

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Columbus Southern Power Company for)
Approval of its Electric Security Plan; an)
Amendment to its Corporate Separation)
Plan; and the Sale or Transfer of Certain)
Generating Assets)

Case No. 08-0917-EL-SSO

and)

In the Matter of the Application of Ohio)
Power Company for Approval of its)
Electric Security Plan; and an Amendment)
to its Corporate Separation Plan)

Case No. 08-918-EL-SSO

Direct Testimony of David I. Fein

**Vice President, Energy Policy - Midwest
Constellation Energy Group, Inc.**

On Behalf of Intervenor
Constellation NewEnergy, Inc.
and
Constellation Energy Commodities Group, Inc.

Dated: October 31, 2008

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1 **INTRODUCTION**

2 **A. Identification of Witness**

3 **Q. Please state your name and your business address.**

4 A. My name is David I. Fein, and my business address is 550 West Washington
5 Boulevard, Suite 300, Chicago, Illinois 60661.

6
7 **Q. By whom are you employed?**

8 A. I am employed by Constellation Energy Group, Inc. ("Constellation").
9

10 **Q. Please describe your position with Constellation.**

11 A. I am Vice President of Energy Policy in the Midwest for Constellation. In this role, I
12 am responsible for directing and implementing regulatory and legislative policies for
13 Constellation's retail, wholesale, and merchant business interests in Illinois,
14 Michigan, and Ohio. Constellation Energy, a FORTUNE 200 company, is the
15 nation's largest competitive supplier of electricity to large commercial and industrial
16 customers and the nation's largest wholesale power seller. Constellation Energy also
17 manages fuels and energy services on behalf of energy intensive industries and
18 utilities. It owns a diversified fleet of 78 generating units located throughout the
19 United States, totaling approximately 8,700 megawatts of generating capacity. The
20 company delivers electricity and natural gas through the Baltimore Gas and Electric
21 Company ("BGE"), its regulated utility in Central Maryland.

1 **Q. Please describe your educational and business experience.**

2 **A.** From an educational perspective, I earned a Bachelor of Arts in Political Science and
3 Behavioral Science & Law from the University of Wisconsin-Madison in 1989 and a
4 Juris Doctorate from DePaul University College of Law in 1993. I am a member of
5 the American, Chicago, Energy, and Illinois State Bar Associations. I have more
6 than 15 years of experience in all facets of the energy industry. Previously, I served
7 as Senior Regulatory Counsel for Constellation and was responsible for providing
8 legal and regulatory support to all of the regulatory activities of Constellation
9 NewEnergy, Inc. ("CNE") before state and federal regulatory agencies across the
10 country and in Canada. In addition, I acted as Senior Counsel providing primary
11 legal support and counsel for all of CNE's commercial activities in Illinois and
12 Alberta, Canada as well as support for other markets. My previous experience prior
13 to joining Constellation includes five-and-a-half years at DLA Piper, LLP, a 3,600-
14 lawyer law firm, specializing in energy and telecommunications law and regulation
15 and four-and-a-half years as an Assistant State's Attorney, in the Illinois Cook
16 County State's Attorney's Office, focusing on public utility law and regulation.

17

18 **Q. On whose behalf are you testifying?**

19 **A.** I am testifying on behalf of CNE and Constellation Energy Commodities Group,
20 Inc ("CCG").

1 **Q. Please provide some background on the Constellation Companies on whose**
2 **behalf you are testifying in the instant proceeding.**

3 A. CNE provides electricity and energy-related services to retail customers in Ohio as
4 well as in 15 other states, the District of Columbia, and two Canadian provinces and
5 serves more than 15,000 megawatts of load and more than 10,000 customers. CNE
6 holds a certificate as a competitive retail electric supplier ("CRES") from the Public
7 Utilities Commission of Ohio ("PUCO" or "the Commission") to engage in the
8 competitive sale of electric service to retail customers in Ohio. CNE currently
9 provides service to retail electric customers in Ohio. CCG provides wholesale power
10 and risk management services to wholesale customers (distribution utilities, co-ops,
11 municipalities, power marketers, utilities and other large load serving entities),
12 throughout the United States and Canada, in both regulated and restructured,
13 competitive energy markets. CCG is active in the PJM Interconnection, L.L.C. and
14 Midwest Independent System Operator ("MISO") wholesale power markets and has
15 sold power for wholesale delivery in Ohio. CNE and CCG are subsidiaries of
16 Constellation Energy Group, Inc.

