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# BEFORE
# THE PUBLIC UTILITIES COMMISSION OF OHIO

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| In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan; and Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets. | ) ) ) ) ) | Case No. 08-917-EL-SSO |
| 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 |

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## POST-HEARING BRIEF OF THE APPALACHIAN PEOPLE'S ACTION COALITION AND OHIO PARTNERS FOR AFFORDABLE ENERGY

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## INTRODUCTION

Columbus Southern Power ("CSP") and Ohio Power Company ("OPCO" or collectively "the Companies" or "AEP") had a combined operating revenue of $3.32 billion in 2007. This application would increase revenues by $10.804 billion over the next three years, an average of $3.6 billion per year or more than double the current annual revenues from Ohio customers. OCC Exhibit 10, , *Direct Testimony of Lee Smith,* LS Exhibit 1. While Am. Sub. SB 221 ("SB 221") overhauled the regulatory framework established under Am. Sub. SB 3, passed in 1999, it did not authorize unreasonable rate increases such as those proposed by AEP in this case. The purpose of an SSO, whether provided pursuant to an ESP or an MRO, is to assure stable, reasonable, and affordable rates for all customers, including residential and small commercial customers who are not served by a competitive retail electricity supplier. This can only occur with an explicit portfolio plan and a determination of the best mix of energy efficiency and generation supply resources to provide the lowest and most stable price over the term of the plan.

Under SB 221, CSP and OPCO continue to be responsible for providing a Standard Service Offer ("SSO") available to customers without competitive options, the situation for the vast majority of customers in their service territories given the dearth of competitive options. R.C. §4928.141. If a utility opts to provide the SSO through an Electric Security Plan ("ESP"), it must comply with state policy as well as be "more favorable in the aggregate", with consideration given to both "pricing and all other terms and conditions," than the price provided through a Market Rate Option ("MRO"). R.C. §4928.143(C)(1). State policies are to be used to guide Commission implementation of R.C. §4928.143. Case No. 08-935-EL-SSO, *Opinion and Order* (December 19, 2008) at 12. Rather than attempting to develop a portfolio of resources necessary to provide SSO service (as any marketer would do), AEP takes the position that its generation rate need only be in the range of the rate an MRO would produce and the additional 'benefits', paid for by customers, make the ESP package more favorable. The Companies offer an extremely one-dimensional reading of a statute which requires a balance between the interests of customers and utilities.

Absent a procurement plan designed to provide an optimally priced SSO under either the MRO or ESP options, the relative value of the two options cannot be compared. Illusory benefits consisting of large expenditures for distribution improvements and an unsupported demand side management (DSM) program -- but no concrete plans or enforceable commitments -- cannot add value to customers. The record evidence fails to demonstrate the advantages of the package to customers.

AEP fails to prove that its proposed ESP is more favorable in the aggregate and therefore as proposed by the Companies should be rejected or substantially modified.

## STATEMENT OF FACTS

SB 221 was signed on June 30, 2008. AEP filed the instant case on the effective date, July 31, 2008, requesting approval of an ESP. A technical conference was held on August 19, 2008. Five public hearings were held to gather customer views on the proposal. The hearing began on November 17, 2008, focusing first on AEP's proposed interim plan. Briefs on the interim plan were filed on December 3, 2008. The hearing concluded on December 10, 2008. The Appalachian Peoples Action Coalition ("APAC") and Ohio Partners for Affordable Energy ("OPAE") hereby submit their Post-Hearing Brief.

## ARGUMENT

### I. The Base Generation Rate Increases Proposed by AEP are Excessive and not Justified by the Record.

The Companies propose two separate adjustments to base generation rates in the ESP. First, AEP proposes to collect, beginning in 2009, carrying costs associated investments made between 2001 and 2008 to comply with environmental requirements.[1] The increases in 2009 equate to a seven percent increase for CSP customers and an eighteen percent increase for OPCO customers.[2] AEP also proposes collection of carrying costs for environmental investments in 2009, 2010 and 2011, through annual increases of three percent per year for CSP customers and seven percent per year for OPCO customers. Application at 5. These annual increases are also designed to compensate the Companies for "the effects of inflation". Application at 6.

