-3151-EL-COI), which encouraged all utilities to include a POR or equivalent in their next ESP case.

Q. Does Exelon have any suggested changes to AEP Ohio's proposal?

A. Exelon seeks only two minor clarifications or modifications to AEP Ohio's POR proposal. First, AEP Ohio should confirm that the Bad Debt Rider ("BDR") associated with the Purchase of Receivables Program is non-bypassable. Second, AEP Ohio should provide a mechanism that shows the various costs included in the BDR. Providing transparency of the BDR costs helps customers see what is included in their overall rate, aids suppliers, and is helpful for the market, overall.

B. Time-Of-Use Products Should Be Phased Out

Q. AEP Ohio has proposed that, as a result of the implementation of full auction-based pricing for its SSO customers and the development of the competitive market, its variable pricing tariffs, such as Standard Time-Of-Use tariffs, be eliminated. (Application, p. 9; Spitznogle Direct; Moore Direct). What is Exelon's view of that proposal?

A. Exelon supports AEP Ohio's proposal to eliminate its time-of-use tariffs. EDUs should be providing only basic default service for supply. They have been ordered to leave the business of the supply function behind. Consistent with that path, EDUs should focus on their role as a distribution utility, and operations that are part and parcel of that role. CRES providers and the competitive market should be the exclusive providers of time-of-use products and new, innovative products and services.

III. THE COMMISSION SHOULD ELIMINATE RIDER PPA

A. Non-Bypassable Generation Riders Should Be Rejected

Q. Please describe your understanding of AEP Ohio's OVEC entitlement and the proposed PPA Rider.

A. I understand that AEP Ohio is entitled to a 19.93% share of the OVEC power participation benefits and requirements. AEP Ohio is proposing to sell its share of the OVEC entitlement into the PJM market, and to include the net benefit of those revenues in Rider PPA, less any costs associated with its share of the OVEC entitlement. However, the Application does not provide any quantification of those costs, and instead expects retail customers, including shopping customers, to simply write a blank check. AEP Ohio has also indicated that Rider PPA is to be used for future PPAs, or similar products, that the Commission may approve.

Q. How does AEP Ohio plan to implement Rider PPA?

A. AEP Ohio's proposed Rider PPA is a non-bypassable generation-related charge.

Q. Please describe what you mean by the term "Non-bypassable Generation-Related Charge."

A. A non-bypassable generation-related charge is a fee or charge that the customer is required to pay to the utility regardless of whether the customer receives generation service from a CRES provider or the utility.

Q. Should all charges be bypassable when a customer takes service from a CRES provider?

A. No, only those costs associated with the service they receive from a CRES provider should be bypassable. This prevents customers from having to pay the utility for services they no longer and do not wish to receive. For example, services which are distribution-related or non-generation supply related should continue to be paid by all customers regardless of whether they choose to select a CRES provider or remain with the utility. Customers should only pay for the costs they cause from the services that they purchase.

Q. How do non-bypassable charges potentially cost customers more when their supply offer is lower than the utility SSO supply?

A. It is fairly simple. When a customer takes supply from a CRES provider, they are receiving all of their generation-related service from that company. They are no longer taking generation-related service from the utility. If a shopping customer is forced to continue to pay the utility for generation-related supply charges plus pay their CRES provider for generation service, they are effectively paying twice for the same service. Paying the utility for a service the customer is already receiving from the CRES could cause the customer to pay more for electric power than had they not switched to the CRES provider, even if the CRES supplier's generation is at a lower cost than the Standard Service Offer.

Q. Has the General Assembly addressed the issue of whether generation-related expenses can be collected in a utility distribution fee?

A. Yes, in Senate Bill 221, the General Assembly amended Section 4928.02(H), Revised Code, which addresses anti-competitive subsidies by specifically: "...prohibiting the recovery of any generation-related costs through distribution or transmission rates." AEP Ohio's Rider PPA, which is a non-bypassable generation-related rider, appears in conflict with this provision.

Q. What is the effect on the competitive retail market when shopping customers are required to pay the utility for generation services they do not receive?

A. Making shopping customers pay AEP Ohio for generation service that they do not receive from AEP Ohio has the potential to destroy the development of the competitive retail market, and in fact was a major contributing factor in the collapse of retail competition and governmental aggregation programs in other Ohio service territories in 2005. The overall result puts Ohio at a competitive disadvantage, as businesses will face unnecessarily high energy costs.

Q. Are there specific generation-related costs and charges that AEP Ohio seeks to impose on customers regardless of whether they actually purchase electric generation service from AEP Ohio?

A. Yes, through Rider PPA, AEP Ohio seeks to impose generation-related non-bypassable charges on all customers even if that customer is taking generation service from someone other than AEP Ohio. Requiring customers that purchase electricity from CRES providers to pay for AEP Ohio's generation costs is contrary to Ohio law, fundamentally unfair, and anti-competitive. Such a proposal will prohibit customers from being able to choose the lowest cost source of generation service and will mean higher costs for electricity customers and businesses that provide jobs in Ohio. Therefore, the Commission should reject the request to make Rider PPA non-bypassable.

