

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
Columbus Southern Power Company )  
And Ohio Power Company for Authority ) Case No. 11-346-EL-SSO  
To Establish a Standard Service Offer ) Case No. 11-348-EL-SSO  
Pursuant to §4928.143, Ohio Rev. Code, )  
In the Form of an Electric Security Plan. )

In the Matter of the Application of )  
Columbus Southern Power Company )  
And Ohio Power Company for ) Case No. 11-349-EL-AAM  
Approval of ) Case No. 11-350-EL-AAM  
Certain Accounting Authority. )

**Direct Testimony of  
David I. Fein**

**Vice President, Energy Policy –  
Midwest/Pennsylvania  
Director of Retail Energy Policy  
Constellation Energy Group, Inc.**

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

**Dated: July 25, 2011**

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1     **I.     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  
5             Washington Boulevard, Suite 300, Chicago, Illinois 60661.

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

8     **A.**     I am employed by Constellation Energy Group, Inc. .  
9

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

11    **A.**     I am Vice President of Energy Policy in the Midwest and Pennsylvania for  
12             Constellation as well as Director of Retail Energy Policy. In my role as  
13             Vice President of Energy Policy in the Midwest and Pennsylvania, I am  
14             responsible for directing and implementing regulatory and legislative  
15             policies for Constellation's retail, wholesale, and merchant generation  
16             business interests in Illinois, Michigan, Ohio, and Pennsylvania. In my  
17             role as Director of Retail Energy Policy, I am responsible for coordinating  
18             Constellation's retail energy policy advocacy across the country.  
19             Constellation, a FORTUNE 200 company, is the nation's largest  
20             competitive supplier of electricity to commercial, industrial, and  
21             governmental customers and the nation's largest wholesale power seller.  
22             Constellation is also an active supplier of electric power and energy to  
23             residential customers. Constellation also manages fuels and energy  
24             services on behalf of energy-intensive industries and utilities. It owns a

1           diversified fleet of 78 generating units located throughout the United  
2           States, totaling approximately 8,700 megawatts of generating capacity.

3  
4   **Q.   Please describe your educational and business experience.**

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

23  
24   **Q.   On whose behalf are you testifying?**

1   **A.**    I am testifying on behalf of CNE and Constellation Energy Commodities  
2           Group, Inc. (“CCG”) collectively (“Constellation”).  
3

4   **Q.**    **Please provide some background on the Constellation**  
5           **Companies on whose behalf you are testifying in the instant**  
6           **proceeding.**

7   **A.**    CNE provides electricity and energy-related services to retail customers in  
8           Ohio as well as in 15 other states, the District of Columbia, and two  
9           Canadian provinces and serves more than 15,000 megawatts of load and  
10          more than 10,000 customers. CNE holds a certificate as a competitive  
11          retail electric service (“CRES”) supplier from the Public Utilities  
12          Commission of Ohio (“PUCO” or “the Commission”) to engage in the  
13          competitive sale of electric service to retail customers in Ohio. CNE  
14          currently provides service to retail electric customers in Ohio. CCG  
15          provides wholesale power and risk management services to wholesale  
16          customers (distribution utilities, co-ops, municipalities, power marketers,  
17          utilities and other large load serving entities), throughout the United States  
18          and Canada, in both regulated and restructured, competitive energy  
19          markets. CCG is active in the PJM Interconnection, L.L.C. (“PJM”) and  
20          Midwest Independent System Operator wholesale power markets and has  
21          sold power for wholesale delivery in Ohio. CNE and CCG are subsidiaries  
22          of Constellation.  
23

1   **Q.   Please discuss Constellation’s commitment to Ohio and Ohio**  
2       **consumers.**

3   **A.**   Constellation has been an active participant before the Commission and  
4       the General Assembly for a number of years. Despite all of the ups and  
5       down and major regulatory policy changes that have existed since the  
6       passage of SB 3, competitive electric suppliers like Constellation continue  
7       to be ready, willing, and able to provide competitive electric service to  
8       Ohio consumers. In addition, we also provide natural gas service and  
9       other energy-related products and services to thousands of customers  
10      throughout Ohio.

11

12      In fact, Constellation was an ardent advocate in the wake of the passage of  
13      Senate Bill 221 for the use of a competitive bidding process as a better  
14      means for setting the rates that would be charged to SSO customers. The  
15      results of the FirstEnergy October 2010 and February 2011 auctions  
16      demonstrated the benefits of competitive wholesale procurement as the  
17      resulting retail rates were set through robust, competitive market forces;  
18      the May 2009 auction resulted in generation rate decreases for a large  
19      number of FirstEnergy consumers. In addition, by setting retail rates  
20      based upon a CBP, and eliminating a number of legacy impediments to the  
21      development of retail competition, the retail market in the FirstEnergy  
22      service territory began to develop, providing customers with more  
23      opportunities to choose, while nevertheless being able to rely on  
24      competitively-priced backstop SSO supply. The experience in the

1 FirstEnergy service territory should be instructive to the Commission as it  
2 considers AEP Ohio's ESP.

3  
4 **Q. How does Constellation provide retail electric service to**  
5 **customers in other parts of Ohio and in states that have**  
6 **functioning retail electric markets?**

7 **A.** In well-functioning competitive markets, competitive retail suppliers have  
8 contracts with customers of all sizes, ranging from residential homeowners  
9 and renters to major manufacturing plants. My company has contracts  
10 with electric customers that can be month-to-month, three months, six  
11 months, one year, 18 months, two years, three years, and even longer. In  
12 addition, there are numerous service options available from competitive  
13 suppliers to meet customer's needs, resources, budget requirements,  
14 environmental or sustainability initiatives, and price hedging strategies.  
15 These products can be individually customized to meet the business goals,  
16 risk appetite, and needs for each individual consumer.

17  
18 **Q. Please provide some examples of the various types of products**  
19 **and services available to customers in competitive retail electric**  
20 **markets.**

21 **A.** If customers are interested in budget certainty and avoidance of market  
22 volatility, we can offer them fixed price contracts. For customers that are  
23 willing to accept some market volatility, we can fix a portion of their  
24 energy needs, and another portion is variable based upon an index. For

1 customers that want to follow a market index or pay rates that vary every  
2 hour, they can select such a product. Other options include setting a strike  
3 price where a fixed price is set once the market price achieves a certain  
4 pre-determined price.

5  
6 **Q. Do competitive suppliers offer demand response, energy**  
7 **efficiency, and green products and services?**

8 **A.** Yes. For customers that are interested in demand response and energy  
9 efficiency measures renewable energy resources, or wish to support the  
10 building of new renewable energy power plants, competitive suppliers can  
11 offer green power products (wind solar, biomass, hydro, geothermal), the  
12 purchase of renewable energy credits (RECs), demand response programs,  
13 and other similar products and services.

14  
15 **B. Purpose of Testimony**

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

17 **A.** As a licensed CRES provider in the State of Ohio, a registered CRES  
18 provider in the service territories of the Columbus Southern Power  
19 Company ("Columbus Southern Power") and the Ohio Power Company  
20 ("Ohio Power") (collectively, "AEP"), and the largest seller of wholesale  
21 power in the U.S., Constellation has a direct pecuniary interest and is  
22 extremely interested in this proceeding.