[1] The Companies Application ostensibly "reflect[s] a credit for the increases authorized by the Commission...pursuant to the Companies' RSP." Application at 5.

[2] It is unclear under the Application and supporting testimony what the impact of the increases are in 2010 and 2011. OCC Exhibit 10, *Direct Testimony of Lee Smith*, at 33.

The base generation increases for CSP customers (excluding fuel and related costs) amount to $40,209,436 in 2009, $40,635,719 in 2010, and $41,074,791 in 2011, or a three-year total of $164,974,537.[3] For OPCO customers, the increases amount to $125,771,480 in 2009, $128,695,483 in 2010, and $131,824,167 in 2011, or a three-year total of $514,529,573.[4]

The Companies have been compensated under Ohio law for environmental compliance investments between 2001 and 2008. AEP was not authorized to recover generation transition costs in Case No. 99-1729-EL-ETP because the generation owned by CSP and OPCO was found to be competitive in the wholesale market. The Companies have failed to demonstrate that their earnings are inadequate to fund environmental compliance requirements which were factored into the transition cost analysis in the ETP case. OCC Exhibit 10 at 32 (Smith). Thus, the capped rates between 2001 and 2005 were adequate to compensate the Companies for environmental expenditures. Under the Rate Stabilization Plan ("RSP"), the Companies were provided with recovery of carrying charges on environmental investments as well as other variable costs through riders approved by the Commission. Case No. 04-169-EL-UNC. No

[3] The increases included a one-time increase of $26,000,000 for incremental carrying costs for environmental capital investments, and annual increases for "the cost of fuel and fuel-related components such as purchased power, emission allowances, including gains and losses associated with sales of such allowances, and consumables related to environmental compliance, as well as costs associated with the Chicago Climate Exchange, carbon-based taxes and other carbon related regulation[s][sic]", which are additive. AEP Exhibit 1, *Direct Testimony of David M. Roush*, DMR-1

[4] The increases included a one-time increase of $84,000,000 for incremental carrying costs for environmental capital investments, and annual increases for "the cost of fuel and fuel-related components such as purchased power, emission allowances, including gains and losses associated with sales of such allowances, and consumables related to environmental compliance, as well as costs associated with the Chicago Climate Exchange, carbon-based taxes and other carbon related regulation", which are additive. Id.

additional compensation for these costs is necessary, legal, or in the public interest.[5]

The annual three and seven percent increases are also not supported by the record. OCC Exhibit 10 at 31 (Smith). Similar increases were authorized during the period of the RSP, but there is no record support in this case for continuing these increases. AEP fails to provide justification for these charges other than "judgmental estimates of the appropriate increase during the three-year ESP". OPAE Exhibit 1, *Direct Testimony of Barbara R. Alexander,* Attachment BA-2. See also Vol. XI at 87 (Baker).

AEP contends that the proposed rate increases do not have to be based on cost. Vol. XI at 141 (Baker). AEP argues that the only appropriate test is whether the plan is more favorable in the aggregate than an MRO option. Id. AEP Witness Baker concedes that situations which could increase base generation costs "are unforeseen and consequently unquantifiable." AEP Exhibit 2E, *Rebuttal Testimony of J. Craig Baker,* at 20. Such an argument completely eviscerates the overall obligation to charge "reasonable" prices to its customers which are "prudently" incurred. R.C. §4928.02(A); R.C. §4928.143(B)(2)(a). AEP Witness Baker rejects the notion of prudency and/or that any justification is necessary prior to collection of revenue.

[5] If the Commission chooses to approve recovery of carrying costs on environmental investments in any manner, the recovery should reflect the application of the Section 1999 tax credit. See IEU Exhibit 10, *Direct Testimony of Joseph G. Bowser,* pp 4-8 and Case No. 07-63-EL-UNC, *Entry on Rehearing* (November 28, 2007). It should also base recovery on the cost of the systems as they are installed. OCC Exhibit 11, *Direct Testimony of Emily S. Medine,* at 29.

Q. (Maskovyak) Can you explain the difference to me for giving cost recovery that's not known or unforeseen and unquantifiable and essentially what I would call a blank check?