The imposition of non-bypassable riders to recover generation-related costs inappropriately places the financial risks of AEP Ohio's parent's business decisions squarely on the shoulders of its customers. Business risks for generation-related costs rightly belong with AEP Generation, or AEP Ohio's parent.

The Commission should reject AEP Ohio's proposal to make the surcharges non-bypassable. One of the primary reasons for retail competition is to give customers options to bypass high default costs through real competitive offers. Generation-related, non-bypassable surcharges can thwart competition and can eliminate any economic advantage from shopping. By eliminating these non-bypassable surcharges, the Commission can avoid having shopping customers effectively subsidize certain of AEP's generating plants. The Commission has the ability to alter the proposed ESP, and should do so by rejecting the proposed Rider PPA.

B. <u>Recovery of OVEC Entitlement Should Be Via Alternative Means</u>

Q. What does AEP Ohio describe as the purpose of its PPA Rider as relates to OVEC?

A. Witness Allen claims that "the proposed PPA rider is designed to stabilize customer rates by providing a hedge against market volatility." (Allen Direct, p. 8) He goes on to state that, "[d]ue to the relative stability of OVEC's costs as compared to market based costs this rider should rise and fall in a manner that is counter to the market and as such will increase rate stability for customers." (*Id.*)

Q. Has AEP Ohio indicated what those costs are?

A. No, the Application did not. Exelon attempted to uncover those costs through discovery, specifically seeking a quantification of the costs and benefits of AEP Ohio's OVEC entitlements and requirements on an annual basis for the past 10 years. However, AEP Ohio indicated that it had not prepared such an analysis. (Attachment 1, RPD-1-002)

Q. Does Exelon need or want AEP Ohio to provide market hedges to customers taking competitive supply from Constellation, Exelon's retail electric business?

A. No, yet that is precisely what AEP Ohio is trying to do. Shopping customers have deliberately and consciously chosen a CRES provider as their competitive supplier, and should not be subject to any element that relates to generation costs. CRES providers manage their own costs and their own portfolio of generation supply. Those portfolios likely include electricity from a number of different generation resources, and types of resources. Unlike electric distribution utilities, that are guaranteed a return on their investment, CRES providers have no such guarantee, and are therefore more motivated to effectively manage their portfolios. Additionally, CRES providers may have a number of different offerings for customers, geared toward the customer's goals and objectives, including their risk tolerance or desire for a market hedge. There is no need, and no place, for AEP Ohio to provide a "hedge" to customers taking competitive supply.

To the extent that Rider PPA provides a hedge to price volatility, it does so at the high price necessary to subsidize the out-of-the-market OVEC entitlement. In contrast, absent the Rider PPA charge, a competitive supplier can offer a customer a stable, long term, fixed price at a much lower rate that is reflective of market prices. Likewise, if AEP is interested in securing long-term PPAs for their generating fleet, they can offer a long-term, fixed-price product through their CRES provider to retail customers in the competitive market. Rider PPA is simply a mechanism that would require Ohio shopping and non-shopping customers to make up any difference between the market price and AEP Ohio's OVEC obligations.[2]

Q. Does Exelon agree with AEP Ohio's approach of retaining the OVEC entitlement at the utility level and selling into the PJM market, placing the costs through a non-bypassable rider?

A. No. Exelon recognizes that the Commission permitted AEP Ohio to "cause the energy from its OVEC contractual entitlements to be sold into the day-ahead or real-time PJM energy markets, or on a forward basis through a bilateral arrangement" (Case No. 12-1126-EL-UNC, Order, dated December 4, 2013). However, there are other alternatives to a PJM sale with a non-bypassable rider. Even though AEP Ohio's OVEC partners would not allow its competitive generation affiliate to take the OVEC entitlement, AEP Ohio could essentially accomplish the same thing through a financial charge or credit to AEP Ohio's generation affiliate, taking retail customers out of the mix altogether and placing the risk where it belongs – on AEP Ohio's generation affiliate and its parent corporation. A financial arrangement of this type best reflects the goals of the legislature, and the

[2] Although there is little transparency regarding OVEC's costs, based on publicly available data, OVEC appears out-of-the-money. The average price per MWh for OVEC's sponsors in 2012 was $62.862. *Ohio Valley Electric Corporation and subsidiary Indiana-Kentucky Electric Corporation Annual Report – 2012,* p. 2. This can be contrasted with an average price of $47.77/MWh for 2012 (*PJM Markets 2012 Year in Review*, p. 11, http://www.pjm.com/~/media/committees-groups/stakeholder-meetings/annual-meeting-members/20130514/20130514-pjm-markets-2012-year-in-review-andy-ott.ashx)

Commission's original order in AEP Ohio's corporate separation plan docket. Of course, making the rider bypassable, with the financial impacts of OVEC flowing to those customers who have chosen to remain on AEP Ohio SSO supply is another approach.