17
18 **B. Purpose of Testimony**

19 **Q. Please describe Constellation's interest in this proceeding.**

20 A. As a licensed competitive retail electric supplier ("CRES") in the State of Ohio and a
21 registered CRES in the service territories of the Columbus Southern Power Company
22 ("Columbus Southern Power") and the Ohio Power Company ("Ohio Power")
23 (collectively, "AEP"), Constellation is extremely interested in this proceeding. The
24 decisions that the Commission makes in this proceeding will determine whether retail

1 competition is viable in the AEP service territories and whether CRES providers like
2 CNE have an opportunity to provide customers with an alternative to service with
3 AEP and whether wholesale power suppliers like CCG have an opportunity to supply
4 AEP with certain of its power procurement needs. Due to its vast experience and
5 participation in the competitive retail and wholesale markets in Ohio and across the
6 country, Constellation will be able to assist in the development of a full and complete
7 record to assist the Commission in its consideration of AEP's ESP Application.
8

9 **Q. Under Senate Bill 221, do retail customers still retain the right to switch to a**
10 **CRES provider to receive electric generation service?**

11 **A.** Yes. As AEP witness Baker emphatically states in his Direct Testimony, customers
12 retain the right to select someone other than AEP to receive electric generation
13 service. (Baker Direct Testimony, p. 25.) In addition, AEP witness Baker talks
14 about how SB 221 makes clear that the promotion of retail competition is one of the
15 policy goals of the State. (Baker Direct Testimony, p. 33.) The bulk of the issues
16 that I will address in my testimony are focused on ensuring that Ohio consumers
17 retain a realistic and meaningful opportunity to exercise that fundamental right to
18 choose a CRES provider and that retail competition has a chance to develop for the
19 benefit of AEP's customers.
20

21 **Q. Please summarize the issues that you will address in your Direct Testimony.**

22 **A.** I will address the following five (5) policy and tariff aspects of AEP's ESP
23 Application:

- 1 • The imposition of non-bypassable generation-related charges upon customers
- 2 that wish to select a CRES provider, including a proposed Provider of Last
- 3 Resort ("POLR") Rider;
- 4 • The mandatory imposition of deferred generation-related fuel charges upon all
- 5 customers, including customers that wish to select a CRES provider;
- 6 • The comparison of the ESP to the expected results from a market rate option
- 7 ("MRO");
- 8 • The prohibition on AEP retail customers directly participating in the PJM
- 9 Demand Response and Interruptible programs; and
- 10 • The proposed competitive wholesale solicitation for electric power and energy at
- 11 increasing increments for calendar years 2009, 2010, and 2011.

12

13 As will be discussed below, if the Commission fails to alter AEP's proposal, retail

14 competition and Government Aggregation will likely not develop in AEP's service

15 territory in Ohio.

16

17 **C. Summary of Recommendations**

18 **Q. Do you have any specific recommendations regarding these five (5) aspects of**

19 **AEP's ESP Application?**

20 **A.** Yes. First, the Commission should **reject** AEP's attempts to impose generation-

21 related costs, including the proposed POLR Rider, onto consumers that do not

22 purchase generation supply from AEP. Second, the Commission should **reject**

23 AEP's attempts to force all customers to pay for the significant generation-related

24 deferred generation-related charges. Third, in evaluating AEP's comparison between

1 the ESP and the expected results of an MRO, the Commission must engage in a true
2 “apples-to-apples” comparison. Fourth, the Commission should **reject** AEP’s
3 proposed restrictions on retail customers’ direct participation in PJM Demand
4 Response and Interruptible programs. Fifth, the Commission should **approve**
5 AEP’s proposal to seek power and energy in the competitive wholesale market
6 through an open, non-discriminatory, and transparent competitive solicitation
7 process to meet certain needs in 2009, 2010, and 2011.

8
9 **II. The Imposition of Non-bypassable Generation-related**
10 **Charges Will Frustrate Customer Choice and Competition**

11 **Q. Please describe what you mean by the term “non-bypassable Generation-**
12 **Related Charge.”**

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

16
17 **Q. Should all charges be bypassable when a customer takes service from a CRES**
18 **provider?**

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

1 **Q. How do non-bypassable charges potentially cost customers more when their**
2 **supply offer is lower than the utility standard service offer (“SSO”) supply?**

3 **A.**It is fairly simple. When a customer takes supply from a CRES provider they are
4 receiving all of their generation-related service from that company. They are no
5 longer taking generation-related service from the utility. If a shopping customer is
6 forced to continue to pay the utility for generation-related supply charges plus pay
7 their CRES provider for generation service, they are effectively paying twice for the
8 same service. Paying the utility for a service the customer is already receiving from
9 the CRES could cause the customer to pay more for electric power than had they
10 not switched to the CRES provider - even if the CRES supplier’s generation is at a
11 lower cost than the standard service offer.