1 Due to its vast experience and participation in the competitive retail and  
2 wholesale markets in Ohio and across the country, Constellation will be  
3 able to assist in the development of a full and complete record to assist the  
4 Commission in its consideration of AEP Ohio's ESP Application.

5  
6 **Q. Please summarize the issues that you will address in your Direct**  
7 **Testimony.**

8 **A.** AEP Ohio has proposed an ESP that would set the Standard Service Offer  
9 ("SSO") rates from January 1, 2012 through May 2014 (29 months)  
10 (hereinafter "ESP II"). The proposed ESP II includes a host of new  
11 generation-related riders and modifications to other existing generation-  
12 related riders.

13  
14 I will address the following seven (7) key policy and tariff aspects of AEP  
15 Ohio's ESP II Application:

- 16 • The overall manner in which AEP Ohio seeks to establish the SSO;
- 17 • The imposition of a litany of non-bypassable generation-related  
18 charges via Riders upon customers that wish to select a CRES provider;
- 19 • The comparison of the ESP to the expected results from a market rate  
20 option ("MRO");
- 21 • The lack of a competitive wholesale solicitation process for electric  
22 power and energy to help meet AEP Ohio's standard service offer  
23 ("SSO") and POLR needs;

- 1       • The extraordinarily high and discriminatory nature of the manner in
- 2       which AEP Ohio seeks to impose capacity charges upon CRES
- 3       providers;
- 4       • The anti-competitive Generation Resource Rider (“GRRI”); and
- 5       • Various measures that are designed to aid in the development of a
- 6       competitive retail electric market.

7

8       **Q.    What advice do you have for the Commission as it considers the**

9       **proposal in the instant proceeding?**

10      **A.**    While Senate Bill 221 tasked the Commission with balancing a number of

11       competing and conflicting goals as it determines whether to approve AEP

12       Ohio’s Application in this proceeding, the instant proceeding provides the

13       Commission with an opportunity to continue to establish a more stable,

14       transparent, and efficient electric marketplace in Ohio as well as send a

15       clear signal to market participants that the Commission supports the

16       development of a robust competitive retail and wholesale marketplace.

17

18       **C.    Summary of Recommendations**

19      **Q.    Please provide your overall observation of AEP Ohio’s ESP**

20      **proposal.**

21      **A.**    AEP Ohio’s ESP proposal is extremely anti-customer and anti-customer

22       choice. AEP Ohio’s ESP proposal would provide consumers with a false

23       sense of rate stability as the true cost of electric service will be masked by

24       the litany of non-bypassable generation-related charges that AEP Ohio will

1 have wide discretion to implement in the future. AEP Ohio has asked the  
2 PUCO to bring an end to any possibility for the development of retail  
3 competition in violation of SB 221 and to the detriment of all consumers  
4 and to the benefit of AEP Ohio alone. As will be discussed in greater detail  
5 below, and for the reasons stated in the Direct Testimony of FirstEnergy  
6 Solutions witness Michael M. Schnitzer of the NorthBridge Group, AEP  
7 Ohio's proposed ESP is not more favorable in the aggregate as compared  
8 to a Market Rate Option ("MRO"). Therefore, Constellation recommends  
9 that the Commission reject the use of AEP Ohio's ESP for the setting of  
10 SSO rates and direct AEP Ohio to conduct a competitive wholesale  
11 procurement process for the benefit of AEP Ohio's retail customers and  
12 the development of retail competition.

13  
14 **Q. Based upon your observations noted above and the issues you**  
15 **address below, do you have any specific recommendations**  
16 **regarding AEP's proposed ESP II Application?**

17 **A.** Yes. Constellation has the following recommendations:<sup>1</sup>

- 18 • First, the Commission should **reject** the structure of AEP Ohio's  
19 proposed ESP for the setting of the SSO and instead direct AEP  
20 Ohio to file a new ESP that relies upon a competitive wholesale  
21 procurement process to meet 100 percent of its SSO needs for the

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<sup>1</sup> The failure of Constellation to address any other portions of AEP Ohio's ESP should not be construed as support for such other provisions and Constellation expressly reserves the right to address such issues or issues raised by other parties during any subsequent round of testimony and/or the briefing phase of the proceeding.

1 term of the ESP plan. The competitive procurement process should  
2 be an open, non-discriminatory, and transparent competitive  
3 wholesale bidding process much like has been successfully  
4 implemented in Ohio by the FirstEnergy utilities and numerous  
5 utilities around the country.

- 6 • Second, if the Commission does not direct AEP Ohio to file a new  
7 ESP that relies upon a competitive wholesale procurement process,  
8 AEP Ohio should be prohibited from imposing a wide array of  
9 generation-related costs, in the form of non-bypassable riders, onto  
10 consumers that do not purchase generation supply from AEP Ohio.
- 11 • Third, in evaluating AEP Ohio's comparison between the ESP and  
12 the expected results of an MRO, the Commission must engage in a  
13 true "apples-to-apples" comparison. Based upon the expert  
14 testimony of Michael Schnitzer, AEP Ohio has failed to satisfy that  
15 test.
- 16 • Fourth, the Commission should reject the proposed manner in  
17 which AEP Ohio seeks to charge CRES providers for capacity;
- 18 • Fifth, the Commission should **reject** AEP Ohio's proposed Rider  
19 GRR.
- 20 • Sixth, the Commission should **require** AEP Ohio to make a  
21 number of enhancements to its tariffs and business practices to  
22 promote the development of retail competition.

1   **Q.   What are some of the overarching benefits of embracing a**  
2       **competitive market model as you recommend throughout your**  
3       **testimony?**

4   **A.**   Competition – both at the wholesale level for procuring SSO energy and at  
5       the retail level for customers that choose to shop – will keep costs as low as  
6       possible and produce the following benefits that customers and  
7       policymakers are seeking across the United States:

- 8       • Advancements in reliability, conservation, renewable energy  
9       development, and the ability of customers to purchase green power  
10      products. In addition, a competitive market model will allow the  
11      marketplace to respond to any future (federal or state) climate  
12      regulation in the most cost competitive manner.
- 13      • A superior platform to promote demand response and energy efficiency  
14      (as compared to traditional cost-of-service regulation). In cases where  
15      consumers do not pay actual market prices, they have little or no  
16      incentive to reduce consumption during times when production costs  
17      are significantly higher (or defer consumption to periods in which  
18      there is lower system demand).
- 19      • The ability and information to make decisions and have choices  
20      regarding their electric power needs -- just as they do with their  
21      telecommunications, and natural gas, industries that at one time were  
22      also previously under a franchised monopoly system of regulation.
- 23      • The confidence that those that choose not to shop will nevertheless  
24      benefit from SSO rates that are the result of downward competitive

1 pressure through a process to obtain the lowest competitive costs for  
2 electricity supply from winning bidders in a pool of qualified suppliers  
3 active in the broader competitive wholesale RTO markets.

- 4 • Innovation that will lead to new products and services and customized  
5 products to meet the needs of customers.

6  
7 **II. AEP OHIO'S PROPOSED ESP HARMS RETAIL CONSUMERS**  
8 **AS IT WILL ELIMINATE COMPETITION AND CUSTOMER CHOICE**  
9

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

13 **A.** Yes. Not only do Columbus Southern Power and Ohio Power customers  
14 retain the right to select someone other than AEP Ohio to receive electric  
15 generation service, but SB 221 makes clear that the promotion of retail  
16 competition is one of the policy goals of the State.