Q. Did AEP Ohio consider either approach?

A. That is not clear. In its testimony, AEP Ohio did not indicate that it considered any alternatives to the Rider PPA in the precise form that it proposed. Although during the discovery process, Exelon specifically asked about alternatives to Rider PPA that AEP Ohio considered, AEP Ohio failed to provide a substantive response. (Attachment 2, INT-1-010).

Q. Has AEP Ohio already benefitted from the PUCO providing compensation to its generating assets?

A. Yes. By order dated March 7, 2012, in Case No. 10-2929-EL-UNC, the Commission created a two-tier capacity construct as an interim measure, under which 79% of each customer class (after excluding those participating in a governmental aggregation program before November 8, 2011) paid capacity costs of $255/MW-day until May 31, 2012. At that time, the RPM capacity price was $110/MW-day. By order issued on July 2, 2012, the Commission approved a capacity pricing mechanism under which AEP Ohio was authorized to recover $188.88/MW-day for capacity for all customers, which remains in effect today. The RPM price was $16.46/MW-day for the 2012-2013 planning year (May 1-June 31), $27.73/MW-day for the 2013-2014 planning year, and $125.99/MW-day for the 2014-2015 planning year.[3] Therefore, AEP Ohio has already been compensated by Ohio customers to effectuate the corporate separation of its generation

[3] Case No. 10-2929-EL-UNC, Order on Rehearing dated July 2, 2012, p. 10.

assets. An additional or new above-market payment from shopping customers need not continue. Instead, AEP should consider the other alternatives discussed herein that better reflect where AEP would be had the OVEC assets transferred to AEP's generation company.

C. <u>The "Black Box" For Future PPAs Should Be Rejected</u>

Q. In addition to the non-bypassable nature of the OVEC entitlement, are there any other elements of Rider PPA that are troubling?

A. Yes. Witness Allen's testimony also includes the following regarding Rider PPA:

> Under the PPA rider mechanism, the Company will have the ability to petition the Commission to allow the inclusion of additional PPAs (or similar products subsequently approved by the Commission) in the PPA rider throughout the ESP term. The Company has not identified any additional PPAs to include in the PPA rider at this time.

The above constitutes the sum and substance of AEP Ohio's discussion on the subject. AEP Ohio provided no additional insight into what it was contemplating, nor any support whatsoever for the need for a rider to serve as a placeholder for future PPAs.

Although during discovery, Exelon specifically inquired into why there would be a need for any additional PPA or similar products given the requirement that AEP Ohio transition to a fully competitive market, once again Exelon received only a non-substantive response in the answers AEP Ohio provided on April 7, 2014. (Attachment 3, INT-1-007).

Q. Have you learned any further information regarding the purpose of Rider PPA?

A. Yes. During AEP's most recent earning's call held on April 25, 2014, Nicholas K. Akins, Chairman, President, and Chief Executive Officer of AEP, indicated that AEP was considering placing some of the 11,000 MWs of its mostly coal-fired generation assets spun off under a "quasi-regulated" PPA.[4] "We separated our generation, so PPAs would have to be something that provide (*sic*) value to consumers in the long term but also provides value to the company in hedging that generation in the long term," he explained.[5] In response to questions, Akins indicated that, in all likelihood, "the long-term PPAs would be a nonbypassable charge that would benefit Ohio but allow customers to continue to shop and choose suppliers."[6] Based on these public statements, Exelon assumes that the reference to the non-bypassable charge relates to the proposed Rider PPA. Further, because Rider PPA would be collected by AEP Ohio but the generation is owned by AEP's generation affiliate, Exelon also assumes that the referenced PPAs would be between AEP Ohio and its generation affiliate.

Q. What is Exelon's reaction to this news?

A. We find it troubling for legal and policy reasons in addition to all of the arguments against non-bypassable generation riders, generally, discussed above. This seems to fly in the face of the most recent PUCO Orders involving AEP Ohio's transition to full competition.

The road to divestiture of generation assets by AEP Ohio has been years in the making. In Case No. 11-346-EL-SSO *et al.*, AEP Ohio described its plan to divest its competitive generation assets from its noncompetitive electric distribution utility to its separate

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[4] "AEP mulling generation options in Ohio", *Platts*, April 25, 2014.
[5] *Id.*
[6] *Id.*

competitive retail generation subsidiary. (Order, dated August 8, 2012, p. 16) On March 30, 2012, AEP Ohio filed its corporate separation plan in Ohio with the Commission, for which it sought an amendment on October 4, 2013, concerning its OVEC obligations. AEP Ohio's plan as filed was supported by Exelon, as well as by customer groups and stakeholders representing customers, including Industrial Energy Users-Ohio, the Ohio Energy Group, and the Office of the Ohio Consumers Counsel. On December 4, 2013, the Commission granted AEP Ohio's request to permit it to maintain its contract concerning OVEC, based on AEP Ohio's inability to obtain consent from its OVEC partners for a transfer of its contractual obligations to its generation affiliate.[7] In Docket No. EC13-26, the Federal Energy Regulatory Commission ("FERC") approved a comprehensive internal corporate reorganization that resulted in the corporate separation of Ohio Power's generation and power marketing businesses from its transmission and distribution business.[8] In a press release after receiving the FERC approvals to transfer generation assets from AEP Ohio to its generation affiliate, Nicholas Akins, AEP President and Chief Executive Officer, commented, "[t]he diligence of our employees and the cooperation of the affected state and federal commissions allowed us to execute our Ohio restructuring plan right on schedule, and we are well-positioned to operate two separate, sustainable businesses with our Ohio assets." [9]

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[7] Case No. 12-1126-EL-UNC.

