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**

APPLICATION FOR REHEARING BY CONSTELLATION NEWENERGY, INC. AND EXELON GENERATION, LLC

Now come Constellation NewEnergy, Inc. and Exelon Generation, LLC pursuant to Section 4903.10, Revised Code, and petition the Public Utilities Commission of Ohio ("Commission") to grant rehearing for the purpose of modifying its February 25, 2015 Opinion and Order in the Ohio Power Company Electric Security Plan III proceeding. The requested modifications are required for the following reasons:

(1) It was unjust and unreasonable for the Commission to authorize the Ohio Power Company to establish a placeholder non-bypassable rider ("Rider PPA") as part of the Utility's third electric security plan when the Commission found that it was not "appropriate to adopt the proposed PPA rider at this time."

(2) The Commission should have been more explicit in its additional critical factors/information that must be addressed in a ratepayer guaranteed rider to ensure that such a rider complies with state and federal law and is in the best interest of ratepayers.

(3) Without further clarifications, the placeholder Rider PPA violates other Ohio laws and Federal laws.

(4) It was unjust and unreasonable for the Commission to order Ohio Power Company to conduct two competitive bid auctions prior to June 2015.

The reasons for and arguments in support of these grounds for rehearing are set forth in greater detail in the attached Memorandum in Support.

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MEMORANDUM IN SUPPORT OF THE APPLICATION FOR REHEARING OF CONSTELLATION NEWENERGY, INC. AND EXELON GENERATION, LLC

I. Introduction

On December 20, 2013, Ohio Power Company ("Ohio Power") filed an application for approval of a third electric security plan ("ESP III") that would commence on June 1, 2015, and continue through May 31, 2018 ("Application").[1] The Application was the subject of a month-long proceeding in which many issues were raised and more than two dozen expert witnesses testified. On February 25, 2015, the Commission approved the Application with significant modifications. Constellation NewEnergy, Inc. and Exelon Generation, LLC (collectively "Constellation") seek rehearing only as to the placeholder Rider PPA placeholder and the auction schedule. Specifically, Constellation files this Application for Rehearing because the Commission lacks the authority, and it is unreasonable, to have a placeholder Rider PPA. Further, without additional conditions and clarifications, the placeholder Rider PPA is incomplete and thus unlawful. Constellation also believes that the Commission's decision to hold two default generation auctions within three months of each other is impractical and thus unreasonable. Constellation thus seeks rehearing on these two points.

[1] Ohio Power's proposal contained a provision by which it could termination the ESP at the end of the second year. That termination proposal was rejected by the Commission. As a result, the Commission has approved a three-year ESP.

II. It was unjust and unreasonable for the Commission to authorize the Ohio Power Company to establish a placeholder non-bypassable rider ("Rider PPA") as part of the Utility's third electric security plan when the Commission found that it was not "appropriate to adopt the proposed PPA rider at this time."

Ohio Power asked for a non-bypassable rider which would grant it a rate payer guarantee for its Ohio Valley Electric Corporation ("OVEC") generation costs in exchange for the ratepayers receiving any upside profits from the sale of power from Ohio Power's OVEC holdings.[2] The purported reason for the Rider PPA was to stabilize overall retail electric rates under the theory that if capacity costs increase, it is likely that OVEC would have profits and the profits would offset in part such retail electric rate increases. Similarly, if capacity rates stayed low, then the Rider PPA would increase retail electric rates.

After examining all the factual and legal issues raised concerning Ohio Power's proposed Rider PPA, the Commission rejected the Rider PPA proposal for OVEC.[3] The Commission then took the unprecedented step of establishing a placeholder Rider PPA in the Ohio Power tariff.[4] In order for the placeholder rider to be implemented Ohio Power must submit a new application, there will be another hearing and a new Opinion and Order must be issued. Further, in the new application Ohio Power has the burden of proof to show the new application meets all the legal and factual requirements, in addition to various criteria the Commission set forth in its Opinion and Order.[5] In other words, the placeholder Rider PPA which was approved for placement in the Ohio Power Tariff is merely a mechanism to reflect the Commission's view that at some point in the future it may be possible under Section 4928.143(B) (2) (d), Revised Code, to have a PPA

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[2] Ohio Power Ex. 1 at 8.
[3] Opinion and Order at 25.
[4] *Id.* at 25, 26.
[5] *Id.* at 25.

proposal that meets the statutory standards[6] and the additional criteria the Commission sets forth in the Opinion and Order.