17  
18 **Q. What is the status of the development of competition in the AEP**  
19 **Ohio service territory?**

20 **A.** The development of competition in the AEP Ohio service territory has  
21 significantly lagged behind the development in all other Ohio electric  
22 distribution utility ("EDU") service territories. There was virtually no  
23 switching to CRES providers since the adoption of AEP Ohio's ESP I (less  
24 than 1% of CSP's load and virtually no switching in Ohio Power) until late  
25 in calendar year 2010. Due to the scheduled phased-in increases,

1 commercial and industrial customers began to seek out competitive  
2 options from CRES providers. According to the PUCO's Switching  
3 Reports, by the end of the 1st quarter 2011, 31% of the commercial  
4 customer load and 12.5% of the industrial customer load had switched to a  
5 CRES provider.<sup>2</sup>  
6

7 **Q. How does AEP Ohio view the status of competition in Ohio?**

8 **A.** Constellation believes that AEP Ohio has failed to properly represent the  
9 current status of competition and demonstrates that AEP Ohio does not  
10 believe in the benefits of competition. AEP Ohio's President Joseph  
11 Hamrock submitted a cover letter to the ESP filing that sets forth a  
12 number of inaccurate statements, including the fact that Ohio has some  
13 dire need for new generation resources to be built. AEP Ohio itself  
14 acknowledges that it has an oversupply of generation in its two (2) most  
15 recent Long-Term Forecast Report ("LTFR") filings.<sup>3</sup> Of course, AEP Ohio  
16 fails to mention that generation planning is no longer handled on a state-  
17 by-state basis as it was in the past and fails to mention that AEP Ohio is  
18 part of the PJM Interconnection regional transmission organization  
19 ("PJM") and, as such, AEP Ohio's customers benefit from the abundant

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<sup>2</sup> Market Monitoring Report 1<sup>st</sup> Qrt. 2011.

<sup>3</sup> *In the Matter of the Long-Term Forecast Report of Ohio Power Company and Related Matters, and In the Matter of the Long-Term Forecast Report of Columbus Southern Power Company and Related Matters*, Case Nos. 10-501-EL-FOR and 10-502-EL-FOR, Supplement to Long-Term Forecast Report, filed Dec. 20, 2010, at p. 16. *In the Matter of the Long-Term Forecast Report of Ohio Power Company and Related Matters, and in the Matter of the Long-Term Forecast Report of Columbus Southern Power Company and Related Matters*, Case Nos. 11-2501-EL-FOR and 11-2502-EL-FOR, Long-Term Forecast Report, filed Apr. 15, 2011, at pp.

1 supply provided through the open, transparent, and competitive PJM  
2 market.

3

4 **Q. Is AEP Ohio's ESP going to continue to allow customers to enjoy**  
5 **the benefits of competition?**

6 **A.** No. It is clear that AEP Ohio has no intention of allowing customers to  
7 choose a supplier other than AEP Ohio. As I will discuss below, there have  
8 been a series of regulatory filings and proposals by AEP Ohio that have the  
9 combined effect of eliminating and actually reversing all of those positive  
10 developments. AEP Ohio's proposed ESP II plan appears to be the last of  
11 those regulatory proposals that, if not significantly altered, will signal the  
12 end of any hope for retail competition to continue.

13

14 **Q Does AEP oppose competitive markets?**

15 **A.** In their service area AEP Ohio has sought to erect barriers to shopping and  
16 competitive bidding of wholesale supply, while outside of their service  
17 area AEP Ohio affiliates have taken advantage of competition.

18

19 **Q. What competitive activities has AEP Ohio's affiliates engaged**  
20 **in?**

21 **A.** AEP Ohio's parent established a CRES provider in Ohio – AEP Retail –  
22 that provides competitive retail electric service in the AEP Ohio service  
23 territory and potentially other service territories in Ohio. In addition, AEP  
24 was a winning bidder in one or more of the FirstEnergy ESP auctions.



1 Outside of Ohio, AEP Retail possesses licenses to compete as a competitive  
2 retail supplier in a variety of other States.

3  
4 **Q. Can you further elaborate on the series of regulatory filings that**  
5 **you believe would create barriers to competitive services?**

6 **A.** Yes. AEP Ohio has made a litany of regulatory filings before the PUCO  
7 and the Federal Energy Regulatory Commission ("FERC") that have  
8 frustrated the continuing viability of a competitive market in the AEP Ohio  
9 service territory. Based upon the public statements from AEP executives,  
10 this should come as no surprise to the PUCO. Specifically, AEP Ohio has  
11 made the following regulatory filings in the past 10 months:

- 12 • As I explained in my testimony in the remand of AEP Ohio's ESP I,  
13 the AEP utilities implemented the Provider of Last Resort (POLR)  
14 fee in a manner which deprived shopping customers of a  
15 meaningful option to bypass the POLR granted by the Commission  
16 in its March 2009 Opinion and Order. AEP Ohio required  
17 customers to acknowledge that if they bypassed the POLR fee they  
18 may forgo ever buying generation again at the ESP SSO price if  
19 they shop. This policy was incorporated into Application in ESP II.
- 20 • In the fourth quarter of 2010, AEP, on behalf of AEP Ohio, filed an  
21 application with the Federal Energy Regulatory Commission to  
22 significantly alter the capacity construct applicable to CRES  
23 providers. The FERC rejected AEP Ohio's request finding, among  
24 others, that the PUCO had adopted the RPM construct as the

1 capacity charge applicable to Ohio retail customers regardless of  
2 whether being served by a CRES provider or taking the SSO.

- 3 • After having its efforts to alter the capacity construct rejected at  
4 FERC, AEP Ohio filed a complaint against PJM alleging that this  
5 capacity construct was unjust and unreasonable. That complaint is  
6 still pending.

- 7 • In early 2011, AEP filed the instant ESP II plan.

8 Taken together, all of these filings have an extremely negative and possibly  
9 deadly impact on customer choice and competition to the detriment of  
10 AEP Ohio's consumers.

11  
12 **Q. Can you please explain AEP's proposal to increase the capacity**  
13 **charges applicable to CRES providers?**

14 **A.** Yes. AEP Ohio sought to impose a **roughly 400% increase** in the  
15 capacity charges applicable to CRES providers to serve retail customers in  
16 the AEP Ohio service territory. This was a dramatic change in the manner  
17 in which capacity charges would be handled and occurred at the time of the  
18 highest switching activity in the history of the EP Ohio service territory.  
19 Fortunately, the Commission's December 8, 2010 Order in Case No. 10-  
20 2929-EL-UNC maintained the capacity cost established in ESP I and the  
21 FERC rejected the AEP Ohio application to change the capacity charge  
22 based on the Ohio Commission's decisions. AEP Ohio has since filed a  
23 complaint before the FERC seeking an alternate means for changing this  
24 construct Both FERC matters remain pending.