12
13 **Q. Has the General Assembly addressed the issue of whether generation related**
14 **expenses can be collected in a utility distribution fee?**

15 **A.**Yes, in Senate Bill 221 the General Assembly amended Section 4928.02 (H), Revised
16 Code which addresses anti competitive subsidies by specifically: “...prohibiting the
17 recovery of any generation-related costs through distribution or transmission rates”.

18
19 **Q. What is the effect on the competitive retail market when shopping customers**
20 **are required to pay the utility for generation services they do not receive?**

21 **A.**Making shopping customers pay AEP for generation service they do not receive has
22 the potential to destroy the development of the competitive retail market, and in fact
23 was a major contributing factor in the collapse of retail competition and
24 governmental aggregation programs in other Ohio service territories in 2005.

1 **Q. Are there specific generation-related charges that AEP seeks to impose on**
2 **customers regardless of whether they actually purchase electric generation**
3 **service from AEP?**

4 **A.** Yes. AEP seeks to impose a POLR charge on all customers even if that customer is
5 taking generation service from someone other than AEP. As will be discussed
6 below, there are significant fuel-related generation charges that are non-bypassable
7 for customers that wish to exercise their right to select someone other than AEP. It
8 is important to note that customers that purchase electric power and energy from a
9 CRES provider are incurring costs associated with meeting the CRES providers'
10 capacity obligations imposed by PJM as well as the other necessary services required
11 to take retail electric generation service.

12

13 **Q. What is AEP's proposed POLR Charge?**

14 **A.** AEP has proposed increasing the residential POLR from 8 tenths of a mil to 6.08
15 mils, Small General Service (GS-1) from 7 tenths of a mil to 5.2 mils, Medium Size
16 General Service (GS-2) from 6 tenths of a mil to 5.3 mils and Large General Service
17 (GS-4) from 5 tenths of a mil to 3.5 mils. This represents an increase of several fold,
18 a dramatic change from the current POLR charge.

19

20 **Q. What are some of the justifications and support for the proposed POLR**
21 **charge?**

22 **A.** AEP Witness Baker seems to base the justification for the POLR charge on his belief
23 that the Governor, General Assembly, and/or the Commission will not stand by an
24 approved ESP plan if returning government aggregation customers have to pay

1 market prices. (AEP Witness Baker Direct, p. 27.) It appears to be Mr. Baker's
2 belief that in such a circumstance, the Governor, General Assembly, and/or the
3 Commission will intervene to assist consumers to the detriment of AEP.
4

5 **Q. Do you believe that it is an appropriate basis upon which to increase a POLR**
6 **charge?**

7 **A.** No. It does not seem appropriate to be inflating a proposed POLR charge on such a
8 non cost-based "expectation" that an approved ESP plan will be overturned or
9 changed in the future by the Governor, General Assembly, or the Commission.
10

11 **Q. Does AEP's ESP Application outline why they are proposing to increase the**
12 **POLR charge?**

13 **A.** Yes. Despite the fact that virtually no customers have switched away from AEP's
14 service during the past eight (8) years, AEP witness Baker starting on pages 26 of his
15 testimony indicates that AEP seeks to protect the commercial value of their
16 generation and views the difference between the market price and the ESP price as a
17 potential loss. To quantify the value of AEP's generation, AEP has relied upon the
18 use of the Black-Scholes model to develop the cost of AEP's POLR obligation.
19

20 **Q. Do you have any concerns with the manner in which AEP has utilized this**
21 **model to develop the POLR Rider?**

22 **A.** Yes. There are various challenges to using this approach but they all boil down to
23 the final answer being extremely sensitive to the input of the market price.
24 Moreover, the admitted lack of current retail competition means that even if there is

1 a theoretical option cost / value, in reality, consumers will not be able to switch as
2 smoothly as the model suggests, thus greatly exaggerating the perceived cost. As
3 such, we are concerned that the imposition of this increased POLR charge will act as
4 a "tax" that will deter customer choice and the development of retail competition.
5

6 **Q. How do other competitive retail markets address the POLR risk of the default**
7 **supplier?**

8 **A.** In other well-functioning competitive retail electric markets, where customers have
9 the ability to select someone other than the incumbent default supplier, we do not
10 see the imposition of POLR charges of the nature that AEP is proposing in this
11 proceeding. Rather, the allowed POLR charge is a modest fee to cover the cost of
12 obtaining electric power and energy for customers who have shopped and
13 subsequently wish to return to service with the default supplier. In such well-
14 functioning competitive retail markets the POLR fee does not include the cost of
15 electric generation, let alone the lost opportunity value of such generation; it is just a
16 fee to cover the cost of accepting the customer back to utility default service.
17

