

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Ohio Power Company and Columbus) Case No. 10-2376-EL-UNC
Southern Power Company for Authority)
to Merge and Related Approvals.)

In the Matter of the Application of)
Columbus Southern Power Company and)
Ohio Power Company for Authority to) Case No. 11-346-EL-SSO
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) Case No. 11-349-EL-AAM
Ohio Power Company for Approval of) Case No. 11-350-EL-AAM
Certain Accounting Authority.)

In the Matter of the Application of)
Columbus Southern Power Company to) Case No. 10-343-EL-ATA
Amend its Emergency Curtailment)
Service Riders.)

In the Matter of the Application of)
Ohio Power Company to Amend its) Case No. 10-344-EL-ATA
Emergency Curtailment Service Riders.)

In the Matter of the Commission Review)
Of the Capacity Charges of Ohio Power) Case No. 10-2929-EL-UNC
Company and Columbus Southern)
Power Company.)

In the Matter of the Application of)
Columbus Southern Power Company) Case No. 11-4920-EL-RDR
for Approval of a Mechanism to Recover)
Deferred Fuel Costs Ordered Under)
Ohio Revised Code 4928.144)

In the Matter of the Application of)
Ohio Power Company for Approval of a)
Mechanism to Recover Deferred Fuel) Case No. 11-4921-EL-RDR
Costs Ordered Under Ohio Revised)
Code 4928.144)

INITIAL TRIAL BRIEF
CONSTELLATION NEWENERGY, INC. AND
CONSTELLATION ENERGY COMMODITIES GROUP, INC.

November 10, 2011

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Now come Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (jointly “Constellation”), and pursuant to the procedural schedule established by the Attorney Examiners and OAC 4901-1-31 submit their initial trial brief in the above styled docket. Constellation appears as a full party of record in this proceeding by virtue of the Entry of March 23, 2011. Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. are signatory parties to the Stipulation submitted September 7, 2011 for which it filed supporting testimony on September 13, 2011.¹

Constellation Energy Commodities Group, Inc. is a wholesale supplier, while its affiliate Constellation NewEnergy, Inc. engages in retail electricity service. Between the two affiliates, Constellation supplies more than 15,000 megawatts of load and more than 10,0000 customers. Constellation NewEnergy, Inc. was granted a certificate as a CRES supplier from the Commission more than ten years ago and has been actively engaged in the competitive sale of electric service to retail customers in Ohio during that whole period.

I. INTRODUCTION

Columbus Southern Power Company and Ohio Power Company (collectively “AEP Ohio”) filed an Application for the establishment of a standard service offer (“SSO”) in the form of an electric security plan (“ESP”) on January 27, 2011. A Stipulation and Recommendation (“Stipulation”) was signed by AEP Ohio, Public Utilities Commission of Ohio (“Commission”) Staff, Constellation and seventeen other third-party intervenors, and filed with the Commission on September 7, 2011. The Stipulation constitutes the ESP that is currently under consideration by

¹ See Constellation Exhibit No. 1, Direct Prepared Testimony of David Fein.

the Commission in this proceeding (“ESP II”). In addition, by the Entry dated September 16, 2011, a number of other applications pending at the Commission were joined to the ESP proceeding. The consolidated cases include a request for the merger of Columbus Southern Power Company with Ohio Power Company in Case No. 10-2376-EL-UNC (“Merger Case”), determination of the capacity charge that AEP Ohio will assess on competitive retail electric service providers in Case No. 10-2929-EL-UNC (“Capacity Charge Case”), the energy curtailment proceeding in Case Nos. 10-343-EL-ATA and 10-344-EL-ATA (“Energy Curtailment Cases”), and the approval of a mechanism to recover deferred fuel costs and accounting treatment for such Case Nos. 11-4920-EL-RDR and 11-4921-EL-RDR (“Fuel Deferral Cases”). These applications are directly affected or would be affected by the ESP II.