1 **III. The Imposition of Non-bypassable Generation-related**  
2 **Charges Will Frustrate Customer Choice and Competition**

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

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

8  
9 **Q. Should all charges be bypassable when a customer takes service**  
10 **from a CRES provider?**

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

19  
20 **Q. How do non-bypassable charges potentially cost customers**  
21 **more when their supply offer is lower than the utility standard**  
22 **service offer (“SSO”) supply?**

23 **A.** It is fairly simple. When a customer takes supply from a CRES provider,  
24 they are receiving all of their generation-related service from that

1 company. They are no longer taking generation-related service from the  
2 utility. If a shopping customer is forced to continue to pay the utility for  
3 generation-related supply charges plus pay their CRES provider for  
4 generation service, they are effectively paying twice for the same service.  
5 Paying the utility for a service the customer is already receiving from the  
6 CRES could cause the customer to pay more for electric power than had  
7 they not switched to the CRES provider – even if the CRES supplier’s  
8 generation is at a lower cost than the Standard Service Offer.  
9

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

13 **A.** Yes, in Senate Bill 221, the General Assembly amended Section 4928.02  
14 (H), Revised Code, which addresses anti-competitive subsidies by  
15 specifically: “...prohibiting the recovery of any generation-related costs  
16 through distribution or transmission rates”. In the instant proceeding,  
17 AEP Ohio has proposed an unprecedented number of non-bypassable  
18 generation-related riders that would violate this legislation.  
19

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

23 **A.** Making shopping customers pay AEP Ohio for generation service that they  
24 do not receive from AEP Ohio has the potential to destroy the

1 development of the competitive retail market, and in fact was a major  
2 contributing factor in the collapse of retail competition and governmental  
3 aggregation programs in other Ohio service territories in 2005. The  
4 overall result puts Ohio at a competitive disadvantage, as businesses will  
5 face unnecessarily high energy costs.

6  
7 **Q. How has the Commission recently addressed the issue of EDUs**  
8 **imposing generation-related non-bypassable charges for**  
9 **customers taking service from a CRES provider?**

10 **A.** In the Commission's recent order in the Duke MRO proceeding, the  
11 Commission agreed with the recommendations of the Commission Staff  
12 and various Intervenors that a proposed Rider RECON should be  
13 bypassable for shopping customers as it sought to collect generation-  
14 related costs.<sup>3</sup>

15  
16 **Q. Did the Commission have any other opportunity to address the**  
17 **question of the imposition of any proposed nonbypassable**  
18 **generation-related charges in the Duke MRO proceeding?**

19 **A.** Yes. The Commission rejected Duke Energy Ohio's attempt to impose  
20 proposed Rider SCR as a non-bypassable Rider. In doing so, the  
21 Commission relied upon Section 4928.02(H) of the Revised Code in

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<sup>3</sup> Public Utilities Commission of Ohio, *In the Matter of Application of Duke Energy Ohio, Inc. for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for a Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service*, Case No. 10-2586-EL-SSO.

1 finding that such a Rider would fail to advance the energy policy of the  
2 State.<sup>4</sup>

3  
4 **Q. Has the Commission allowed other Ohio EDUs such as**  
5 **FirstEnergy to impose non-bypassable generation-relate**  
6 **charges in either of their ESPs?**

7 **A.** No. FirstEnergy's ESP does not contain non-bypassable riders for  
8 recovery of generation-related costs or charges nor for any environmental  
9 investment costs. One of the reasons that generation expenses are not  
10 made bypassable is the fact that as part of the electric transition plan cases  
11 the electric distribution utilities received generation and regulatory  
12 transition payments from their customers as compensation for the risk of  
13 selling generation at market. Thus, the Staff in its comments in the  
14 abandonment of the Sporn Unit No. 5 generation plant recommended that  
15 the Commission reject AEP Ohio's request for a non bypassable rider for  
16 the decommissioning costs for Sporn No. 5 Unit 5.

17  
18 **Q. Would allowing AEP Ohio to impose the litany of non-**  
19 **bypassable generation-related riders on customers taking**  
20 **service from a CRES provider create a cross subsidy from the**  
21 **competitive market to the regulated SSO service?**

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<sup>4</sup> *Ibid*, pp. 63-64, emphasis added.

<sup>5</sup> April 8, 2011 Comments

1   **A.**    Yes. As discussed above, in some recent orders, the Commission has  
2           established a policy position consistent with the R.C. 4928.02(H) that it  
3           will not approve riders that cause cross subsidies from the competitive  
4           market to the traditional monopoly service market or conversely.

5  
6   **Q.**    **Are there specific generation-related costs and charges that AEP**  
7           **seeks to impose on customers regardless of whether they**  
8           **actually purchase electric generation service from AEP Ohio?**

9   **A.**    Yes. AEP Ohio seeks to impose an unprecedented number of generation-  
10          related non-bypassable charges on all customers even if that customer is  
11          taking generation service from someone other than AEP Ohio. All of those  
12          charges would be imposed via the following Riders:

- 13           • Rider GRR (Generation Resource Rider)
- 14           • Rider FCCRR (Facility Closure Cost Recovery Rider)
- 15           • Rider CCSR (Carbon Capture and Sequestration Rider)
- 16           • Rider EICCR (Environmental Investment Carry Cost Rider)
- 17           • Rider MTR (Market Transition Rider)
- 18           • Rider NERCR (NERC Compliance Cost Recovery Rider)
- 19           • Rider Provider of Last Resort (POLR)

20  
21          Requiring customers that purchase electricity from CRES providers to pay  
22          for AEP Ohio's generation costs is contrary to Ohio law, fundamentally  
23          unfair, and anticompetitive. Such a proposal will prohibit customers from

1 being able to choose the lowest cost source of generation service and will  
2 mean higher costs for electricity customers and businesses that provide  
3 jobs in Ohio. Therefore, the Commission should reject the request to  
4 make Riders GRR, EICCR, FCRR, CCSR, MTR, NERCR, non-bypassable,  
5 and make the POLR practically non-bypassable.  
6

7 **Q. What is the basis of your knowledge of these riders?**

8 **A.** I reviewed the descriptions of the riders in AEP-Ohio's application and the  
9 testimony of various AEP-Ohio witnesses.  
10

11 **A. Generation Resource Rider (GRR)**

12 **Q. Please describe the Generation Resource Rider (GRR)?**

13 **A.** The GRR is a "placeholder" rider that AEP Ohio wishes to seek approval of  
14 for an unspecified number of renewable energy generation projects.  
15 However, AEP Ohio has not provided any specific cost information for  
16 these purported generation investments during the life of the proposed  
17 ESP.  
18

19 **Q. Under Ohio law, do CRES providers have to meet alternative or**  
20 **renewable energy mandates?**

21 **A.** Yes. Under Senate Bill 221, a CRES provider is responsible for meeting  
22 renewable energy portfolio standards just like the electric distribution  
23 utilities. Therefore, if AEP Ohio is allowed to make the GRR



1 nonbypassable, customers taking service from CRES providers will be  
2 required to pay twice for meeting renewable energy mandates.