While the Commission is within its authority to provide dicta on how it is possible, at some future point, to have a reasonable PPA Rider proposal that has the effect of stabilizing or providing certainty as to retail electric service rates, it is not authorized by Section 4928.143, Revised Code, to authorize a placeholder rider PPA. In other words, the Commission does not have the authority to approve a non-bypassable rider based on the hope that at some point in the future there will be a PPA that benefits ratepayers. Instead, there must be a showing that the rider and any associated PPA actually will benefit ratepayers as proposed. This is especially true in the matter at bar as the Commission ruled that the Rider PPA in the Application would <u>not</u> actually promote rate stability[7] and will <u>not</u> provide rate certainty regarding retail electric service.[8] In fact, the Commission stated it could not even determine the rate impact of the Rider PPA.[9] Because the Commission did not find that Ohio Power's Rider PPA will satisfy the "providing certainty" aspect of Section 4928.143(B) (2) (d), Revised Code, the Commission erred in permitting Ohio Power to include the placeholder Rider PPA in its tariffs.

The Commission noted in its Opinion and Order that it had previously allowed the establishment of a placeholder rider within an ESP.[10] However, when a rider in an application is accepted and all that is needed is the submission of the dollar amounts based on future cost occurrences, a rider is actually established. For instance, Duke Energy Ohio, Inc. was permitted

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[6] Section 4928.143(B)(2)(d), Revised Code, states that an electric security plan may provide for or include "[t]erms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service."
[7] Opinion and Order at 24.
[8] *Id.*
[9] *Id.*
[10] *Id.* at 25.

to establish the Distribution Rider – Infrastructure Modernization (Rider DR-IM), initially set a zero, while actual costs were incurred. In that situation, Duke's underlying proposal was approved, although a specific rider rate could not be set on day one. Additionally, the FirstEnergy electric distribution utilities were permitted to establish the Delta Revenue Recovery Rider (Rider DRR) for recovery of delta revenues for reasonable arrangements approved after a specific date. This rider too was an approved rider that had to be initially set at zero until the costs were incurred. In stark contrast, the Commission rejected Ohio Power's Rider PPA and Ohio Power was required to file anew, if it decides to move forward.

In sum, the Commission reviewed the plain and clear language of Section 4928.143(B) (2) (d), Revised Code, and compared it with Ohio Power's proposal. The plain and clear language of Section 4928.143(B) (2) (d), Revised Code, was not met in order to establish and approve a placeholder PPA rider. The statute does not allow it to be met based on the hope that at some future point a PPA proposal will exist that benefits ratepayers. Accordingly, upon finding that Ohio Power's proposal did not satisfy the statutory requirements, the Rider PPA proposal should have been rejected. It was unjust and unreasonable to conclude that a placeholder PPA rider, combined only with the hope for a reasonable PPA proposal at some future date, satisfied the statutory requirements. Section 4928.143(B) (2) (d), Revised Code, does not allow an ESP to include a term, condition or charge that hopefully meets the components of the statute in the future.

III. The Commission should have been more explicit in its additional critical factors/information that must be addressed in a ratepayer-guaranteed rider to ensure that such a rider complies with state and federal law and is in the best interest of ratepayers.

The Commission's approval of the placeholder PPA Rider is premised on the notion that Ohio Power may present at some future date a "reasonable PPA rider proposal that provides for a significant financial hedge that truly stabilizes rate."[11] In support of this notion, the Commission listed the following factors it would take into consideration in deciding whether to approve a future PPA application:[12]

- Financial need of the generating plant;
- Necessity of the generating facility in light of future reliability concerns, including supply diversity;
- Description of how the generating plant is compliant with all pertinent environmental regulations and its plan for compliance with pending environmental regulations;
- Impact that a closure of the generating plant would have on electric prices and the resulting effect on economic development;
- Rigorous Commission oversight of the rider, including a process for periodic substantive review and audit;
- Commitment to full information sharing with the Commission and its Staff;
- An alternative plan to allocate the rider's financial risk between the company and its ratepayers; and
- Severability provision recognizing that other provisions of the ESP will continue if the PPA rider is invalidated.

The above criteria form the foundation for what is essentially a cost-benefit analysis for finding that a future PPA proposal is necessary and appropriate. However, the Commission should have been more explicit as to what additional information must be provided to meet each of these criteria. Constellation contends that the Commission erred in not requiring that other critical factors/information be addressed and considered in all future applications seeking approval of a PPA mechanism. Further detail is necessary in order to provide stakeholders, including the Commission, with objective standards by which to measure each of these elements.