A. (Baker) I'm not asking for cost recovery. I'm asking for an automatic increase that's provided for in Senate Bill 221.

Vol XIV at 209.

There are no grounds for the notion that SB 221 contemplated actual costs should be ignored in an automatic recovery mechanism. Since the concept of "reasonable" prices based on "prudent" expenditures must of necessity flow from a consideration of facts and evidence, the underlying costs incurred to provide the proposed ESP price is clearly a key component of the Commission's analysis. The only element of an MRO that can be considered is the price produced by the MRO to which the ESP, in the aggregate, is compared. Costs and prices are inherently the measure by which to make the comparison. Since an ESP can contain a number of costly initiatives beyond generation rates, the measure of cost becomes the only yardstick by which to measure the reasonableness of the rates produced based on the prudency of purchases and the comparison of the plan with an MRO. Otherwise, a utility could have the obvious incentive to create a high estimate of MRO prices in order to promote an ESP price that would not be based on actual costs or reasonable prices simply because it is slightly lower than its estimate of MRO prices. Such an approach has in fact been demonstrated to have occurred in the AEP filings and will, therefore, result in unconscionable earnings and higher prices for customers than should be allowed under SB 221.

SB 221, specifically R.C. §4928.143(C)(1) makes clear that "the burden of proof in the proceeding shall be on the electric distribution utility." Yet AEP makes no pretense of defending price increases for generation that are not part of the proposed Fuel Adjustment Clause ("FAC"). It is both a fatal and one factor which must be aggregated in order to evaluate the plan under the terms of the statute. The Non-FAC generation rate increases will impose an additional $679,504,110 in charges on AEP customers. AEP has failed to justify these higher prices based on any form of long term resource planning or analysis of alternatives that may be more cost-effective, such as increased investment (even beyond the statutory minimum) for demand side management programs that would reduce the need to purchase some or all of the expensive generation supply reflected in AEP's filing. R.C. §4928(B)(2)(a) requires that automatic adjustments be based on prudently incurred costs. AEP's position conflicts with the statute and should be rejected.

## II. The Fuel Adjustment Clause ("FAC") proposed by AEP is Excessive and Unreasonable.

The Companies propose a FAC to capture "the cost of fuel and fuel-related components such as purchased power, emission allowances, including gains and losses associated with sales of such allowances, and consumables related to environmental compliance, as well as costs associated with the Chicago Climate Exchange, carbon-based taxes and other carbon related regulation." Application at 4. The rider will be set based on projected costs.

Actual expenses greater than those collected under the FAC in 2009, 2010, and 2011 will be deferred for collection via a nonbypassable rider from 2012 through 2018 in order to hold overall rate increases to under fifteen percent per year, while excess recoveries, caused by the use of projected expenses as the basis for the FAC will be deferred and reduce the regulatory assets ultimately collected. Application at 14. The Companies propose that the FAC will extend beyond 2012, recovering both deferrals (discussed below) and continuing projected fuel costs with periodic adjustments for under/over recovery. Id.

Ohio has long permitted utilities to adjust rates to reflect the changes in price of fuel and other consumables. The costs AEP proposes to recover through the FAC are consistent with statutory provisions. R.C. §4928.143(B)(2)(a). Recovery is only permitted for costs that are "prudently incurred." Id. Again, cost is being used as a yardstick for measuring the appropriateness of collecting revenue from customers. Vol. XI at 139 (Baker).

AEP has not demonstrated that it has chosen a least-cost approach to procuring fuel and purchased power as is necessary to meet the prudency standard of the statute. OPAE Exhibit 1 at 9, 11 (Alexander). Other experts testifying in the case provide detailed critiques of the Companies proposed procurement plan. OCC Exhibit 11 at 38-39 (Medine). AEP Witness Baker admits that AEP has the ability to manage procurement effectively, but apparently has chosen not to apply that expertise to minimize costs for Ohio customers. Vol XIV at 267-268 (Baker). The record does not demonstrate the prudency of AEP's procurement strategy.