18 **Q. If utilities in other states are not imposing a POLR charge on customers that**
19 **wish to select a competitive retail supplier, how do they protect themselves**
20 **from the POLR risks outlined by AEP witness Baker?**

21 **A.** It has been our experience that such risks are addressed through switching rules,
22 enrollment windows or notice provisions, and default service rates that compensate
23 the POLR supplier for their actual costs to serve a returning customer. Other states
24 require returning customers to take service that mimics or tracks a verifiable index --

1 such as the PJM West Hourly or Day-Ahead price for on-peak and off-peak power.
2 For example, this approach is utilized as the default rate in the Commonwealth
3 Edison Company service territory in Illinois.
4

5 **Q. Do all Ohio POLR suppliers apply a POLR or Standby Charge on customers**
6 **to address this POLR risk?**

7 **A.** Duke Energy - Ohio ("DE-Ohio") does not impose any POLR or Standby Charge
8 on customers that take service from a CRES provider and agrees not to return to the
9 SSO. Should a customer who pledged not to return default back to the SSO they are
10 charged a market price for generation instead of the standard service price. In DE-
11 Ohio's Electric Security Plan filing (Case No. 08-920-EL-SSO), a Stipulation was
12 recently filed which alters the rate that applies to the unscheduled returning customer
13 to the SSO price plus 15%. DE-Ohio currently and under its Stipulation also
14 provides that a customer may pay the full POLR fee and reserve the right to return
15 at the SSO price.
16

17 **Q. What is your opinion regarding the manner in which DE-Ohio addresses its**
18 **POLR risks, as compared to that proposed by AEP?**

19 **A.** As a CRES provider to Ohio customers in the DE-Ohio service territory, our
20 experience with the Duke POLR structure is that it is preferable to the mandatory
21 imposition of a non-bypassable POLR charge that has a generation reservation
22 component.

1 **Q. What would be a reasonable POLR charge?**

2 **A.** The basic POLR charge should be only the cost for the Company to stand ready to
3 purchase generation for the customer in the open market. The current POLR fees
4 are of the order of magnitude that would accomplish that service. Customers who
5 agree to return at a market price should not pay for electric generation that they are
6 not using, but if the return they should pay the true market cost of their generation.
7 Further, if customers want the ability to return at the standard service price, then it
8 would be acceptable to charge such customers a fee for the risk of keeping that
9 pricing open. The key point is that any charges imposed for POLR service should be
10 the true cost that AEP incurs for providing that service to the customer.

11
12 **III. The Commission Should Reject The Mandatory, Non-bypassable**
13 **Nature of AEP's Proposed Fuel-Related Generation Deferral / Phase-in**

14 **Q.** Please discuss AEP's proposed fuel cost generation deferral / phase-in that is
15 part of AEP's ESP Application.

16 **A.** AEP proposes a significant deferral of fuel costs in order to limit the annual total
17 rate increases to approximately fifteen percent (15%) for each rate schedule. (Baker
18 Direct Testimony, p. 20.)

19
20 **Q.** Are all customers required to pay for the deferral and phase-in of AEP's fuel
21 related costs?

22 **A.** Yes. AEP requires all customers, SSO and shopping customers alike, to pay for the
23 costs associated with the fuel cost deferral.

1 **Q. Is charging a deferred generation cost recovery rider to all customers**
2 **equitable?**

3 **A.** No. Customers who take service from a CRES provider are no longer taking
4 generation service from AEP. It is impossible to point to any benefit being
5 conferred upon a shopping customer if the fuel is being utilized by other customers
6 that are taking service from AEP. By charging those shopping customers the FAC
7 Phase-In Charges proposed in the Application, shopping customers will be paying
8 the generation costs for a service they did not use, plus carrying costs. In addition, if
9 AEP happens to sell electric power and energy to the CRES provider, that customer
10 will be paying twice for fuel-related costs – once to the CRES provider and twice to
11 AEP. Compounding the problem is the large deferrals associated with increased fuel
12 charges which are being deferred.

13

14 **Q. Are there other ways to structure a phase-in or deferral of generation-related**
15 **fuel or other costs?**

16 **A.** Yes. There are a number of different options that are all preferable to the manner in
17 which AEP has proposed to impose the FAC Phase-In.