[8] The Corporate Separation Transaction as a whole was contained in FERC Docket Nos. ER13-232, ER13-233, ER13-234, ER13-235, ER13-236, ER13-237, ER13-238, ER13-239, ER13-240, ER13-1874, ER13-1896, ER14-87, ER14-88, ER14-95, and ES14-21.

[9] "AEP Receives All Necessary Approvals To Complete Separation of Its Ohio Assets", press release dated December 26, 2013, https://www.aep.com/newsroom/newsreleases/?id=1851

The fact that within a matter of weeks after obtaining that approval, AEP Ohio filed an Application including a PPA that would allow it to seek subsidization of its affiliate's generation assets is counter to the objectives of (1) R.C. 4928.17, requiring corporate separation plans, (2) 4928.02(H), setting forth State policy against anti-competitive subsidies and prohibiting generation-related costs through distribution rates, and (3) previous Commission orders.

Q. Would an additional PPA under Rider PPA provide any benefits to Ohio customers by providing rate stability and a hedge to price volatility?

A. No. Similar to AEP Ohio's claims that Rider PPA and the embedded subsidy to the OVEC entitlement will provide rate stability and serve as a "hedge" to market volatility, any argument that an additional PPA relating to uneconomic coal units is to the customers' benefit is equally disingenuous. To the extent that Rider PPA will provide "rate stability," it will do so at a higher price than the competitive market could otherwise offer. Any mechanism for potentially recovering any AEP generation-related costs beyond OVEC is just a means of having customers, shopping and non-shopping, pay additional subsidies for AEP's out-of-the-money coal plants, the costs of which are sure to only increase in the wake of future environmental regulation. If AEP Ohio is truly interested in including long-term PPAs as a part of the SSO supply portfolio mix for the benefit of customers, any such procurement must be done through a competitive bid process. AEP Ohio's ESP strategy of subsidizing its affiliate's generation undermines Ohio policymakers' explicit goal for retail competition: to provide customers the right to choose less costly options rather than be captive to one provider's costs. The Commission should summarily reject any and all such attempts.

Q. Would an additional PPA under Rider PPA to support AEP's coal units be necessary or appropriate to maintain reliability in Ohio?

A. No. In the recent earnings call, AEP cited the polar vortex and reliability benefits of a PPA proposal, stating that Ohio "certainly needs to take note, in my opinion, of what happened during the polar vortex.[10] However, because of the robust transmission system linking the AEP Ohio service territory to the rest of PJM, capacity resources in any part of the 13-state PJM regional transmission organization can be used to support capacity needs in the AEP Ohio zone and Ohio as a whole. Even if a bona-fide reliability concern existed, a state-sanctioned subsidy of one company's uneconomic coal units via an embedded non-bypassable surcharge to shopping customers is not the appropriate approach. If reliability truly is an issue, PJM has a process for studying reliability and providing a Reliability Must Run ("RMR") contract for any units determined necessary to maintain for reliability. FERC is looking at the issue of reliability, as well, in its Docket AD14-8, in the wake of significant cold weather events this past winter. In particular, they are assessing adequacy of infrastructure, market compensation models, fuel procurement and diversity, and policy implications or changes that can be made in both the short and long terms. PJM and FERC have the appropriate authority and are well equipped to ensure reliability and to make changes to provide the proper market structure for the interstate market that Ohio's consumers are part of. AEP should continue to work with PJM and FERC to address their concerns.

Q. Do you have any other concerns regarding a potential PPA between AEP Ohio and its generation affiliate being included under Rider PPA?

[10] "AEP mulling generation options in Ohio", *Platts*, April 25, 2014.

A. Yes. I am advised by counsel that any plan to have AEP Ohio enter into a contract with its competitive generation affiliate to purchase generation from coal units at an above-market rate, and have Ohio shopping and non-shopping customers subsidize the PPA via a non-bypassable rider, is facially at odds with affiliate restrictions set forth in FERC Order No. 697 that govern the relationship between franchised public utilities with captive customers and their "market-regulated" power sales affiliates. I am further advised by counsel that, as set forth in *Boston Edison Co. Re: Edgar Electric Energy Co.*, there are three acceptable approaches to demonstrate that a buyer has chosen the lowest cost supplier and therefore not unduly preferred an affiliate.[11] First, the utility may show head-to-head competition between affiliated and non-affiliated suppliers either in a competitive bid process, using either sealed bids or informal negotiations.[12] Second, the utility may offer prices that non-affiliated buyers in the relevant market, and that are not subject to market power by the seller or its affiliates, were willing to pay for similar services from that project.[13] Finally, the utility may submit "benchmark" evidence of the prices, terms and conditions of sales by non-affiliated sellers, including purchases made by the utility or by other buyers in the relevant market. To be credible benchmarks, sales must be contemporaneous and for similar services when compared to the original transaction.[14] Based on the available information, it appears that AEP Ohio is seeking a mechanism to directly award PPAs for above-market generation costs to its affiliates, leaving all Ohio energy customers, responsible for paying the cost to subsidize uneconomic coal units solely for the benefit of AEP Ohio's competitive generation