A. Slice-of-System Purchased Power Costs Should Not Be Included In The FAC As Proposed By AEP.

As OEG Witness Baron points out in his direct testimony "In 2009...CSP's rates will be higher by $69.5 million and OPCO's rates will be higher by $75.4 million. In 2010 and 2011 the impact will be roughly two to three times greater (respectively) for each Company" than if the power was purchased from AEP's Eastern Pool. OEG Exhibit 2 at 4. OEG Witness Kollen puts the total at $418 million for CSP and $452.40 million for OPCO over three years or $870.4 from AEP customers. OEG Exhibit 3 at 4. OCC Witness Smith offers similar conclusions. OCC Exhibit 10, LS Exhibit 1 (Smith).

AEP Witness Baker acknowledges that collectively, CSP and OPCO have adequate capacity to service Ohio load. His explanation for not utilizing this capacity or the AEP Eastern Pool, which has long served Ohio load, is because the pool agreement "doesn't provide for these kind of purchase arrangements." Vol. X at 202 (Baker). Mr. Baker fails to identify any barriers to accessing this lower cost generation other than AEP's internal policy. Moreover, he also acknowledges that it will likely be AEP capacity that is used to serve Ohio load – at market prices.

The Commission should not permit AEP to launder existing capacity long used and useful in serving Ohio load through PJM to obtain a higher price. The Companies provides no justification for this procurement approach and it should be rejected.

B. Advanced Energy Resource Obligations should not be included in the FAC.

Under SB 221, all providers are required to meet statutory standards for generation from renewable and advanced energy resources. AEP proposes to charge costs associated with these mandates to customers through the FAC, a portion of which it proposes to defer for collection through a nonbypassable charge levied on customers through 2019. Application at 5. This is inconsistent with R.C. §4928.64(E) which requires that all costs associated with the advanced energy standard are bypassable. The Application ignores this requirement. The cost of compliance with these standards must either be excluded from the FAC or, at a minimum, be converted to a bypassable component of the FAC. See Staff Exhibit 4, *Direct Testimony of Stuart M. Siegfried* at 6-7.

C. AEP Proposes an Unreasonable Benchmark for the Measurement of Increases in Fuel Cost to be Recovered under the FAC.

The Companies contend that the year rates were unbundled -1999 – should be used as the baseline for determining increases in costs eligible for recovery under the FAC. Vol. X at 198 (Baker). While AEP alleges that the baseline would be adjusted for recovery permitted during the RSP, Witness Baker admits that the automatic increases in the RSP have "no relationship to fuel" and therefore will not affect the baseline. Id. at 200.

The rates in effect during the ETP and the RSP provided AEP with revenue adequate to obtain the fuel necessary to operate its plants. There is no evidence to indicate otherwise. If AEP wishes to collect incremental fuel costs, the baseline for determining increases or decreases should be the amount paid for fuel in 2008 and should be determined retrospectively or in a manner consistent with the method used to collect transmission costs. At present, fuel costs are down. This will reduce the baseline and could result in further downward adjustments in the future. The baseline proposed by AEP is inconsistent with the statute and should be rejected or modified.

## III. The Deferrals Proposed By AEP Do Not Result In Reasonable Rates For Customers.

AEP proposes to defer portions of the FAC to limit overall rate increases to fifteen percent per year to moderate the impact on customers of the massive rate increases proposed. However, the deferral would be unnecessary if the rates proposed in the ESP were reasonable. OPAE Witness Alexander has established that AEP has not submitted an analysis of its generation supply options or procurement plans for fuel and purchased power that would allow the Commission to determine whether its has chosen the least cost approach to assuring generation supply for its customers for the next three years.. OPAE Exhibit 1 at 9. AEP has failed to justify various proposed distribution charges. Id. at 13-14. AEP has not demonstrated the prudence or reasonableness of the proposed rates. The deferrals cannot be justified because there is no evidence the price increases are warranted.

## IV. AEP's Proposed POLR Charge Should Be Rejected

AEP requests annual recovery of $60.9 million for Ohio Power Company and $108.2 million for Columbus Southern Power through a non-bypassable POLR charge. AEP's total recovery for its POLR charge during the three-year term of the ESP would total more than *one-half billion* dollars. The Commission should reject AEP's proposed POLR charge. This huge charge is unnecessary, allows the Company to recover costs that may never occur, and is based on a highly flawed application of a stock options pricing model. Moreover, AEP has both overestimated its risks and overlooked existing lower-cost options to mitigate risk.