18

19 First, all customers should be provided with the option of whether they want to pay
20 the full generation price instead of being forced to defer certain costs and impose
21 interest charges on top of those charges. Another alternative is that shopping
22 customers should have the option of not being charged the FAC Phase-In Charge,
23 or getting a credit equal to the deferral and paying the FAC Phase-In Charge.

1 Charging shopping customers for generation service that they do not take from AEP
2 is inequitable.

3

4 **Q. Have other states utilized such an optional process when addressing rate**
5 **increase phase-ins or deferrals of certain generation-related costs?**

6 **A.** Yes. In Maryland and Illinois, after the expiration of a lengthy period of capped
7 rates, residential customers were provided with the option to defer or phase-in the
8 resulting rate increases instead of being forced to finance the deferrals. Surprisingly,
9 despite all of the press coverage of the alleged rate increases in those two States, a
10 very small percentage (less than 10%) elected to defer such costs and take on the
11 additional costs associated with interest and carrying charges on not paying the full
12 price for electric power.

13

14 **Q. Do you have any concerns about the level of the FAC baseline?**

15 **A.** Yes. We are concerned that the baseline be established in a transparent and
16 reasonable manner. Moreover, it is our understanding that costs over and above the
17 baseline will be passed through to all customers. However, it is unclear if customers
18 also will receive a credit in the event that costs come in under the baseline under the
19 ESP.

1 **IV. Determining Whether AEP's ESP Is More Favorable**
2 **In The Aggregate Requires An Apples-to-Apples Comparison**

3 **Q. How does AEP propose to compare the expected results that would occur**
4 **under an MRO with its' proposed ESP?**

5 **A.** We agree with AEP witness Baker that a comparison between an ESP and a MRO
6 must cover the same timeframe. (AEP witness Baker Direct, p. 4.) In AEP's case,
7 Senate Bill 221 (and subsequent clarifying amendments) contemplates a "blending"
8 of a competitive solicitation (market price) with the prior year's SSO. The blending
9 would have a MRO for only a portion of AEP's load during the ESP term (e.g. 10%
10 in 2009, 20% in 2010, and 30% in 2011.) AEP further outlines that the apples-to-
11 apples comparison should be for full requirements ("FRP") electric service for the
12 2009-2011 time period. (Baker Direct, p. 6, 7.)

13

14 **Q. What costs were included in AEP's proposed FRP as the "Competitive**
15 **Benchmark"?**

16 **A.** AEP included the following costs: ATC Simple Swaps (adjusted for basis), a load
17 following/shaping adjustment, PJM Ancillary Services, Losses, PJM Capacity
18 Obligations, Transaction Risk, and a retail administration charge.

19

20 **Q. Of all of the costs identified by AEP, which account for the largest portion of**
21 **the total cost?**

22 **A.** According to AEP witness Baker, the ATC Simple Swaps account for approximately
23 2/3 of the total cost in the Competitive Benchmark. The PJM Capacity Obligations
24 account for an additional 14% (Columbus Southern Power) and 12% (Ohio Power),
25 respectively.

1 Q. What has been the trend in the wholesale market price for power since AEP
2 filed its ESP on or about July 31, 2008?

3 A. Forward market prices for energy in Cinergy and PJM have fallen significantly since
4 Mr. Baker submitted his testimony to the Commission. As of October 29, 2008,
5 prices had fallen as follows for the PJM and Cinergy Hubs for calendar years 2009,
6 2010, and 2011:
7

| PJM-W | Cal '09 | Cal '10 | Cal '11 | Cinergy | Cal '09 | Cal '10 | Cal '11 |
|-----------|---------|---------|---------|---------|---------|---------|---------|
| Date | Px Last | Px Last | Px Last | | Px Last | Px Last | Px Last |
| 10/29/08 | \$69.50 | \$73.50 | \$74.50 | | \$56.20 | \$59.75 | \$61.25 |
| 07/31/08 | \$89.75 | \$88.00 | \$84.00 | | \$71.12 | \$69.62 | \$68.12 |
| % decline | 25% | 18% | 12% | | 23% | 15% | 11% |

8
9 Q. What does the significant drop in forward market prices tell you about the
10 necessary apples-to-apples comparison that the Commission is required to
11 undertake?

12 A. In order for the Commission to properly discharge its duties to determine whether
13 AEP's ESP is more favorable in the aggregate, great care must be taken to ensure a
14 genuine and accurate apples-to-apples comparison that takes into account current
15 market conditions. Otherwise, since the decision that is to rendered in this
16 proceeding will set the market structure for at least the next three (3) years, the
17 PUCO could be charting a course that could harm, instead of benefit Ohio
18 consumers.