[11] *Edgar,* 55 FERC ¶ 61,382 (1991).
[12] *Id.* at 62,168.
[13] *Id.* at 62,168-69.
[14] *Id.* at 62,169.

affiliate and AEP overall. I am advised by counsel that a proposal of this nature that does not involve a competitive procurement process and the opportunity for unaffiliated market participants to supply the PPA appears at odds with applicable restrictions on affiliate transactions.

III. AEP OHIO SHOULD NOT POSSESS A UNILATERAL TERMINATION RIGHT

Q. What term does AEP Ohio propose?

A. AEP Ohio proposes a three year ESP, from June 1, 2015-May 31, 2018. However, their application seeks a unilateral early termination right one year early.[15]

> **VI. Early Termination and Reopener Provision**
>
> The Company reserves a right to terminate the proposed ESP one year early (*i.e.*, by June 1, 2017) based upon: (a) a substantive change in Ohio law (including rules or orders of the Commission) affecting standard service offer (SSO) obligations and/or SSO rate plan options under Chapter 4928 of the Revised Code, or (b) a substantive change in federal law (including FERC rules or orders) or PJM tariffs or rules with respect to capacity, energy or transmission regulation or pricing that has an impact on SSO obligations and/or rate plan options. The Company may exercise this early termination right, at its sole option and discretion, by giving written notice to the Commission no later than October 1, 2016. If the Company exercises the right to early termination, it will propose a new SSO rate plan to encompass the June 1, 2017 through May 30, 2018 period, which proposed rate plan may also encompass a longer time period consistent with applicable law.

Q. Does Exelon have concerns with that provision?

[15] Application, p. 15.

A. Yes. Exelon strongly opposes the provision, for a number of reasons. First, it lacks statutory authority. Second, there is no objective criterion by which AEP Ohio may avail itself of the provision, or by which the PUCO would evaluate whether AEP Ohio's election of the early termination provision is proper. Third, the lack of certainty regarding the term of the ESP, and the potential outcome if AEP Ohio elects to trigger its unilateral termination right, places customers, CRES providers, SSO suppliers, and both the competitive retail and wholesale markets at a high degree of uncertainty and instability.

Q. Are you familiar with any other ESP case that contained such a provision?

A. No, as far as I am aware, AEP Ohio's proposal is unprecedented.

Q. Did AEP Ohio provide statutory authority for this unprecedented ESP provision in the Application or testimony?

A. No. There is no authority provided in the Application itself. In response to Exelon's specific data request seeking statutory authority for an early termination clause, AEP Ohio merely cited to the legislative authority to offer an ESP, and characterized its ESP filing as a two-year ESP with a unilateral option to extend. Of course, that is not what the Application says; the Application itself indicates that the proposed ESP is for a three year term, commencing on June 1, 2015 and ending May 21, 2018. (Application, p. 2). If the Commission modifies and approves a utility's proposed ESP, the utility must decide at that time whether or not to accept the ESP or to withdraw the application, thereby terminating it. R.C. 4928.143(C)(2)(a). There is no authority within 4928.143 of the Revised Code for a utility to terminate an ESP two years into a three-year term when it no longer likes the rates that were set.

Q. Did AEP Ohio provide any objective criteria by which it would be permitted to terminate the ESP a year early?

A. No. The Application indicates that the right to terminate early is conferred whenever there has been "a substantive change in Ohio law" or "a substantive change in federal law" that affects or has an impact on SSO obligations and/or rate plan options. AEP Ohio did not provide a witness to address that element of its proposed ESP in any more detail. Through the discovery process, Exelon sought clarification of any objective criteria, or examples of items that would have met the criteria. However, AEP Ohio still failed to provide any objective criteria or otherwise provide any examples of circumstances under which AEP Ohio would (or potentially could) avail itself of the early termination right. (Campbell Direct; Attachment 4, INT-1-030 – INT-1-033)

Q. Please describe the importance of objective criteria.

A. Certainty is crucial for the competitive environment. Suppliers in both the competitive retail market and the competitive wholesale market are making decisions now concerning their continued commitment to serving customers in AEP Ohio's service territory, or bidding into the AEP Ohio auction for SSO load, based on this Application and the resulting Commission Order. Vague language that gives AEP Ohio almost unfettered discretion to decide on a moment's notice to end an ESP a year earlier than scheduled creates tremendous uncertainty within the market, which adds risk (and therefore cost) to doing business in AEP Ohio's service territory, which could chill competition.