First, as AEP has indicated, it has not made a decision as to whether it will actually purchase any options to hedge against its risk of exposure to making purchases at higher market costs, should that become necessary. IEU Exhibit 1, *Direct Testimony of Kevin M. Murray,* at 7. It is seeking to recover costs from ratepayers that it may never actually incur in purchasing hedging instruments. Vol XIV at 200-201 (Baker). AEP can retain the entire one-half billion dollars without ever spending a dollar to reduce its risk. Moreover, AEP Witness Baker did not quantify in his testimony any calculation of what he believes is the cost of the POLR obligation other than a general statement that "the costs of AEP's POLR obligation can best be understood in light of potentially having to buy high and sell low." AEP Exhibit 2A, *Direct Testimony of J. Craig Baker,* at 30. AEP Witness Baker also points to the political risk faced by the Company by asserting that he "simply" does "not believe that the PUCO and/or the General Assembly and Governor will sit back and fail to intervene while residential customers are forced into paying 'higher future market rates.'" Id. Forecasting what the PUCO, General Assembly, and/or the Governor will do or not do over the next three years are a speculative and inappropriate basis to impose a huge POLR charge on AEP's Ohio customers. AEP Exhibit 2A at 28 (Baker Direct).

Second, AEP is overestimating its POLR risks and is assuming events that may never occur and, based on actual experience in other restructuring states, have a very low probability of occurring. During the past eight years, Columbus Southern Power has experienced minimal customer switching (and no residential switching), and Ohio Power Company has experienced no customer switching. Vol. IX at 225 (Baker). The risk of migration or significant development of a retail market for residential customers is very low. Such a market has not developed in any other restructured state with the market model similar to that in effect in Ohio. OPAE Exhibit 1 at 28. A market has certainly not yet developed in Ohio. See Case No. 07-976-EL-UNC, *Staff Comments* (September 21, 2007).

Moreover, the risk of any customers switching from AEP to a competitive supplier is an ordinary market or customer migration risk rather than a traditional POLR risk. Staff Exhibit 10, *Direct Testimony of Richard Cahaan,* at 6. Customers have been legally able to switch to CRES suppliers during the existing RSP and previous ETP periods following the implementation of Senate Bill 3. In addition, the Companies can greatly mitigate any losses from migrating customers by making off-system sales of excess power into the wholesale market. OPAE Exhibit 1 at 28.

The risk of returning customers who want to be served under the Companies' SSO is a POLR risk. However, for the risk of a customer switching to a competitive supplier and subsequently return to AEP to be real, customer switching must actually occur. In other words, until the first customers are switched, the probability of a customer returning to AEP is zero. IEU Exhibit 1 at 7 (Murray). There is no need to hedge against this risk until it becomes real. . Hedging this risk is analogous to buying insurance in excess of your actual needs, e.g., buying homeowner's insurance when you only rent. Id. If switching does occur, AEP could buy options and mitigate its risk by buying options in sufficient volume to cover the customer's load at a strike price equivalent to the SSO rate. Id. at 7–8. In addition, AEP could mitigate its risks through provisions similar to those in the proposed First Energy and Duke Energy Ohio ESPs that allow a customer to waive his/her right to come back to service under SSO rates during the ESP term, after receiving service from a third party supplier, if the customer agrees he/she will only return to SSO service that is priced at a proxy for market-based rates. Id. at 8–9.

The FAC provisions of the Companies' ESP already provide a means to collect the cost of the Companies' POLR obligation to serve returning customers. If the Companies fulfilled their POLR obligations through purchased power, the incremental costs of the purchased power would be recoverable through the FAC. OCC Exhibit 11 at 14 (Medine), Staff Exhibit 10 at 6 (Cahaan). In short, "either the returning customers would pay market prices or the incremental costs of the purchased power would be recovered through the FAC." Id.