Constellation believes that the Stipulation represents a comprehensive settlement that will move AEP Ohio from providing energy and capacity based on the cost of its legacy generation (which, according to AEP Ohio’s data, would lead to above-market rates) to public procurement of both capacity and energy through competitive auctions. The Stipulation bears faint resemblance to the ESP Application filed by AEP Ohio on January 27, 2011 (“Application”). Constellation opposed the Application because it imposed a litany of non-bypassable generation-related charges upon customers that wished to select a competitive retail electric service (“CRES”) provider. The Application had unjustified Provider of Last Resort (“POLR”) fees² and lacked a competitive wholesale solicitation process for electric power and energy. Finally, the Application continued the use of barriers to shopping such as long notice provisions before a customer could switch, lack of sufficient web based information for suppliers, and minimum stays.

In sharp contrast, the Stipulation represents a fundamental shift not only from the

² Constellation participated in the 08-917-EL-SSO proceeding as well as the remand proceeding and opposed the POLR.

Application, but in the way in which AEP Ohio will conduct its service. In place of the use of pricing based on its legacy generation with escalation clauses for fuel and purchased power it uses today, AEP Ohio will commence a 41 month transition to a stable, transparent and efficient electric marketplace in Ohio. By moving to competitive procurement of energy and capacity, AEP Ohio will, by the fourth year of the ESP II, send accurate clear price signals to market participants and suppliers alike. The Stipulation accomplishes this because it represents a commitment by AEP Ohio to move to a “100% competitive, market-based pricing regime that will rely upon a competitive wholesale procurement process and AEP Ohio moving its generation into the PJM RPM capacity auction.”³ The Stipulation also removes a number of barriers to shopping and eliminates certain non-bypassable generation riders.

II. THE STIPULATION MEETS THE COMMISSION’S THREE PART TEST FOR ACCEPATANCE

A. Standard Of Approval – Three Part Test

Parties to a rate proceeding may enter into a Stipulation pursuant to Rule 4901-1-30 of the Ohio Administrative Code. The Ohio Supreme Court has found that, although stipulations are not binding on the Commission, they are to be accorded “substantial weight.”⁴ In determining whether to adopt a stipulation, “the ultimate issue for [the Commission’s] consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted.”⁵ The Commission has developed a three-part test for making that determination:

³ Constellation Ex. 1, p. 9.

⁴ *Office of Consumers’ Counsel v. Pub. Util. Comm’n of Ohio*, 592 N.E.2d 1370, 1373 (Ohio 1992). See also *Ohio Consumers’ Counsel v. Pub. Util. Comm’n of Ohio*, 872 N.E. 2d 269 (Ohio 2007).

⁵ *In re Ohio Edison Co., et al.*, Case No. 10-388-EL-SSO, Opinion and Order at 20 (Aug. 25, 2010).

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?⁶

Constellation finds that the Stipulation meets this three part test. The Stipulation was negotiated among knowledgeable and informed parties, and is supported by a broad and diverse group of stakeholders with varying interests. The Stipulation violates no law, rule, or regulatory principle, and reinforces Ohio's Energy Policy. The Stipulation results in AEP Ohio's move to a competitive wholesale market that will provide choices to consumers and benefit Ohio's economy, and is thus a great benefit to consumers and the public interest. For these reasons, and those discussed below, Constellation supports approval of the Stipulation.

B. The Stipulation Is A Product Of Serious Bargaining Among Capable, Knowledgeable Parties.

The Stipulation was the result of weeks of intensive negotiations in which extensive and lengthy discussions among the parties occurred.⁷ The interested parties to this proceeding, including signatory and non-signatory parties, attended numerous settlement conferences to discuss resolution of their issues and attempt a proposed stipulation. The negotiations process was fair, transparent, and open.⁸ All interested parties were invited to the table and given an

⁶ *Office of Consumers' Counsel*, 592 N.E.2d at 1373.

⁷ PUCO Staff Exhibit No. 4, Direct Prepared Testimony of Robert Fortney, p. 2; Exelon Generation Exhibit No. 1, Direct Prepared Testimony of Joseph Dominguez, p. 1.

⁸ Exelon Generation Exhibit No. 1, Direct Prepared Testimony of Joseph Dominguez, p. 2.

opportunity to participate in the negotiations.⁹ Those parties that ceased attending the settlement sessions did so of their own free will, pursuing what they believed to be their best interest.