Q. What impact would this unilateral termination have upon retail customers?

A. Such a provision would limit the ability of customers to enter into longer term contracts with CRES providers and instill a high degree of instability for those customers who wish to minimize risk over a longer term than two years. Based on the lack of assurance regarding the ESP term, CRES providers may be reluctant to offer any contracts beyond the early termination date. Or, if CRES providers do offer contracts, they will necessarily have to build into their costs the possibility that AEP would terminate the ESP early, although CRES providers would not know what construct would then apply. In essence, AEP's early termination clause is creating a new, unhedgeable risk for CRES providers and, by extension, consumers.

Q. What would be the effect of an early termination, logistically?

A. AEP Ohio's Application indicates that it would provide written notice to the Commission not later than October 1, 2016. There are only eight months between October 1, 2016 and June 1, 2017. Even assuming that AEP Ohio filed a new ESP contemporaneously with the notice of termination (which they have not committed to do), given the amount of time that a fully litigated proceeding takes, it is questionable whether the Commission would be able to enter a final order in advance of June 1, 2017. Even if there was a final order, it would likely be an insufficient period to allow suppliers to make any internal changes to accommodate the new environment. So not only are suppliers exposed to more risk now by virtue of the inclusion of an early termination provision that could go into effect, if AEP Ohio actually elected to use that provision, suppliers (and customers) would face real and immediate risks to their business and operations.

IV. AEP OHIO SHOULD INCLUDE ADDITIONAL NON-MARKET-BASED, PJM <u>CHARGES IN ITS NON-BYPASSABLE BASIC TRANSMISSION COST RIDER</u>

Q. How does AEP Ohio currently recover transmission charges?

A. AEP Ohio currently recovers all of its PJM-assessed transmission costs for its SSO customers through the Transmission Cost Recovery Rider, a bypassable rider previously approved by the Commission. Because this rider is bypassable, CRES providers currently are required to arrange PJM-assessed transmission service for their customers and recover such costs in the rates offered to shopping customers.

Q. What changes to transmission cost recovery is AEP Ohio proposing in its ESP?

A. AEP Ohio is proposing to establish the Basic Transmission Cost Rider ("BTCR"), a non-bypassable rider to recover certain non-market-based ("NMB") charges from all customers, both shopping and non-shopping. These charges include:

- PJM Network Integrated Transmission Service ("NITS") fees -- PJM invoice Id. No. 1100.
- PJM Transmission Enhancement charges ("TEC") -- PJM invoice Id. No. 1108.
- PJM Load Reconciliation For Transmission Owners Scheduling -- PJM invoice Id. No. 1450.
- Reactive Supply and Voltage Control -- PJM invoice Id. No. 1330.
- Transmission Owner Scheduling, System Control, and Dispatch Service -- PJM invoice Id. No. 1320.
- Firm Point-to-Point Transmission Services -- PJM invoice Id. No. 2130.
- Non-Firm Point-to-Point Transmission Services -- PJM invoice Id. No. 2140.

Q. Does Exelon support the AEP Ohio proposal to remove cost responsibility for these non-market-based charges from suppliers and recover these costs through the BTCR?

A. Yes. Exelon is particularly supportive of the proposal to collect NITS and TEC under the non-bypassable BTCR. NITS and TEC costs are essentially cost-of-service rates that are imposed on all Load Serving Entities ("LSEs") in PJM based each LSE's share of load served. Accordingly, all customer load on an EDU's system is allocated a share of transmission service costs based on the customer's Network Service Peak Load Contribution. TEC is allocated to an LSE in a particular PJM zone to pay for any transmission enhancement project revenue requirements applicable to that zone. NITS charges generally represent an administrative charge assessed to LSEs by PJM for network transmission service. Neither charge is market-based, and is therefore not hedgeable by an SSO supplier or CRES provider.

Q. Why does Exelon support the AEP Ohio proposal?

A. AEP Ohio's proposal to assume responsibility for these charges and pass them through to all customers via a competitively neutral, non-bypassable charge is efficient and reasonable. Exelon is concerned that changes to these types of charges are difficult for potential SSO Suppliers and CRES providers to predict and manage. As is the case for all NMB Charges, if SSO Suppliers and CRES providers – rather than EDUs – are responsible for these unknown and unpredictable, administrative costs and changes thereto that *may* occur, then, in order to account for such risk, all suppliers will need to factor a premium into their SSO bids and retail offers, respectively, for such *potential* Charges *regardless* of the frequency and extent to which such charges and changes thereto *actually* occur. Prudent SSO suppliers and CRES providers would have to consider the costs that they *could* incur. To be sure, if these charges do not occur and/or are not increased, as applicable, absent AEP Ohio's proposal, consumers may – through costs embedded in SSO bids and CRES offers – pay for market charges which were never *actually* realized. In this way, it is very difficult for suppliers to financially hedge NMB charges because of how those charges are calculated and imposed. By having AEP Ohio provide NMB services and recover the costs from all customers through a rider that imposes a reconcilable, non-bypassable charge, competitive neutrality can be maintained and all customers should benefit.[16]

The SSO product – without AEP Ohio's suggested improvement – potentially raises the ultimate costs for SSO supply for consumers. The same would be true for fixed-price retail offerings from CRES providers. AEP Ohio's proposal, in turn, would be more likely to result in more competitive SSO and CRES supply costs for consumers. It is appropriate that such customers bear any *actual* costs for these types of NMB charges *directly*, rather than leaving SSO bidders and CRES providers responsible for trying to predict their impacts.