Finally, AEP has not demonstrated that the model upon which it relied in calculating its POLR charge—the Black-Scholes stock options pricing model—is the appropriate tool for measuring POLR risk. No other utility company or public utilities commission in the country has used the Black-Scholes model for the purpose of valuing their POLR obligations. OCC Exhibit 11 at 17 (Medine). AEP acknowledges it knows of no other utility employing this model for this purpose, nor was it aware of any publications that recommended doing so. Vol. XIV at 206-207 (Baker). It is useful in certain applications and may not be useful in other applications, including the POLR option. Transcript VI at 244–245 (Medine). In order to utilize the Black-Scholes model for this new purpose, the Companies had to take great liberties with respect to how the model's inputs were defined, using "subjective judgment" to define each of the inputs and running the model an "indeterminate" amount of times before settling on the inputs included in the Companies' filing. OCC Exhibit 11 at 15-16 (Medine).

For example, the Companies use competitive benchmark prices discussed in relation to their MRO as the option price and the first-year ESP price as the strike price. However, neither of these numbers is known at this time. Id. In addition, the ESP price which the Companies used as the strike price in the Black-Scholes model apparently does not include the FAC deferrals or other non-bypassable costs. Id. at 16. Further, the Companies' application of the model erroneously assumes that customer switching will occur whenever market pricing is below ESP pricing and fails to account for the two-year period of ineligibility for the ESP price for returning customers who are part of a government aggregation. Id. There are many reasons to think that substantial customer migration will not quickly occur, even if the market price falls below the SSO price. Staff Exhibit 10 at 7 (Cahaan). This complexity, the highly subjective nature of the Companies' inputs into the Black-Scholes model and the Companies' "indeterminate" manipulation of those inputs render the model inappropriate for the purpose of valuing the Companies' POLR obligation. The Companies may have been creative in drafting the Black-Scholes model options for this novel purpose, but their application of the model is neither credible nor practical.

In summary, there is no reason to believe that the Companies will experience significant customer migration, the risks associated with returning customers can be avoided, and the Companies have misapplied the Black-Scholes model to the calculation of their POLR charge. A realistic POLR charge, if one is considered appropriate, would be significantly below what AEP is requesting. As Staff has recommended, "the current level of the POLR charge would be more reasonable." Id.

## V. The gridSMART Program Proposed By AEP Is Not, As A Whole, Justified By Record Evidence.

R.C. §4928.02(D) calls for the promotion and utilization of "cost-effective supply- and demand-side retail electric service including...advanced metering...." AEP proposes to implement a comprehensive 'gridSMART' program including Distribution Automation, Advance Meters ("AMI"), and installation of Home Area Networks ("HAN") in customers' homes to implement this state policy. The Application specifically requests the Commission approve the plan without "imposing a requirement that all such benefits be specifically monetized and mathematically shown to equal or exceed the net costs." AEP Exhibit 4, *Direct Testimony of Karen L. Sloneker* at 17.

The statute requires otherwise. As OPAE Witness Alexander points out, too little information is provided in the Application and supporting testimony to conduct the cost-benefit analysis required by statute. OPAE Exhibit 1 at 22-23. Consideration of the gridSmart proposal should, at a minimum, be subjected to the cost-effectiveness tests applied to other demand side resources. Staff Exhibit 3 at 4-5 (Scheck). R.C. §4928.02(D). The Commission should consider approving the distribution system automation proposal separately from the AMI and HAN provisions of the plan, deferring action for a future case wherein a full analysis of the costs and benefits and the impacts on 'at risk' customers can be evaluated. OPAE Exhibit 1 at 23-25. Staff Witness Scheck indicated concerns with overhead costs for AMI and HAN and the overall savings that would accrue to customers. Staff Exhibit 3 at 3-4 (Scheck). Cost-effective demand reduction technologies that are not dependent on AMI or HAN already exist and should be evaluated alongside the Companies' proposals. Id.

## VI. The AEP Enhanced Service Reliability Plan is not Justified by Record Evidence.

R.C. §4928.143(B)(2)(h) permits a utility to propose a "long term energy delivery infrastructure modernization plan" as a component of ESP. However, AEP does not offer a plan; rather it proposes a seven percent increase is CSP distribution rates and a six and one-half percent distribution rate increase for OPCO customers. AEP Exhibit 1, DMR 1 (Roush). The proposal does not specify what level of increased reliability will be achieved, nor does is evaluate alternative options to "ensure that customers' and the electric distribution utility's expectations are aligned" which would result in reliability improvements at the lowest possible cost. R.C. §4928.143(B)(2)(h).