A. A Competitive Bid Process Will Provide the Lowest Cost Solution for Ohio

The list of criteria for approving a future PPA in the Opinion and Order is missing one additional and important element – whether the plant seeking a PPA is the lowest cost

[11] Opinion and Order at 25.
[12] Opinion and Order at 25-26.

alternative. Ohio Power must take steps to assure that any application for a future PPA has made a good faith search of all the possible power plants that could be used. In the current case, Ohio Power only reviewed the power plants that its affiliate owned. A future PPA application should also address the opportunity for the Rider PPA to have non-affiliated power plants considered. This can easily be done with a request for proposal or other mechanism for competitive bidding. Competitive bidding will allow for lower cost alternatives to be selected and avoid any claims of corporate separation issues[13] or appearances of impropriety through affiliates-only being considered for the PPA. This too will provide greater transparency, demonstrating that indeed the power purchase will not be unduly discriminatory or preferential.

B. The Financial Need Element Should Take Into Account PJM Capacity Market Reforms

For the "financial need of the generating plant" factor, the Commission must include more detail and explanation. One factor the Commission should consider under financial need is whether the generating plant cleared the most recent PJM Capacity Auction, and what type of capacity resource it cleared as. The Commission should require the applicant to address the impact of the PJM's proposed Capacity Performance ("CP") product, which is currently awaiting a decision from the Federal Energy Regulatory Commission ("FERC").[14] The CP product will potentially have a profound effect on the capacity market and is likely to materially impact the financial need of the generator for a PPA. The proposed CP transitional auctions for 2016/2017 and 2017/2018 alone could have significant economic upside for generating plants seeking PPAs and potentially obviate the need approving a PPA for an individual plant. At the very least, the Commission should grant rehearing in this case in order to conduct an assessment to fully

[13] Corporate separation is addressed below and the statute in which corporate separation is outlined is quoted in footnote 19.
[14] *In re: PJM Interconnection, LLC*, Docket No. ER15-623-000.

understand the potential impact of CP. Any findings from this assessment should be documented in the record for the Commission to consider either with respect to its criteria for approving a future PPA, or in revisiting the decision as to whether the placeholder PPA is necessary in the first instance.

C. The Financial Risk Element Must also Take Into Account PJM Capacity Market Reforms and the Capacity Performance Penalty Risk Must Not be Shifted to Ratepayers

In its list of criteria to approve a future PPA, the Commission also identifies the inclusion of an "alternative plan to allocate the rider's financial risk between the company and its ratepayers."[15] The Commission's focus on a shifting of risk in a PPA rider is appropriate. However, the Commission erred by not specifically requiring that in order to meet this financial risk criteria, the person seeking the PPA must show that the ratepayer benefits of a PPA are not outweighed by the risks.

The shifting of risk under a PPA will become a vital consideration for the Commission if the unit seeking a PPA also qualifies as a CP resource. While CP results in increased capacity revenues, these revenues also come with significant penalty risks for non-performance. In fact, the CP penalties are so severe that they far exceed the potential CP revenues.[16] So while at first glance CP may look like it could result in a credit to customers under a PPA proposal, if the risk of non-performance by the generator also is shifted to customers under the PPA, CP could be a disaster for ratepayers.

Furthermore, shifting the CP penalty risk to ratepayers would undermine the entire purpose behind CP, as it would eliminate the incentive of a generator to make the investments necessary to make a plant CP-compliant. If ratepayers are financially responsible for the CP

[15] Opinion and Order at 25.
[16] CP as proposed could have penalties of up to 1.5 Net CONE (over $400/MW-Day) so customers may be in line to receive $269/MW-Day, but be at risk to be charged $400/MW-day.

non-performance penalty under a PPA, the generator has no real incentive to spend the money or to make the investment necessary to ensure performance. This would have the perverse impact of actually increasing the reliability risk, not decreasing it. Therefore, while CP revenues may look enticing as a potential credit to ratepayers, this value can only be preserved if the risk of non-performance remains with the generator. Otherwise, the risk associated with generator non-performance can eviscerate the revenues from CP, and then some, resulting in a horrible outcome for Ohio consumers, as well as the reliability of the grid.