Q. Are there other non-market-based charges that would benefit from this treatment?

A. Yes. PJMs Generation Deactivation Fee -PJM invoice Id No. 1930, also referred to as the Reliability Must Run ("RMR") charge, is similar to the other non-market based charges I have discussed. The RMR charges are assessed to pay generation owners to continue to operate units beyond their proposed deactivation date pending completion of necessary transmission upgrades to ensure system reliability. RMR costs are one of the more volatile and unpredictable non-market-based costs to which suppliers can be subjected, and cannot be hedged by a supplier. By including RMR in a non-bypassable

[16] FirstEnergy-PA Direct Testimony, Statement No. 7, at p.9 (lines 13-19).

rider, suppliers will be less incentivized to add costly risk premiums or pass-through provisions in contracts to address potential future RMR costs. Instead, all customers, both shopping and non-shopping will be charged equitably as actual RMR charges occur, instead of paying an up-front risk premium for an RMR charge that may never occur. Therefore, transferring these cost obligations to the EDU and recovering them through a non-bypassable rider is both reasonable and efficient.

Q. Would the collection of RMR costs through the non-bypassable BTCR be consistent with other EDUs?

A. Yes. Currently, all other Ohio EDUs collect RMR on a non-bypassable basis from all customers both shopping and non-shopping. Therefore, AEP Ohio using its BTCR to collect the non-market-based RMR charge from all customers, will bring consistency across all Ohio EDUs, which is a stated goal of the Commission in its recent Retail Markets Investigation Final Order.

Q. Is the BTCR an appropriate rider to collect RMR charges?

A. Yes. Although one could argue that RMR is not a transmission-related charge, it is still very much a non-market-based charge, and as such, including it in the BTCR would be consistent with the stated purpose of the BTCR as a non-bypassable rider to recover certain non-market-based charges from all customers, both shopping and non-shopping. There is precedent in Ohio supporting this recommendation, as DP&L currently collects RMR under its transmission-related rider, the Transmission Cost Recovery Rider. Therefore, it is appropriate for AEP Ohio to use its BTCR to collect the non-market-based RMR charge from all customers.

V. CONCLUSION AND SUMMARY OF RECOMMENDATIONS

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

A. By adopting Ohio Power's ESP with the recommended modifications discussed herein, the Commission will support the continued development of retail competition and competitive wholesale electric markets. Consistent with the recommendations herein, the Commission should revise AEP Ohio's ESP application as follows:

- **Modify any OVEC collection -** AEP Ohio should not be permitted to create a non-bypassable rider for OVEC costs. There are other, more appropriate means of accounting for AEP Ohio's OVEC participation than the AEP Ohio proposal.
- **Eliminate Rider PPA** – There is no justification for creating a rider that would allow for future PPAs.
- **Eliminate Unilateral Termination Right** – AEP Ohio should be required to commit to a 3-year ESP without a unilateral right to terminate after 2 years, with one-third of the ESP term still remaining.
- **Include the Additional Non-Market-Based PJM Generation Deactivation charge in the Basic Transmission Cost Rider**

Q. Does this conclude your testimony?

A. Yes, it does.

Certificate of Service

The undersigned certifies that a copy of the foregoing document has been served upon the persons below via electronic mail this 6th day of May 2014.

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Attachment 1

Direct Testimony of Lael Campbell
on Behalf of Intervenors
Constellation NewEnergy, Inc. and
Exelon Generation Company, LLC

May 6, 2014

OHIO POWER COMPANY'S RESPONSES
TO CONSTELLATION NEWENERGY AND EXELON'S
DISCOVERY REQUESTS
PUCO CASE 13-2385-EL-SSO et al.
FIRST SET

REQUESTS FOR PRODUCTION OF DOCUMENTS

RPD-1-002 Please quantify the costs and benefits of AEP Ohio's OVEC entitlements and requirements on an annual basis for the past 10 years.

RESPONSE

The Company objects to the extent the request seeks information which is outside the scope of the case and is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving the foregoing objection(s) or any general objection the Company may have, the Company states as follows. In developing the PPA rider as part of the Application initiating this case, the Company has not prepared such an analysis.