3  
4 **Q. Doesn't Senate Bill 221 expressly address the bypassable nature**  
5 **of the EDUs costs of meeting the alternative energy mandates?**

6 **A.** Yes. Section 4928.64(E), Revised Code makes it clear that such charges  
7 are to be bypassable for customers taking service from a CRES provider.  
8 Specifically: "All costs incurred by an electric distribution utility in  
9 complying with the requirements of this section shall be bypassable by any  
10 consumer that has exercised choice of supplier under section 4928.03 of  
11 the Revised Code."  
12

13 **Q. Are there any specific costs that AEP Ohio seeks to recover**  
14 **through the GRR that should be recovered through a different**  
15 **mechanism?**

16 **A.** Yes. AEP Ohio seeks to recover the costs associated with the Turning  
17 Point solar project through the GRR arguing that it is needed to meet the  
18 alternative energy requirements under Senate Bill 221. Consistent with  
19 section 4928.64(E) Revised Code the appropriate place to recover the  
20 costs of the Turning Point Project would be through the bypassable  
21 Alternate Energy Rider (AER).  
22  
23  
24

1    **B.    Environmental Investment Carrying Cost Rider – EICCR**

2    **Q.    Please describe the asserted purpose of AEP Ohio’s proposed**  
3    **Environmental Investment Carrying Cost Rider – EICCR.**

4    **A.    AEP Ohio proposes to utilize the EICCR to fund future investments in**  
5    **pollution control equipment on its generating plants.**

6

7    **Q.    Is the currently applicable EICCR bypassable for customers**  
8    **taking service from a CRES provider?**

9    **A.    Yes.**

10

11    **Q.    Why is AEP Ohio now proposing to make this Rider Non-**  
12    **bypassable?**

13    **A.    AEP Ohio claims that if the EICCR is not made bypassable, it will be too**  
14    **risky to make any investments in pollution control equipment and may**  
15    **force additional or earlier retirements of generation facilities in Ohio.<sup>6</sup>**

16

17    **Q.    Are these appropriate reasons to justify making the EICCR non-**  
18    **bypassable?**

19    **A.    No. In essence what AEP Ohio is saying is that a project is financially or**  
20    **technically so risky they would not commit their shareholders to it, but ask**  
21    **the Commission to commit ratepayers. The Commission should also**  
22    **declare the rider anticompetitive and find that it does not meet the**  
23    **standards by being non bypassable. If the EICCR is made non-bypassable,**

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<sup>6</sup> Nelson Direct at 15:23 – 16:6.

1 it would force customers taking service from a CRES provider to pay for  
2 AEP Ohio's future costs to meet the environmental compliance costs  
3 related to AEP Ohio's provision of competitive generation service.  
4

5 **C. Facilities Closure Cost Recovery Rider - FCCR**

6 **Q. Please describe the FCCR.**

7 **A.** According to AEP Ohio, the FCCR is designed to reimburse AEP Ohio for  
8 any costs it incurs if it shuts generating plants during the proposed ESP  
9 period. Specifically, AEP Ohio seeks to recover costs that include, but are  
10 not limited to, "materials and supplies unique to the facility,  
11 environmental liabilities requiring action upon facility closure, mitigation  
12 costs required by applicable existing or future environmental regulations,  
13 and legacy pension and benefit requirements. For facilities requiring early  
14 closure, costs may also include undepreciated balances."<sup>7</sup>  
15

16 **Q. How does AEP Ohio justify imposing such cost through a**  
17 **nonbypassable generation Rider?**

18 **A.** AEP Ohio attempts to justify making the FCCR nonbypassable by asserting  
19 that it will protect jobs in Ohio.  
20

21 **Q. Is that an appropriate reason to justify making the FCCR**  
22 **bypassable?**

---

<sup>7</sup> Thomas Direct at 24:15-21.

1    **A.**    No. AEP Ohio fails to offer any explanation as to why these costs should  
2           be recovered from customers who purchase electricity from CRES  
3           providers. Further, when Senate Bill 3 was passed which began Ohio's  
4           electric restructuring process, utilities were supposed to convert their  
5           generation fleet from cost of service to market based funding. Utilities,  
6           including AEP Ohio, received transition payments to make that shift.<sup>8</sup>  
7           Having made the transition to market based, the shareholders and not the  
8           ratepayers now have responsibility for the plant closing costs.

9

10       **D.    Carbon Capture and Sequestration Rider (CCSR)**

11    **Q.**    Please describe the Carbon Capture and Sequestration Rider  
12           (CCSR)?

13    **A.**    According to AEP Ohio witness Nelson, the Carbon Capture and  
14           Sequestration Rider (CCSR) is intended to allow AEP Ohio to recover a  
15           portion of the front-end engineering costs of the carbon capture and  
16           sequestration plant that was recently cancelled in West Virginia.

17

18    **Q.**    What reasons does AEP offer in support of making the CCSR  
19           nonbypassable?

20    **A.**    AEP Ohio witness Nelson offers three reasons why the CCSR should be  
21           nonbypassable: "a) coal is an essential part of the current and future  
22           generation of electricity because of its abundance and versatility; b) the

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<sup>8</sup> See In Re Columbus Southern Power Case No. 99-1729-EL-ETP and In Re Ohio Power Case No. 99-1730-EL-ETP.

1 coal industry plays a significant role in the economy by the creation of  
2 jobs, and; c) it provides a promising way of addressing current and future  
3 greenhouse gas regulation/legislation.”<sup>9</sup>

4

5 **Q. What is the status of AEP’s efforts to develop a carbon capture**  
6 **and sequestration plant in West Virginia?**

7 **A.** On July 14, 2011, AEP announced that it was cancelling plans to develop  
8 the plant.

9

10 **Q. Has AEP Ohio modified its proposal in the instant proceeding to**  
11 **account for the cancelling of the plant in West Virginia?**

12 **A.** No.

13

14 **E. Migration Transition Rider (MTR)**

15 **Q. Please describe the Migration Transition Rider (PIRR)?**

16 **A.** According to AEP Ohio, Rider MTR is designed to reduce the impact to  
17 customers whose rates under ESP II are being increased. This is achieved  
18 by a credit funded from other customers. The reason that the MTR is  
19 needed at all is because AEP Ohio is shifting dramatically the cost  
20 allocation among the customers and the magnitude of the winners and  
21 losers by the shift is so extreme that AEP seeks to phase it in. The  
22 Commission should reject the new allocations because they are not

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<sup>9</sup> Direct Testimony of Phillip Nelson on Behalf of Columbus Southern Power Company and Ohio Power Company, January 27, 2010 (“Nelson Direct”), at 19:23 – 20:3.

1 supported with any cost of service evidence, just the testimony of AEP  
2 Ohio witness Thomas that the rates are now more market like. The  
3 Commission should reject this and simply apply the overall increase that  
4 AEP Ohio is seeking to all the existing tariff rates each class and service  
5 pro rata. Such would eliminate the need for Rider MTR.

6  
7 At a minimum, should the Commission allow the new rate design it should  
8 simply make Rider MTR bypassable. This is purely a generation expense  
9 and those who are shopping should not have to pay it, nor receive credit  
10 from it. Most important, it would keep the price to compare  
11 uncontaminated by the effect of the Rider MTR credit which sends  
12 customers improper and distorted price signals.

13  
14 **F. NERC Compliance Cost Recovery Rider (NERCR)**

15 **Q. Please describe the new NERC Compliance Cost Recovery Rider**  
16 **(NERCR)?**

17 **A.** With the new NERC Compliance Cost Recovery Rider, AEP Ohio requests  
18 to recover the cost of improvements to AEP Ohio's generation fleet. This  
19 new Rider replaces an existing Rider that is designed to recover NERC  
20 transmission costs. However that existing Rider is by-passable.

21  
22 **Q. Do you believe that this is an appropriate basis to make the**  
23 **Rider NERC non bypassable?**

1   **A.**    No. Since the cost sought to be recovered relates to AEP Ohio's generation  
2           costs, this Rider should be bypassable. If not, shopping customers will be  
3           forced to pay twice for the NERC compliance costs – once to AEP Ohio and  
4           also in the price it pays to secure electric power and energy.