D. Environmental Factor Should Require a Showing of Actual Environmental *Value* to Ratepayers, not just Bare Minimum Environmental Compliance

The Opinion and Order also states that a future PPA application must provide a description of how "the generating plant is compliant with all pertinent environmental regulations and its plan for compliance with pending environmental regulations."[17] This criteria merely reflects the bare minimum environmental obligations of a plant. The Commission erred by not establishing a more robust standard that measures whether a plant seeking a PPA provides actual environmental *value* to Ohio consumers that justifies the potential cost to consumers under the PPA rider. Low-carbon-emitting generation provides a value to consumers beyond just the energy and capacity the generation provides. For example, a low-carbon resource such as a nuclear generator not only provides value to the environment by emitting zero carbon, it also provides incredible value to Ohio and the region in its ability to meet potential future federal emissions requirements. Whether a plant provides this additional value to ratepayers is a criteria that should be recognized more objectively in a Commission determination to approve a PPA application. The Commission should amend this factor to require a showing of the affirmative environmental value of a unit seeking a PPA beyond just minimum compliance with

[17] Opinion and Order at 25.

environmental standards and its ability to provide energy and capacity. Therefore, the Commission should require that an future PPA application include a description of (a) any low-carbon benefits of the PPA generating plant along with any other environmental benefits of the generating plant, and (b) whether the generating plant provides value to Ohio under state and federal environmental policies.

E. Reliability Need Should Be Supported By a Reliability Study

With regard to the "future reliability concerns" included in the factors to be addressed, greater details are also warranted. The Commission erred by not requiring that, in order to meet the reliability need criteria in a future PPA application, a showing must be made that, absent the PPA rider, the generating plant will retire. The Commission further erred by not requiring that a reliability study must be conducted by a third party demonstrating the reliability need of the generating plant based on commonly accepted local or regional reliability standards. Specifically, the Commission should require that the reliability study provide, at a minimum:

- A demonstration of the reliability need of the generating plant
- A description of the methodologies and findings in the underlying reliability studies

The Commission also should require that a PPA application that is premised on reliability need should also be temporary in nature and address the need to retain certain generating plants until more permanent solutions are in place. This recommendation is consistent with concerns the FERC has recognized as recently as last month for certain power purchase agreements in the wholesale market administered by the New York Independent System Operator, Inc., under which the generation resources would continue to operate and recover costs that would not otherwise be recovered through generator sales of energy, capacity and ancillary services in NYISO's markets. Specifically, the FERC stated, "agreements should be of a limited duration so as to not perpetuate out-of-market solutions that have the potential, if not undertaken in an open and transparent manner, to undermine price formation."

Altogether, the Commission should require submission of the additional critical factors/information listed above in all future PPA applications regarding a competitive bidding process used, financial need of the generating plant, future reliability concerns, and compliance with environmental regulations. At a minimum, the Commission should grant rehearing in this case in order to fully understand the potential impact of CP and have any findings documented in the record for the Commission to consider it with respect to its criteria for approving a future PPA, or revisiting the decision as to whether the placeholder PPA is necessary.

IV. Without further clarifications, the placeholder Rider PPA violates other Ohio laws and Federal laws.

A. Rider PPA is not permissible under Section 4928.17, Revised Code.

Shopping customers already pay their CRES supplier for the power they use and, under Rider PPA, the shopping customers would potentially also pay for some of the cost of power from OVEC that they did not use because OVEC's power price is above market.[18] Ohio Power is not allowed to supply a noncompetitive retail electric service (i.e., distribution service) and a competitive retail electric service (i.e., generation service) except under a corporate separation plan. *See*, Section 4928.17(A), Revised Code.[19]

[18] Constellation Ex. 1 at 12.

[19] Section 4928.17(A), Revised Code, requires Ohio Power to have a corporate separation plan approved and supervised by the Commission. At a minimum, the corporate separation plan must contain the following:

> (1) The plan provides, at minimum, for the provision of the competitive retail electric service or the nonelectric product or service through a fully separated affiliate of the utility, and the plan includes separate accounting requirements, the code of conduct as ordered by the commission pursuant to a rule it shall adopt under division (A) of section 4928.06 of the Revised Code, and such other measures as are necessary to effectuate the policy specified in section 4928.02 of the Revised Code.
>
> (2) The plan satisfies the public interest in preventing unfair competitive advantage and preventing the abuse of market power.