The signatory parties represent a diverse group and cross section of customers and market participants. The consumer groups who have signed the Stipulation include colleges and universities, municipalities, large commercial and industrial groups including manufacturers and hospitals, groups promoting alternative energy, environmental groups, wholesale and retail marketers, and the Staff. In total, twenty parties signed the Stipulation, including Constellation. The signatory parties are capable and knowledgeable entities represented by experienced counsel. Most of the signatory parties, including Constellation, the Ohio Energy Group, the OMA Energy Group, the Ohio Hospital Association, and the Association of Independent Colleges and Universities of Ohio actively participated in the previous AEP Ohio Electric Security Plan as well as in the electric security plans of other electric utilities. In addition to the eighteen intervenors, the Staff was at the bargaining table to the end and signed the Stipulation. The Staff's mandate includes protecting the interests of the public at large, including residential customers. Thus, Constellation believes the Stipulation represents a fair and balanced compromise among diverse groups of consumers and market participants, which was vigorously negotiated.

C. The Stipulated ESP Does Not Violate Any Important Regulatory Principle Or Practice

The Stipulation does not violate any important regulatory principle or practice, and in fact, the Stipulation reinforces Ohio's Energy Policy codified in Section 4928.02, Revised Code. It is

⁹ See cross examination of AEP Ohio witness Mr. Hamrock, Tr. 870–871 (noting that a number of non-signatory parties opposed a motion to continue the hearing date to allow for continued negotiations sending "...very clear signals that the settlement talks were not constructive, were not productive, and were not leading to an outcome that they supported.").

Ohio’s Energy Policy to “[e]nsure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers…” and “[r]ecognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment.”¹⁰ The Stipulation fulfills this policy by ensuring a transition to a competitive electric market by giving consumers effective choices, while retaining flexible oversight by the Commission.¹¹ The Stipulation also provides for “[f]air and reasonably priced rates which support the provision of safe and reliable service” in accordance with the Energy Policy.¹²

In order to approve an ESP, Section 4928.143(C)(1), Revised Code, requires that the Commission find,

... the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. (emphasis added)(“in the aggregate test”)

This test requires that the Commission consider both the quantitative and qualitative aspects of the Stipulation as compared to a Market Rate Offer (“MRO”). Constellation has not conducted an analysis of the Stipulation as compared to an MRO, but has relied on the analysis conducted by AEP Ohio. Constellation finds that AEP Ohio’s analysis comparing predicted pricing, other non-price quantitative benefits, and qualitative benefits as presented by AEP Ohio witnesses Ms. Thomas, Mr. Allen and Mr. Hamrock, together demonstrate that the Stipulation is more favorable

¹⁰ Sections 4928.02(C) and (G), Revised Code.

¹¹ See PUCO Staff Exhibit No. 4, Direct Prepared Testimony of Robert Fortney, pp. 1–2; Section 4928.02(C), Revised Code.

¹² PUCO Staff Exhibit No. 4, Direct Prepared Testimony of Robert Fortney, pp. 1–2; Section 4928.02(A), Revised Code.

than the expected results under an MRO.¹³ The “in the aggregate test” must include each aspect of AEP Ohio’s testimony, and the numeric price test alone cannot be determinative of the outcome of this case. It should be noted in particular, that the fact that this Stipulation results in a transition to the competitive market faster than can be achieved under an MRO, while maintaining the flexibility of an ESP, is a significant benefit that weighs heavily in favor of the Stipulation.

D. The Stipulation As A Package, Benefits Ratepayers And Is In The Public Interest.

AEP Ohio’s original Application contained a number of anticompetitive aspects, including non-bypassable generation riders and no opportunity for a competitive bidding process or for a change in AEP Ohio’s business structure. The Stipulation now represents a compromise in which AEP Ohio has committed to change its business structure, transition to a competitive market by June 1, 2015, remove non-bypassable generation riders, and remove a number of shopping barriers. This shift to a competitive market contained in the Stipulation will create a better means for setting the rates that would be charged to SSO customers, as well as a means for giving customers options in choosing their electric supply, including granting customers the opportunity to choose less costly options rather than be captive to AEP Ohio supply.¹⁴ This transition will encourage investment in Ohio by retail and wholesale providers. AEP Ohio’s willing transition of its SSO load into the competitive market, as contained in the Stipulation, is a significant benefit to rate payers and the public interest that cannot be achieved as quickly under an MRO and is not required under an ESP.