6           **G.    Provider of Last Resort Charge Rider (POLR)**

7   **Q.**    **What is the justification for AEP Ohio's proposed POLR charge?**

8   **A.**    According to AEP Ohio, the POLR Rider is designed to recover the  
9           “definite and significant cost associated with providing customers the[e]  
10          flexibility” of shopping and returning to SSO service.<sup>10</sup>   However, any  
11          asserted “risk” that may exist under the proposed ESP, is a problem of  
12          AEP Ohio's own creation. Such risks could be eliminated by reliance upon  
13          a competitive procurement process to set the SSO. By doing so, there  
14          would be no need to establish a POLR charge for returning customers as  
15          there would be alternative mechanisms to price such service.

17 **Q.**    **Is the current AEP Ohio POLR charge bypassable for shopping**  
18 **customers?**

19 **A.**    In principle, it is supposed to be bypassable, so long as, if a customer came  
20          back during the Electric Security Plan term, they purchased generation at  
21          the higher of market rates or the bundled standard service offer rate.  
22          However, as I discussed in my Direct Testimony in the remand of AEP  
23          Ohio's 2009 ESP proceeding, AEP Ohio has apparently interpreted the

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<sup>10</sup> Thomas Testimony, p. 14.

1 Commission's March 2009 Opinion and Order to mean that any customer  
2 who elected not to pay the POLR fee had made a permanent election and  
3 could never take standard service again at less than the higher of market  
4 price or the standard service offer.

5  
6 **Q. How do other competitive retail markets address the POLR risk**  
7 **of the default supplier?**

8 **A.** In other well-functioning competitive retail electric markets, where  
9 customers have the ability to select someone other than the incumbent  
10 default supplier, we do not see the imposition of POLR charges of the  
11 nature that AEP is continuing to propose in this proceeding. Rather,  
12 suppliers are asked to take on the risk that AEP describes, and the only  
13 source of recovery for this risk for any supplier is (appropriately) within  
14 the generation rate. Therefore, AEP's charge should be able to function in  
15 similar fashion. In other markets, there is no fee charged to shopping  
16 customers for the cost of electric generation, let alone the lost opportunity  
17 value of such generation. AEP should be precluded from doing so here.

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

23 **A.** It has been our experience that such risks are addressed through switching  
24 rules, enrollment windows or notice provisions, and default service rates



1 that compensate the POLR supplier for their actual costs to serve a  
2 returning customer. Other states require returning customers to take  
3 service that mimics or tracks a verifiable index -- such as the PJM West  
4 Hourly or Day-Ahead price for on-peak and off-peak power. For example,  
5 this approach is utilized as the default rate for customer classes that are  
6 declared "competitive" in the Commonwealth Edison Company service  
7 territory in Illinois.

8  
9 **Q. Do all Ohio POLR suppliers apply a POLR or Standby Charge on**  
10 **customers to address this POLR risk?**

11 **A.** No. Neither the FirstEnergy Companies nor Duke Energy - Ohio ("DE-  
12 Ohio") impose a non-bypassable POLR charge. DE-Ohio does not impose  
13 any penalty on customers who elect not to pay the POLR charge and  
14 return after the Electric Security Plan term has ended. Further, if a  
15 customer who has elected not to pay the POLR charge does come back for  
16 standard service during the term of the Electric Security Plan, the rate is  
17 set at the standard service price plus 15%. Cleveland Electric Illuminating,  
18 Toledo Edison and Ohio Edison ("FE-Ohio") do not have a POLR charge.  
19 Customers are free to come and go from standard service and that  
20 migration risk is simply incorporated in the bid price. That is typical of all  
21 competitive procurements for full requirements -- the supplier does not get  
22 additional funds for customers that switch back to utility load. Rather, by  
23 bidding out the responsibility for POLR to the wholesale providers, FE-

1 Ohio has used the market to find the overall lowest cost provider of  
2 service.

3

4 **Q. What is your opinion regarding the manner in which FE-Ohio**  
5 **and DE-Ohio address their POLR risks, as compared to that**  
6 **proposed by AEP?**

7 **A.** As a CRES provider to Ohio customers in the FE-Ohio and DE-Ohio  
8 service territories, the manner in which these other Ohio EDUs address  
9 the issue is preferable to the mandatory imposition of a non-bypassable  
10 POLR charge. Further, given the language of the Commission's March 18,  
11 2009 Opinion and Order in this case, I believe the Commission thought it  
12 was implementing a somewhat uniform approach.

13

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

15 **A.** The basic POLR charge should be only the cost for the Company to stand  
16 ready to purchase generation for the customer in the open market. That  
17 should be nominal, if it exists at all. AEP Ohio should not be permitted to  
18 charge a reserve payment based on forecasted costs, using a variety of  
19 assumptions that may be inaccurate. Instead, AEP Ohio should receive  
20 recovery of their actual costs, as those costs are incurred. In sum, if a  
21 customer switches back to utility service, AEP should only at that time be  
22 entitled to recovery, and should be limited to recovery of their actual costs.  
23 In accordance with the Remand Order from the Ohio Supreme Court, a  
24 POLR charge cannot be a black box calculation under Section 4928.143,

1 Revised Code and must be based on actual costs or supported under a  
2 different legal theory.

3  
4 **Q. Has the PUCO addressed the remand issue?**

5 **A.** The PUCO has taken a number of actions to address the Supreme Court  
6 remand. First, the Court directed AEP Ohio to file tariffs in compliance  
7 with the Supreme Court remand. Second, the PUCO is in the process of  
8 conducting a remand proceeding with discovery, testimony, hearings, and  
9 the submission of briefs.

10  
11 **IV. Determining Whether AEP Ohio's ESP Is More Favorable**  
12 **In The Aggregate Requires An Apples-to-Apples Comparison**

13 **Q. Please explain your understanding of the proper standard by**  
14 **which the Commission must consider AEP Ohio's ESP.**

15 **A.** Senate Bill 221 and Section 4928.143(C)(1) requires that the Commission,  
16 in approving an ESP application, must determine that the ESP is "more  
17 favorable in the aggregate" than the results that would otherwise occur  
18 under an MRO. Such an analysis for AEP Ohio, under Ohio law and  
19 regulation, requires a "blending" process for any competitive solicitation  
20 (market price) with the prior year's SSO. The blending requirement  
21 would apply such that an MRO could only be used for a portion of AEP  
22 Ohio's load during the ESP term (e.g. 10% in 2012, 20% in 2013, and 30%  
23 in 2014.) AEP further outlines that the apples-to-apples comparison

1 should be for full requirements ("FRP") electric service for the 2012-2014  
2 time period.

3  
4 **Q. Why is it necessary for the Commission to ensure a true apples-**  
5 **to-apples comparison?**

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

13  
14 **Q. Earlier you indicated that you support the Testimony of FES**  
15 **Witness Michael Schnitzer regarding the fact that AEP Ohio has**  
16 **failed to demonstrate that its' ESP is more favorable in the**  
17 **aggregate than an MRO, could you please elaborate?**

18 **A.** Yes. Constellation supports Mr. Schnitzer's conclusion that AEP Ohio's  
19 proposed ESP is not more favorable in the aggregate than the results  
20 expected under an MRO plan. As such, it would fail the statutory test that  
21 is required under section 4928.143(C)(1) of the Ohio Revised Code.  
22 Accordingly, the Commission should reject AEP Ohio's proposed ESP.