Ohio Power was directed to complete full corporate separation by the end of 2013.[20] When Ohio Power encountered difficulty in timely completing its corporate separation, the Commission approved Ohio Power's request to retain the OVEC contractual entitlement, but required that the OVEC energy must be sold into the PJM energy markets.[21] Nothing in that December 2013 decision reflected that Ohio Power should cease its efforts to divest/transfer its OVEC entitlement, and the Commission affirmed in these cases that Ohio Power must divest/transfer its OVEC entitlement.[22]

The fact is that Ohio Power still retains its OVEC entitlement at this time and Rider PPA will potentially cause shopping customers to pay for some of the cost of power from OVEC that they did not use. This is contrary to the corporate separation directives in Ohio law.

B. Rider PPA is not permissible under Section 4928.02(H), Revised Code.

Section 4928.02, Revised Code, is the State Energy Policy, which complements the corporate separation plans by strictly forbidding subsidies to flow (either direction) between a regulated non-competitive company and the non-regulated affiliates of the distribution company. Section 4928.02(H), Revised Code, instructs the Commission to take the necessary actions to "[e]nsure 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[.]"

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(3) The plan is sufficient to ensure that the utility will not extend any undue preference or advantage to any affiliate, division, or part of its own business engaged in the business of supplying the competitive retail electric service or nonelectric product or service....

[20] *In the Matter of the Application of Ohio Power Company for Approval of Full Legal Corporate Separation and Amendment to its Corporate Separation Plan*, Case No. 12-1126-EL-UNC, Finding and Order (October 17, 2012).
[21] *Corporate Separation, supra*, Finding and Order (December 4, 2013).
[22] Opinion and Order at 26-27.

Rider PPA violates Section 4928.02(H), Revised Code, by requiring shopping customers to pay part of the cost of the OVEC generation and creating a subsidy for Ohio Power's generation service.[23] Rider PPA will recover from all ratepayers (both shopping and non-shopping ratepayers) the OVEC generation costs. This subsidy will exist regardless of whether OVEC's power sales revenue exceed the OVEC costs. Ohio Power's ratepayers are guaranteeing that the OVEC generation earns a profit by covering any difference in the revenues from the sale of the power and cost of generation (the costs of generation include a profit amount).[24] This guarantee frees Ohio Power from any market/price risk associated with the OVEC generation. The OVEC generators have the advantage over other competitive generators because the OVEC units would be guaranteed to recover their cost, including a return on equity.

The Commission acknowledges that Rider PPA will be a generation-related rate.[25] As such, Rider PPA will recover generation-related costs. However, the Commission's conclusion that Rider PPA will not recover generation-related costs through distribution or transmission rates[26] overlooks the fact that Rider PPA will be imposed by Ohio Power on all Ohio Power ratepayers. The shopping customers in Ohio Power's territory pay Ohio Power only for its distribution and transmission services. As a result, Rider PPA is recovering a generation-related costs through distribution or transmission rates at least as to the shopping customers in Ohio Power's territory. There is no other cost category or conclusion to be reached based on the evidence of record.

[23] Constellation Ex. 1 at 13.
[24] IEU Ex. 1B at KMM-1, page 7-11.
[25] Opinion and Order at 26.
[26] Opinion and Order at 26.

C. Rider PPA will violate Federal law.

In Constellation's Initial and Reply Briefs in these matters, Constellation explained that Rider PPA will violate federal law for two reasons:

- As a wholesale transaction between affiliates, the OVEC arrangement is subject to FERC jurisdiction and its affiliate transaction restrictions in FERC Order. 697. The pricing of the OVEC generation cannot be called "market priced power," based the FERC's tests set forth in *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382. Thus, Rider PPA violates the spirit, if not the letter, of the FERC's affiliate transaction restrictions.
- Two recent federal decisions have tossed out different state efforts to require retail customers to buy or subsidize the wholesale sale of power on the ground that they are preempted by federal law. *See, PPL Energy Plus v. Nazarian*, 753 F.3d 467 (4^{th} Cir. 2014) and *PPL Energy Plus v. Solomon*, 766 F.3d 241 (3rd Cir. 2014).