AEP has the burden of proof to establish that its plan achieves the goals of the statute. R.C. §4928.143(C)(1). The Companies' current reliability performance is poor when compared to other utilities. See AEP Exhibit 13 (AEP Response to OCC Set 3-36). The estimated improvements resulting from the expenditures are at best speculative. See OPAE Exhibit 1, BA-3. Like much of the ESP, the proposal is incomplete and unsupported by testimony; it is simply a financial request, amounting to $149.6 million over three years for CSP customers and $132.8 million for OPCO customers. What customers will get for their money is not clear, but it is not an 'alignment of interests.' Rather, it is an increase in revenues for AEP without any commitment to actually making expenditures to improve reliability, reaching any benchmarks, or being subject to any consequences for failure to achieve any reliability goals. Staff Witness Hess argues, and APAC and OPAE agree, that the issue should be diverted to a distribution rate case. Staff Exhibit 1, *Direct Testimony of J. Edward Hess* at 5-6.

## VII. The Proposed "Partnership with Ohio" Does Not Provide Benefits To Customers and Fails to Protect 'At-Risk' Populations.

AEP proposes to spend $75 million in shareholder money over three years to provide assistance to low-income customers and promote economic development. Application at 8. According to AEP Witness Baker, this funding will protect 'at-risk' populations as required by state policy. R.C. §4928.02(L). Vol. X at 192. However, there is no guarantee that the $75 million will be spent at all should the Commission modify the ESP. Vol. X at 233 (Baker) and Vol. 3 at

137 (Hamrock). The Application fails to spell out how much of the $75 million will be spent for protecting at-risk populations. AEP Exhibit 3 at 16 (Hamrock). There is no proposal to exempt at-risk populations from the costs of implementing advanced energy programs or any of the other new charges contained in the Application.

AEP has no demonstrated track record in administering funds to promote economic development. Vol. X 266-268 (Baker). AEP Witness Baker could not provide information on whether or how $14 million provided for these purposes was spent or whether it produced any positive results. Id. As noted previously, AEP has the burden of proving compliance with state policy. It has not done so in this case regarding protection of at-risk populations or promotion of economic development.

## VIII. The Energy Efficiency Compliance Plan Proposed By AEP Is Not Supported by Record Evidence.

AEP offers a two-stage strategy to meet the energy efficiency and demand response targets. First, AEP proposes "to implement several familiar DR [demand reduction] and EE [energy efficiency] programs as soon as practical to achieve some results in 2009." AEP Exhibit 4 at 20 (Sloneker). The estimated costs and savings are projected using data from other AEP operating companies, particularly AEP Texas. Id. Second, the Companies have convened a collaborative to develop a slate of programs specific to Ohio. Id. at 23.

OPAE supports the collaborative approach. OPAE Exhibit 1 at 19. Ohio has several well established low income efficiency programs that can readily expand to help AEP meet its EE and DR requirements. Conducting a market potential study for EE and DE is also warranted. Id.

OPAE is concerned, however, with the slate of programs proposed to be implemented in 2009 to begin the process of meeting statutory EE and DR requirements. AEP Witness Sloneker indicates that the programs are 'generic'. Vol III at 288. She was unsure where these generic program designs have been implemented or whether they are applicable in Ohio's climate zones. Id. at 289. AEP did not evaluate existing Ohio low income programs for inclusion in the list, despite the fact that they could be quickly implemented. Id. at 289-290. AEP Witness Sloneker could not articulate the difference between the two low income programs the Companies propose to implement in 2009 nor was she aware of how the income eligibility for the two programs coordinated with other Ohio assistance programs. Id at 291-292. And, while AEP has convened a collaborative to design Ohio-specific programs, the Companies can ignore the recommendations of the group. Id. Though AEP has not settled on any program designs, it has established a budget and rider based on costs incurred in other states. AEP Exhibit 4 at 25 (Sloneker).