1 **V. The Commission Should Direct**  
2 **AEP Ohio To Rely Upon Competitive Wholesale**  
3 **Procurement to Set Its SSO Under an ESP or a MRO**  
4

5 **Q. Does Constellation support the structure that AEP Ohio has**  
6 **proposed for establishing the SSO?**

7 **A.** No. Constellation supports the use of competitive wholesale solicitations  
8 to meet the electric power and energy needs of AEP Ohio's SSO customers.  
9 An open, non-discriminatory, and transparent process that utilizes a  
10 request for proposal or auction process to seek such electric power and  
11 energy needs is a much more preferable structure to meet the needs of  
12 AEP Ohio's customers and to promote the development of retail  
13 competition.  
14

15 **Q. Is this type of SSO structure utilized by any other Ohio EDUs?**

16 **A.** Yes. The FirstEnergy EDUs have been operating under such a structure  
17 and the PUCO has approved two (2) ESPs that rely upon a descending  
18 clock auction structure. In addition, Duke Energy Ohio has recently  
19 proposed to utilize a very similar approach in Case No. 11-3549-EL-SSO  
20 that is pending before the PUCO.  
21

22 **Q. What are some of the benefits of a POLR structure that utilizes a**  
23 **full-requirements, competitive wholesale procurement process?**

24 **A.** Under such a structure, all of the risks are borne by competitive wholesale  
25 suppliers instead of customers. Such a structure provides a proper balance  
26 between obtaining the most competitive prices for consumers and

1 maintaining a reasonable level of price stability by providing a fixed price  
2 product, while appropriately placing risks such as volume risk and  
3 virtually all price risks on wholesale suppliers. A diverse pool of wholesale  
4 suppliers provides the most cost-effective method of POLR supply  
5 management for purposes of setting the SSO.

6  
7 Under such a procurement structure, EDUs such as AEP Ohio can provide  
8 to potential bidders prior to procurements, and to winning bidders on an  
9 ongoing basis afterwards, all of the load data for AEP Ohio's customer  
10 classes. Wholesale suppliers are specialists in the area of portfolio  
11 management, and have greater resources, expertise and ability to  
12 appropriately utilize this data to manage portfolios of supply at the least  
13 possible cost, by allocating the costs for their operations over much larger  
14 load obligations throughout the country. Moreover, such suppliers are  
15 able to draw from their substantial experience throughout PJM and in  
16 other jurisdictions to develop proprietary models of customer behavior  
17 and switching patterns, to refine these models, and to better analyze the  
18 local data provided by AEP Ohio. These wholesale suppliers will pass on  
19 the efficiencies they achieve due to their sophisticated risk management  
20 skills and experience in the form of more competitive bids for POLR  
21 service. Wholesale suppliers have already invested in, and continue to  
22 make significant investment in acquiring, experts in each specific type of  
23 market which makes up this type of full requirements service.

1 **VI. The Commission Should Reject Rider GRRI Which Is**  
2 **An Attempt to Restrict Competition For Large Customers**

3 **Q. Please describe the Rider GRRI?**

4 **A.** Essentially, AEP Ohio is agreeing to offer a rate discount to large  
5 customers that agree to forego the right to select competitive retail service  
6 and instead take service from AEP Ohio for a nine (9) year period. No cost  
7 data is provided for this service. In fact since this is a discount off of rates  
8 that have yet to be determined no cost data could be provided. The  
9 offering is this type of competitive service flies in the face of the mandate  
10 to promote competitive generation service. Clearly, AEP Ohio's affiliated  
11 CRES could make such an offer, and if they did there would be no risk that  
12 other customers either through distribution rates or generation rates  
13 would be providing a subsidy. This proposed Rider is yet another example  
14 of AEP Ohio attempting to prevent the ability of customers from shopping  
15 with a CRES provider.

16  
17 **Q. What is your recommendation with regard to proposed Rider**  
18 **GRRI?**

19 **A.** The Commission should reject this Rider as inconsistent with the clear  
20 energy policies of the State.

21  
22 **VII. The Commission Should Remove A Number of Existing**  
23 **Barriers to Retail Competition in AEP Ohio's Service Territory**

24  
25 **Q. What are some of the existing barriers to retail competition in**  
26 **AEP Ohio's service territory?**

1    **A.**    AEP Ohio seeks to continue a number of tariff requirements and business  
2           practices that act as barriers to retail competition. Those barriers include:

- 3           • Billing limitations;
- 4           • A 12-month minimum stay requirement if you return to AEP's  
5           service from service with a CRES provider;
- 6           • A 90-day notice provision to exercise a right to select a CRES  
7           provider; and
- 8           • Inadequate processes for the provision of necessary data and  
9           information.

10

11   **Q.**    **Do you have any recommendations regarding these barriers to**  
12           **retail competition?**

13   **A.**    Yes. The Commission should direct AEP Ohio to eliminate these outdated  
14           and draconian tariff and business practice requirements. Specifically, the  
15           Commission should direct AEP Ohio to:

- 16           • Implement Rate Ready and Bill Ready billing;
- 17           • Implement a Purchase of Receivables program;
- 18           • Eliminate the 90-day Notice and 12-month minimum stay  
19           requirement; and
- 20           • Implement a process in order to provide CRES providers with the  
21           following data an information:
  - 22           1. A list of customers that is refreshed and updated each quarter;



- 1           2. Web-based, electronic access to key customer usage and account  
2           data that can be accessed via a supplier website that presents data  
3           and information in a format that can be automatically scraped;
- 4           3. Data access including access to the following types of data:
  - 5           (a) Validation, Error Detection, and Editing (“VEE”) data posted via  
6           Electronic Data Interchange (“EDI”)- post;
  - 7           (b) 867 Historical Usage (“HU”) and Historical Interval Usage  
8           (“HIU”) data;
  - 9           (c) 867 Monthly Usage (“MU”) and Interval Usage (“IU”) data;
  - 10          (d) Transmission and capacity Peak Load Contributions (“PLCs”) in  
11          867s;
  - 12          (e) Meter read cycle information;
  - 13          (f) Accounts requested together should come back together, unless  
14          there would be an unnecessary delay for a particular subset of  
15          accounts; and
  - 16          (g) A quarterly updated sync-list should be provided to CRES  
17          Providers on a confidential basis showing the accounts that are  
18          enrolled with the CRES Provider. The list would contain  
19          information such as service start date, bill method, PLC values,  
20          and whether or not the customer is taking service under a  
21          Purchase of Receivables (“POR”) program.

1   **Q.    Why is it important that such information be provided to CRES**  
2       **providers?**

3   **A.**   By providing this type of data and information, CRES providers will be  
4       better able to provide services to prospective customers, better able to  
5       meet the needs of existing customers, and better able to manage their  
6       businesses. Further, provision of this type of data and information allows  
7       a CRES Provider to provide a prospective customer with a competitive  
8       offer for electric service, check the enrollment status of a new customer,  
9       and perform other functions designed to better serve customers. The  
10      Commission should direct AEP Ohio to allow CRES Providers to obtain  
11      such usage and account information, including interval data through a  
12      website or through other electronic means.