The Commission did not address the federal law arguments in its decision, specifically opting not to.[27] It was unjust and unreasonable for the Commission to approval a Rider PPA when it will violate Ohio laws and Federal law. At a minimum, the Commission should have indicated in its Opinion and Order that, under federal law, the FERC and the Regional Transmission Agencies have primary responsibility for reliability and the pricing of power for resale (wholesale transactions). Any mechanism that the Commission proscribes in which the true price of a wholesale power transaction is being set will have to comply with federal law. Using any of Ohio Power's cost projections,[28] Rider PPA as proposed has a subsidy flowing back to Ohio Power from ratepayers to in effect increase the actual value of the wholesale sale. The Commission, if it is authorized to issue a placeholder Rider PPA, must assure that its placeholder Rider complies with Ohio and federal law.

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[27] Opinion and Order at 26.
[28] Ohio Power Exs. 8A and 8B; IEU Ex. 1B at KMM-4 through KMM-7.

V. It was unjust and unreasonable for the Commission to order Ohio Power Company to conduct two competitive bid auctions prior to June 2015.

Ohio Power proposed to hold six auctions for procurement of energy, capacity, ancillary services and certain transmission services for the standard service offer ("SSO") during the ESP III.[29] The Commission agreed that six auctions should be held, but modified the CBP schedule, among other things. Specifically with regard to the schedule, the Commission ordered that two separate auctions be held within weeks of each other and both be held prior to June 2015.[30] Moreover, the Commission stated that those two auctions "should occur sufficiently far in advance of the end of the current ESP term on May 31, 2015." This aspect of the Commission's decision is unjust and unreasonable for three logical reasons. First, neither of the CBP auctions has taken place as of this time (30 days after the decision was issued) and there is not enough time during the two months remaining before May 31, 2015, for both auctions to take place sufficiently far in advance of May 31. Second, two auctions in such a short period of time will impose significant administrative costs and impact the operational efficiencies of the auction participants. Moreover, the Commission's decision is unclear as to any offsetting benefit(s) that justifies these costs.

It is not just and reasonable to establish such a tight schedule at the time Ohio Power will be expanding its auction products. During the current term, Ohio Power's auctions have been limited to energy-only. The ESP III auctions will be different because the ESP III auctions will be "full requirements" auctions, to procure energy, capacity, ancillary services and certain transmission services.[31] It is not just or reasonable to mandate a schedule for those expanded auctions that can very easily deter their success.

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[29] Ohio Power Ex. 15 at 9, 11-12 and CL-10.
[30] Opinion and Order at 31.
[31] Ohio Power Ex. 15 at 9.

Constellation understands and supports the Commission's goal of having one of the six auctions take place prior to the start of the ESP III. However, mandating that two auctions take place before the ESP III in the time remaining is not just or reasonable. The benefits, if any, of having two auctions within weeks of each other do not outweigh the extra administrative costs and burdens. It is much more just and reasonable to hold one auction in the abbreviated timeframe prior to June 2015. The Commission's goals of competitive pricing can still be met with five auctions that are staggered over-time to protect customers. Accordingly, the Commission should modify its ruling (a) to require only one auction be held sufficiently far in advance of the end of the current ESP term and (b) to require that the second CBP auction not be held, with the remaining auctions as scheduled by the Commission in November 2015, March 2016, November 2016, and March 2017.

VI. Non-Market-Based Charges should be direct-billed by Ohio Power through the Basic Transmission Cost Rider, including Generation Deactivation Charges.

Ohio Power proposed, as part of its EPS III, to establish a non-bypassable rider, the Basic Transmission Cost Rider ("BTCR"), to recover non-market-based transmission charges directly from its ratepayers.[32] Constellation supported Ohio Power's BTCR proposal, but urged the inclusion of Generation Deactivation charges in the BTCR. Ohio Power later agreed with Constellation's suggestion[33] and the Commission adopted the BTCR with the inclusion of Generation Deactivation charges.[34]

Constellation notes its support for the approval of Ohio Power's proposed BTCR and the inclusion of Generation Deactivation charges in the list of transmission costs that will be directly billed and recovered by Ohio Power. Constellation commends the Commission for moving

[32] Ohio Power Ex. 13 at 8 and AEM-3; Ohio Power Ex. 15 at CL-2, Attachment F.
[33] Ohio Power Initial Brief at 117.
[34] Opinion and Order at 67.

forward on this point and making the billing and recovery of transmission costs more standardized among the Ohio electric distribution utilities.

VII. Conclusion

For the foregoing reasons, the Commission should granted this Application for Rehearing and modify its February 25, 2015 decision accordingly.

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on 27th day of March 2015 upon all persons/entities listed below.

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