1 **Q.** **In addition to the significant drop in forward electric prices over the past few**
2 **months, are there any other aspects of AEP witness Baker's comparison**
3 **between the ESP and the MRO that are problematic?**

4 **A.** Yes. There are at least two. First, AEP Witness Baker states that he attempted to
5 even out the sample ATC Simple Swap pricing inputs by staggering the selection
6 over the first 7 months of 2008. (AEP Witness Baker Direct, p. 15.) If one were to
7 take a larger historic sample of prices for the ATC Simple Swap (e.g. going back 2
8 years or more years), you would see a more accurate depiction of what we may see
9 for forward market prices. Since electric prices had been at or near an all-time
10 historic level from January 2008 – July 2008, a more accurate representation would
11 be to take date from January 2007 to the present. Second, there are a number of
12 AEP's proposed riders that have established charges that are directly related to the
13 absolute level of prices. Thus, the lower the assumptions regarding future prices, the
14 lower the charges. The proposed POLR Rider is a perfect example. The recent drop
15 off in forward wholesale prices also implies that the proposed POLR charges should
16 be re calculated. If that were to be done, the proposed POLR Rider charges would
17 be much lower numbers than the proposed \$108 Million for Columbus Southern
18 Power and \$60 Million for Ohio Power.

19

20 **V. The Commission Should Reject AEP's Attempts to**
21 **Restrict Participation In PJM's Demand Response Programs**

22 **Q.** **Please explain what you mean by demand response?**

23 **A.** Demand response is the strategic management of energy demands in response to
24 supply. Optional loads and services are reduced during critical timeframes according
25 to a pre-planned load prioritization schedule. There are two strategies employed in

1 demand response both with the goal of lowering the demand on the electrical grid
2 and reducing electrical costs. *Interruptible loads*, in which customers voluntarily reduce
3 electrical demand at the request of the utility *and demand side management*, in which
4 customers meter their usage so that it never reaches the point at which per-kilowatt
5 costs increase. A comprehensive demand response program will help reduce stress
6 on the grid and postpone the need to build additional generation. Demand response
7 creates a “virtual” peaking plant which can be called upon to deliver load to the grid
8 and bring it back into balance during times of peak demand. In this way, the
9 Regional Transmission Organization (“RTO”) harnesses the energy conservation
10 efforts of its customer base rather than bringing older gas, oil or coal plants on-line
11 to meet demand. At the individual facility level, these conservation efforts often
12 reflect dimming lights, raising the set point on thermostats, or changing production
13 schedules. In short, RTOs such as PJM are willing to compensate customers who
14 help with this balancing act.

15
16 **Q. Please explain AEP's proposal as it relates to customer participation in PJM's**
17 **demand response programs.**

18 **A.** It is my understanding that AEP seeks to prohibit the participation of its standard
19 service offer (“SSO”) customers in any of the PJM demand response programs.

20 (AEP Witness Roush Direct Testimony, p. 7.)

1 **Q. Does AEP seek to prevent all retail customers from participating in PJM's**
2 **demand response programs?**

3 **A.** Based upon the discussion in AEP witness Roush's Direct Testimony, it is unclear
4 whether AEP only seeks to prevent SSO customers from participating in PJM's
5 demand response programs or whether that prohibition extends to all customers on
6 the AEP distribution system regardless of whether they are taking service from AEP
7 or a CRES provider.

8
9 **Q. What is the basis for AEP's proposed restriction on the participation of**
10 **customers in PJM's demand response programs?**

11 **A.** Despite saying that it is "not appropriate" and discussing "unregulated entities such
12 as curtailment service providers" being allowed to enroll customers in PJM's
13 programs, AEP fails to explicitly articulate any legal or policy reasons why the
14 Commission should adopt such an anti-competitive restriction on customer
15 participation in PJM's demand response programs.

16
17 **Q. Please explain from the perspective of a CRES provider why you would be**
18 **interested in PJM's demand response programs?**

19 **A.** Many CRES providers do much more than simply sell customers electricity; they
20 assist customers with a wide range of energy management services, including selling
21 demand response products and services. The key to maximizing the benefits
22 associated with demand response is to provide customers with access to information
23 and data regarding the manner in which a customer is using electricity.