13

14   **Q.    What can happen if this type of data and information is not**  
15       **provided on a timely basis?**

16   **A.**   Unnecessary delays in the provision of this data and information can have  
17       an effect on the ability to contract with customers, render invoices, and  
18       provide other services to consumers. Ultimately, given the fact that  
19       pricing may change during the intervening time, a customer may be  
20       economically harmed.

1   **Q.   Are there any more granular or specific issues associated with**  
2       **access to interval data for customers with interval meters?**

3   **A.**   Yes. If CRES do not receive timely and accurate delivery of interval data,  
4       this not only impacts suppliers' ability to provide price quotations to  
5       customers but also frustrates their ability to issue an invoice to a customer  
6       on a timely basis, which inconveniences customers and increases  
7       suppliers' costs.

8

9   **Q.   When you recommend that AEP Ohio develop a web-based,**  
10       **customer-specific data and information system, what type of**  
11       **customer-specific information are you referring to?**

12   **A.**   This type of system has been developed by FirstEnergy and has been  
13       successfully used by electric distribution utilities in a number of states  
14       with robust competitive retail markets such as Illinois and Pennsylvania.  
15       The customer-specific information should include the following:

- 16           • Account Numbers;
- 17           • Meter Numbers;
- 18           • Names;
- 19           • Service Addresses, including Zip codes;
- 20           • Billing Addresses, including Zip codes;
- 21           • Email addresses;
- 22           • Meter Read Cycle Dates;
- 23           • Meter Types;

- 1 • Interval Meter Flags;
- 2 • Rate Code Indicators;
- 3 • Load Profile Group Indicators;
- 4 • PLC values (capacity obligations);
- 5 • 24 months of consumption data (in kWh) by billing period,
- 6 including:
  - 7 ○ On-Peak data; and
  - 8 ○ Off-Peak data;
- 9 • 24 months of demand data (in kW) by billing period;
- 10 • 24 months of interval data;
- 11 • Effective dates for current and pending rate class;
- 12 • Default Service indicators (if on Default Service);
- 13 • Minimum stay dates (if applicable);
- 14 • Identifiers of whether customers are participating in Budget Plans;
- 15 and
- 16 • Identify if customer is in POR program.

17

18 **Q. Are there other business practices related to the provision of**  
19 **data and information and/or support to CRES Providers that**  
20 **you believe should be implemented by AEP Ohio?**

21 **A.** Yes. In order to further enhance the ability of CRES Providers to meet the  
22 needs of retail customers, AEP Ohio should adopt the following four (4)  
23 business practices:

- 1           1.     Notification to CRES Provider of record before a drop occurs,  
2                 providing the CRES Providers the ability to cure the situation;
- 3           2.     Provision of legacy customer numbers. If there are any plans to  
4                 change the customer account numbers or meter numbers due to  
5                 systems changes or upgrades, the old account/meter numbers  
6                 should be maintained and provided in the customer lists and on  
7                 EDI data transactions. This allows the old numbers to be cross  
8                 referenced with the new numbers so that CRES Providers can  
9                 synchronize their systems/databases.
- 10          3.     Regular electronic mail notifications of tariff supplements,  
11                 modifications, or changes when filed with the Commission.
- 12          4.     Semi-Annual or Quarterly Meetings or Conference calls with CRES  
13                 Providers to discuss proposed tariff changes, business practices, or  
14                 other information.

15  
16   **Q.     Do you have any final recommendations regarding AEP Ohio's**  
17       **ESP Application?**

18   **A.**    Yes. Constellation supports all of the recommendations contained in the  
19            Direct Testimony of RESA witness Teresa Ringenbach. Further, the  
20            Commission should require AEP Ohio to file the new compliance tariffs  
21            within thirty (30) days of the entry of a final Order in this proceeding but  
22            in no event less than sixty (60) days prior to their effective date. It is  
23            important for at least three (3) reasons that specific implementation tariffs  
24            addressing the attendant rules regarding retail choice are submitted in a

1 clear and easy to follow manner. First, it increases efficiency. Having  
2 clear tariffs will help to avoid unnecessary expenditures of time and effort,  
3 thereby lowering transaction costs for customers. Second, tariffs can  
4 identify, and therefore allow customers to avoid, specific problems. A lack  
5 of clarity can create real problems for real individual customers resulting  
6 in costly situations that hurt their business, their owners, and their  
7 employees. Third, tariffs will be the best, most definitive guidepost for  
8 customers and suppliers alike regarding what will be a completely new  
9 process, resulting in new products.

## 11 **VIII. Conclusion**

12 **Q. Please summarize your conclusions and recommendations**  
13 **regarding AEP Ohio's ESP Application.**

14 **A.** The Commission has the opportunity to be a steadying force in the  
15 continued evolution of the competitive electric market in Ohio. However,  
16 without significant modifications, AEP Ohio's ESP proposal will result in  
17 the elimination of any hope for the development of retail competition and  
18 signal a return to the failed regulatory policies of the past. The  
19 unprecedented litany of nonbypassable generation-related charges, many  
20 that are merely placeholders, will allow AEP Ohio wide and unprecedented  
21 discretion to pass through to customers a wide array of potentially billions  
22 of dollars of costs. As I explained earlier, the imposition of a number of  
23 inappropriate non-bypassable charges only benefits AEP – to the  
24 detriment of customers and the competitive market. If the Commission

1 wants to continue along the track of relying upon the competitive market  
2 model, the Commission should reject AEP Ohio's ESP and direct AEP to  
3 file an ESP that relies upon competitive wholesale procurement as a better  
4 means for the procurement of SSO. By directing AEP Ohio to utilize a  
5 competitive procurement process, it will bring the benefits of wholesale  
6 competition to customers that do not choose a competitive alternative to  
7 AEP Ohio's SSO and should lead to the development of the competitive  
8 retail electric market.

9  
10 **Q. Please summarize your recommendations regarding AEP's ESP**  
11 **Application.**

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

- 14 • Reject AEP Ohio's form of SSO that it has proposed in the instant  
15 proceeding;
- 16 • Reject AEP Ohio's attempts to impose a litany of nonbypassable  
17 generation-related costs onto consumers that do not purchase  
18 generation supply from AEP Ohio;
- 19 • Reject the proposed capacity charge that AEP Ohio seeks to impose  
20 upon CRES providers;
- 21 • In evaluating AEP Ohio's comparison between the ESP and the  
22 expected results of an MRO, the Commission must engage in a true  
23 "apples-to-apples" comparison;

- 1           • Direct AEP Ohio to file an ESP (or MRO) that relies upon a  
2           competitive wholesale procurement process to set the SSO;  
3           • Reject the proposed GRRR Rider; and  
4           • Direct AEP Ohio to make various operational and tariff changes to  
5           promote the development of retail competition.

6

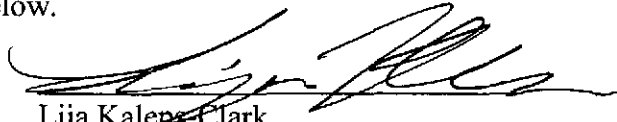
7   **Q.   Does this conclude your testimony?**

8   **A.   Yes.**



## CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served this 25<sup>th</sup> day of July, 2011 by electronic mail, upon the persons listed below.

  
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