Prepared by: William A. Allen

Attachment 2

Direct Testimony of Lael Campbell
on Behalf of Intervenors
Constellation NewEnergy, Inc. and
Exelon Generation Company, LLC

May 6, 2014

OHIO POWER COMPANY'S RESPONSES
TO CONSTELLATION NEWENERGY AND EXELON'S
DISCOVERY REQUESTS
PUCO CASE 13-2385-EL-SSO et al.
FIRST SET

INTERROGATORIES

INT-1-010 What, if any, other alternatives to the PPA rider did AEP explore? Please provide all analyses performed on alternatives that were considered. Do any of these alternatives provide the same benefits that AEP claims the PPA rider provides?

RESPONSE

Regarding proposals discussed but not filed, the Company objects to this request as seeking information that is confidential and privileged in connection with trial preparation, settlement discussions and/or the common interest privilege. The Company also objects to the extent this request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. The Company also objects to this request seeking a narrative answer that includes an array of details or outlines of evidence, which can be more efficiently answered through production of documents or taking of depositions.

Prepared by: Counsel

Attachment 3

Direct Testimony of Lael Campbell
on Behalf of Intervenors
Constellation NewEnergy, Inc. and
Exelon Generation Company, LLC

May 6, 2014

OHIO POWER COMPANY'S RESPONSES
TO CONSTELLATION NEWENERGY AND EXELON'S
DISCOVERY REQUESTS
PUCO CASE 13-2385-EL-SSO et al.
FIRST SET

INTERROGATORIES

INT-1-007 Given the transition as of July 1, 2015, by AEP to procure a fully competitive generation supply for Standard Service Offer generation using competitive wholesale procurement, please describe the foreseeable scenarios which AEP envisions would create a need for the Utility to have any Purchase Power Agreements ("PPAs") or other similar products?

RESPONSE

Regarding future regulatory filings, the Company objects to this request as seeking information that is confidential and privileged in connection with trial preparation, settlement discussions and/or the common interest privilege. The Company also objects to the extent this request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. The Company also objects to this request seeking a narrative answer that includes an array of details or outlines of evidence, which can be more efficiently answered through production of documents or taking of depositions. The Company objects to this request as it requires speculation on the part of the Company. Without waiving the foregoing objection(s) or any general objection the Company may have, the Company states as follows. The Company's current proposal under the Purchased Power Agreement related to OVEC is described in the testimony of Company witness Allen.

Prepared by: William A. Allen

Attachment 4

Direct Testimony of Lael Campbell
on Behalf of Intervenors
Constellation NewEnergy, Inc. and
Exelon Generation Company, LLC

May 6, 2014

OHIO POWER COMPANY'S RESPONSES
TO CONSTELLATION NEWENERGY AND EXELON'S
DISCOVERY REQUESTS
PUCO CASE 13-2385-EL-SSO et al.
FIRST SET

INTERROGATORIES

INT-1-030 Please identify the authority and provide any past known instance in which AEP or an electric distribution utility in Ohio enjoyed a unilateral right to terminate an ESP early.

RESPONSE

The Company objects to this request as seeking a legal conclusion or opinion regarding decisional precedent that is not attributable to a witness and is more appropriate for briefing and argument by counsel, and which the Company reserves the right to further address in those contexts. Without waiving the foregoing objection(s) or any general objection the Company may have, the Company states as follows. Under RC 4928.143, the electric utility has the right to propose a term for the ESP and has the right to withdraw if the Commission modifies the proposal. The Company's proposal as described in the Application and supporting testimony is effectively for a term of two years with an automatic one year extension (absent an election to withdraw at the Company's discretion) is permissible under the ESP statute.

Prepared By: Counsel

OHIO POWER COMPANY'S RESPONSES
TO CONSTELLATION NEWENERGY AND EXELON'S
DISCOVERY REQUESTS
PUCO CASE 13-2385-EL-SSO et al.
FIRST SET

INTERROGATORIES

INT-1-031 Identify the objective criteria by which AEP would assess whether or not to terminate the ESP early.

RESPONSE

See the response to CNE/EXELON INT-1-030.

Prepared by: Counsel

OHIO POWER COMPANY'S RESPONSES
TO CONSTELLATION NEWENERGY AND EXELON'S
DISCOVERY REQUESTS
PUCO CASE 13-2385-EL-SSO et al.
FIRST SET

INTERROGATORIES

INT-1-032 Identify the standard under which the PUCO would evaluate whether or not something constituted a "substantive legal or regulatory change" that would allow for the exercise of this early termination option, if such a request was submitted.

RESPONSE

See the response to CNE/EXELON INT-1-030.

Prepared by: Counsel

OHIO POWER COMPANY'S RESPONSES
TO CONSTELLATION NEWENERGY AND EXELON'S
DISCOVERY REQUESTS
PUCO CASE 13-2385-EL-SSO et al.
FIRST SET

INTERROGATORIES

INT-1-033 Identify all "substantive legal or regulatory changes" in Ohio law, federal law, and PJM tariffs that occurred over the last five years that would have given rise to AEP Ohio's potential to exercise a similar early termination right, had the proposed provision been an element of previous AEP Ohio ESPs.

RESPONSE

See the response to CNE/EXELON INT-1-030.

Prepared by: Counsel