1 **Q. Do you believe that demand response, coupled with Smart Grid technologies**
2 **will help stimulate competition and customer choice, and empower**
3 **customers?**

4 **A. Yes. Until recently, demand response has been primarily a reactive program and the**
5 **typical response to an RTO-initiated directive to curtail energy load has been to fire**
6 **up the back-up generators – a fairly blunt instrument with its own air emissions**
7 **issues. Today, thanks in large part to innovations introduced in the competitive retail**
8 **and wholesale markets, the fundamentals of demand response are changing rapidly,**
9 **bringing increasingly more sophisticated and environmentally sound ways of limiting**
10 **energy consumption to the table. These opportunities, which go well beyond**
11 **dimming lights and adjusting temperature, can be leveraged during peak times and all**
12 **year.**

13

14 **Q. How does a CRES provider like CNE get involved with demand response?**

15 **A. CNE is partnering with multiple systems integrators to develop a holistic load**
16 **response solution that incorporates energy supply and demand information and**
17 **knowledge onto one comprehensive and open IT management platform. Systems**
18 **integrators already utilize building automation systems to manage the lighting,**
19 **HVAC, and air conditioning infrastructure within a facility. This ability to bridge**
20 **and consolidate information on one platform has focused on introducing efficiency**
21 **and conservation efforts such as automated lighting, internet access, phone systems**
22 **and heating and ventilation control. These integration efforts have required**
23 **significant capital investments but improved efficiency and enhanced decision-**
24 **making at the building management and operations level of an enterprise. CNE and**

1 many other CRES providers are leveraging the opportunities that have come about
2 as a result of a more competitive energy market to change this paradigm. Integrating
3 existing load response programs onto existing open platforms brings the supply side
4 of the picture into perspective, putting facility managers, business owners and
5 building management in a position to leverage both the demand and supply side of
6 the equation.

7
8 **Q. Please explain how the deployment of Smart Grid technologies, AMI and**
9 **access to real-time metering and price information is important to CRES**
10 **providers and customers?**

11 **A.** Access to real-time metering and price information systems, which allow up-to-the-
12 minute views of energy usage and costs and the ability to employ this information to
13 better shape and control usage patterns, puts a business in the driver's seat of a
14 smarter and more energy responsive building or facility. Fully integrated and
15 intelligent buildings do more than respond to mandatory curtailment demands.
16 These buildings are capable of reacting to changes in the energy marketplace at
17 anytime by shedding load and adjusting consumption to maximize economic
18 efficiency. As a result, intelligent buildings are able to shift electricity consumption
19 from periods of high prices to periods of low prices and reduce overall energy costs
20 in the process.

21
22 **Q. Are commercial customers already participating in these types of activities?**

23 **A.** Yes. Participants in the building automation sector already know that reducing costs
24 by automating functions across a facility is good business. Those that can bring an

1 enhanced intelligent market-based load management product to the table will be well
2 received by customers seeking to leverage existing investments in technology and
3 infrastructure in a way that unites their energy purchasing strategies with corporate
4 responsibility.

5
6 In today's competitive business environment, managers and owners are thinking
7 about energy as a strategic asset integral to every aspect of the bottom line. The
8 capacity to actively monitor and manage usage and adjust operations accordingly
9 reflects the increasingly sophisticated energy strategies now available. Load response
10 solutions are particularly attractive to businesses that have already invested in
11 intelligent building designs, and wish to leverage the full spectrum of the energy
12 chain to maximize these energy investment decisions. CNE and other CRES
13 providers are helping customers adapt successfully to this new energy paradigm and
14 positioning them to make the most of the opportunity to participate in the emerging
15 energy marketplace of the 21st Century. Overlaying Smart Grid technologies onto
16 existing open platforms makes it possible to more successfully harness and shape
17 load whether the load is distributed across a single facility, college campus, or retail
18 chain with multiple locations throughout a large geographic area. This ability to shift
19 and shape load across multiple buildings is going to reveal itself to be the smartest
20 and most efficient way to create the virtual peaking plants and intelligent buildings of
21 the greener energy grid of the future. Innovations of this magnitude in our built
22 environment, by virtue of its role in consumption, have the potential to shift our
23 understanding of energy generation, demand and load allocation in an entirely new
24 direction.

1 Q. Does CNE currently offer demand response products and services to
2 customers in the AEP service territory in Ohio?

3 A. While CNE actively markets demand response products to customers in all of the
4 PJM markets in which it operates, we have not yet been able to offer those products
5 to customers in the AEP service territory. We are hopeful that the Commission will
6 modify AEP's ESP proposal so that we have an opportunity to serve customers in
7 the AEP service territory.

8
9 Q. What is CNE's position regarding AEP's proposal on restricting customer
10 participation in PJM's demand response programs?