AEP should be required to empower the collaborative, which includes all parties, to design appropriate programs for Ohio. OPAE Exhibit 1 at 10-20. In the interim, rather than implement entirely new programs, the Company should provide funding for programs that already exist and can rapidly provide the EE and RE reductions required by statute. The Companies should also consider retaining a third-party administrator that reports to the collaborative to manage program implementation.

## IX. The ESP Proposed By AEP Is Not More Favorable In The Aggregate Than An MRO.

AEP argues that its ESP proposal is more favorable than an MRO based on a combination of price and non-price factors. The evidence is clear that the proposed ESP rate is not lower than an MRO rate given current market conditions. OCC Exhibit 10, LS Exhibit 1 (Smith). The base generation increases are arbitrary. The fuel, purchased power, and consumables procurement strategy is nonexistent and will not result in acquisitions at a prudent price.

The other elements of the proposal, which AEP does not justify on a cost basis, are ephemeral at best. The Companies proposed a huge increase in investments in distribution infrastructure but fails to prove these would be enhancements in reliability over minimum levels required by current rules. In addition, AEP provides no plan for these investments, does not including any appropriate outcome measures, and fails to establish the investments are cost-effective. No metrics to evaluate the improvements to reliability are proposed. Compliance with EE, DE and Advance Energy requirements are mandated by law and must occur under either an ESP or MRO, so including them in this proposal provides no additional advantage to customers. The same is true for the smartGRID proposal. The POLR charge is excessive and provides customers with no advantages, particularly since shopping risk is low. Finally, the deferrals are no boon to customers; rate increases are merely deferred at excessive interest rates to be collected via a nonbypassable rider during the next decade far after the costs are incurred. The Companies seek to mortgage our futures.

The ESP offers no price advantage to customer and the alleged benefits of the balance of the plan either cannot or have not been evaluated for cost-effectiveness. There is no clear demonstration that the ESP is superior to an MRO.

**CONCLUSION**

The Commission should require AEP to evaluate a variety of options to assure generation supply service to its customer classes. This analysis should vary by customer class. The risk of customer migration for residential customers is very small except through governmental aggregations and should be reflected in the analysis and recommendations. Any analysis should start from an examination of its current and future load and load shapes for each customer class. AEP's filing should include a resource plan that identifies a range of demand forecasts and the assumptions for econometric and/or end use variables that would be considered in the range of outcomes that complement the long term forecasts of demand and consumption during the term of the plan. AEP should then evaluate how it can "manage" this load shape and meet its needs under a variety of potential scenarios that would evaluate how much cost effective energy efficiency and demand response products and services could be provided compared to purchasing traditional generation supply. Renewable energy requirements, which are also cost-competitive, must be included as well.

If AEP had approached this needs analysis from the "bottom up," it would be able to identify the least cost and most cost effective means to provide the needed energy and capacity to provide SSO over a period of years to its customers. Such an approach would require AEP to manage its load shape as well as managing various traditional generation supply contracts with its affiliates or other entities. While the use of a FAC is allowed under S.B. 221 for an ESP, the lack of any portfolio analysis and procurement planning information would result in delegating to AEP complete discretion in the planning and acquisition of fuel and purchased power over the term of the plan. There is no evidence that AEP has or will undertake a long term least cost approach to acquiring fuel and purchased power resources necessary to meet the needs of its customers.

The other elements of the plan have not been proven to be the most cost-effective options to provide distribution system reliability or meet energy efficiency, demand response, and advanced energy requirements.

The Commission should either reject this plan or modify it to bring it into compliance with the statute. The Company should redesign its generation and fuel procurement proposal to reflect the least-cost options. The collaborative convened to develop EE and DE programs should be empowered to design and oversee the management of the initiatives. The distribution reliability and smartGRID proposals should be removed from the proposal and dealt with in a separate distribution proceeding.

Ohio cannot afford additional damage to its economy. Doubling the revenue collected from customers compared to current revenues is not what the

General Assembly envisioned or sanctioned. Reasonable rates and implementation of the advanced energy provisions are critical for economic growth and should be the focus of the Commission's and the Companies' efforts. All Ohio ratepayers are 'at-risk' and all should be protected.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Post-Hearing Brief was served by regular U.S. Mail, postage prepaid, and electronically upon the parties of record identified below on this 30th day of December, 2008.

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