11 A. For the reasons stated above, AEP's proposal on prohibiting customers from
12 participating in the PJM Demand Response and Interruptible Rates programs must
13 be rejected. At the very least, AEP has no legal or regulatory basis to restrict
14 customers that are taking service from CRES provider from participating in PJM's
15 PJM Demand Response and Interruptible Rates programs.

16
17 VI. **AEP's Proposal To Seek Competitive Bids For A Small Portion**
18 **Of The Electric Power and Energy Needs Of AEP Is A Positive Step**

19 Q. Please explain what you understand AEP's proposal to be regarding seeking
20 purchased power to meet a portion of its electric power and energy needs.

21 A. It is my understanding that AEP seeks to procure an increasing amount of electric
22 power through a slice of system approach over three-year term of the ESP (5% in
23 2009, 10% in 2010, and 15% in 2011). AEP proposes to recover the costs associated
24 with such purchased power procurement through the proposed FAC. AEP

1 describes the proposal as consistent with the state policy to recognize the continuing
2 emergence of competitive electricity markets. (Baker Direct Testimony, p. 22.)
3

4 **Q. Do you have any recommendations regarding this aspect of AEP's ESP**
5 **Application?**

6 **A.** Yes. Constellation supports the use of competitive wholesale solicitations to meet a
7 small portion of the electric power and energy needs of AEP and AEP's customers.
8

9 **Q. Are there aspects of AEP's competitive solicitation proposal that are unclear**
10 **or which could be better clarified by AEP or the Commission?**

11 **A.** Yes. It is our understanding that AEP intends to utilize an open, non-
12 discriminatory, and transparent process that will use a competitive request for
13 proposal (RFP)-type process to seek such electric power and energy needs.
14 However, we believe that additional clarity or detail surrounding this proposal is
15 warranted, including information regarding Commission involvement in the RFP
16 process, a sample RFP, and the criteria that will be utilized for determining winning
17 suppliers.
18

19 **Q. Why is it important that such a process contain the additional detail that you**
20 **mentioned in the previous answer?**

21 **A.** Based on our experience with competitive solicitations across the country, the way in
22 which a competitive solicitation is structured, and the terms and conditions included
23 in that competitive solicitation, can greatly affect bidder interest and the ultimate
24 outcome. Moreover, clear standards to be utilized by the Commission in evaluating

1 bids received will provide greater certainty to prospective bidders, which itself
2 impacts the participation in, and prices resulting from, the procurement event.
3

4 **VII. Conclusion**

5 **Q. Please summarize why the Commission should consider the effects of ESP**
6 **pricing, which includes non-bypassable generation-related charges, on**
7 **shopping customers.**

8 **A.** When reviewing the benefits of the ESP, the Commission must include in their
9 analysis the fact that S.B. 221 retained the right of customers to select someone other
10 than the utility for their electricity. The Commission must consider the economic
11 reality for customer choice and customer switching when evaluating AEP's ESP
12 proposal.
13

14 Customers who shop with a CRES provider have a variety of products to choose
15 from, including the ability to fix a rate at any point in the market. The imposition of
16 non-bypassable charges, such as AEP's proposed POLR Rider and the Phase-In
17 Charge, are a detriment to the ability of customers to shop – especially when market
18 prices are competitive with or below the utility SSO price. At that point, the benefits
19 of paying a lower price for generation outweigh any benefit of deferrals which may
20 artificially lower prices in the short term but cost more in the long term. As I
21 explained earlier, the imposition of a number of inappropriate non-bypassable
22 charges only benefits AEP – to the detriment of customers.

1 **Q. Please summarize your recommendations regarding AEP's ESP Application.**

2 **A.** The Commission should take the following actions regarding AEP's ESP
3 Application:

- 4 • Reject AEP's attempts to impose generation-related costs, including the
5 proposed POLR Rider, onto consumers that do not purchase generation
6 supply from AEP;
- 7 • Reject AEP's attempts to force all customers to pay for the significant
8 generation-related deferred generation-related charges;
- 9 • In evaluating AEP's comparison between the ESP and the expected results
10 of an MRO, the Commission must engage in a true "apples-to-apples"
11 comparison;
- 12 • Reject AEP's proposed restrictions on retail customers' direct participation in
13 PJM Demand Response and Interruptible programs; and
- 14 • Approve AEP's proposal to seek power and energy in the competitive
15 wholesale market through an open, non-discriminatory, and transparent
16 competitive solicitation process to meet certain needs in 2009, 2010, and
17 2011.

18
19 **Q. Does this conclude your testimony?**

20 **A.** Yes.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Document was served upon the following parties by E-mail or First-Class U.S. Mail this 31 day of October, 2008.



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