¹³ See Direct Prepared Testimonies of Joseph Hamrock (AEP Ohio Ex. 8); Laura Thomas (AEP Ohio Ex. 5); William Allen (AEP Ohio Ex. 4).

¹⁴ Exelon Ex. No. 1, p. 2.

Constellation believes that the Stipulation is in the public interest because it will fulfill the Ohio Energy Policy goal of encouraging market development, creating diverse supply and supplier options and assuring reliable electric service¹⁵ by:

- Entering into a competitive wholesale procurement process to meet 100 percent of AEP Ohio’s SSO needs for the term of the ESP plan.
- Removing a number of barriers to shopping contained in the tariffs including minimum stay requirements and lack of data sharing.
- Removing a number of non-bypassable generation-related riders that inhibit the benefits of customer choice.
- Providing certainty regarding the capacity charge and providing a “glide path” to full RPM capacity pricing.
- Rejecting AEP Ohio’s automatic recovery for new generation under the Generation Resource Rider (“GRR”).¹⁶

Perhaps most importantly, the Stipulation represents a clear commitment by AEP Ohio to transition to a fully competitive market faster than could be achieved under an MRO. The Stipulation further eliminates the uncertainty related to the pending capacity litigation and the cases combined in this stipulation while transitioning to a competitive market.

1. *Competitive Bidding Process*

Constellation has been advocating for a number of years for the use of competitive wholesale solicitations to meet the electric power and energy needs for the standard service.¹⁷

¹⁵ Sections 4928.02(A) and (C), Revised Code.

¹⁶ *See generally* Constellation Ex. 1.

¹⁷ Constellation Ex. 1, p. 5.

Such an option will provide customers with an “...open, non-discriminatory, and transparent process.”¹⁸ Public procurement of energy and capacity would result in AEP Ohio’s customers receiving the lowest priced electricity along with the most innovative service options.

Competitive bidding would also encourage retail and wholesale competition development and investment in Ohio. The Stipulation provides for a phase-in of the competitive bid process so that competitive wholesale procurements will begin in the fall of 2013 and continue throughout the transition period so that an auction for the full load will be conducted June 1, 2015.¹⁹

The Stipulation was further designed as a far reaching and, to the extent practical, all-inclusive document that includes guidelines for the implementation of the competitive bid process (“CBP”). The CBP is largely modeled off of FirstEnergy’s competitive bid auction. The CBP will be for 1% slice-of-system tranches and will use the auction format from Case No. 08-935-EL-SSO.²⁰ The Stipulation also provides for criteria that may be considered by the Commission in accepting the results of the CBP.²¹ The Stipulation contains provisions to prevent discriminatory or anti-competitive actions from occurring during the process.²² To the extent issues are not specifically addressed in the Stipulation relating to the CBP, AEP Ohio has agreed to engage in a stakeholder process for developing input into the remaining design and details needed.

The detailed plan for implementing the CBP demonstrates that the parties seriously and extensively negotiated these provisions and that the CBP represents a reasonable and well thought out compromise.

¹⁸ *Id.* at 4.

¹⁹ Stipulation and Recommendation, ¶ IV(1)(r).

²⁰ *Id.*

²¹ *Id.* at p. 12.

²² *Id.*

2. Capacity Charges

Not only has AEP Ohio committed 100% percent of its SSO load to a competitive auction by June 1, 2015, but AEP Ohio has also agreed to commit its generation resources to PJM's RPM capacity auction in June of 2015.²³ On that date, capacity for all retail load in the AEP Ohio footprint will be set at the applicable RPM price. Prior to that date, increasing percentages of RPM-priced capacity will be made available to CRES providers. In 2012, 21% of the RPM-priced capacity would be made available to CRES providers, in 2013, 29% (and potentially up to 31%), and in 2014, 41% will be made available.²⁴ For the retail shopping that exceeds this first tier of pricing, CRES providers will receive capacity pricing at \$255/MW/day, almost \$100/MW/day less than what AEP Ohio has requested at the Federal Energy Regulatory Commission ("FERC") and PUCO.²⁵

These set capacity charges will give CRES providers certainty and stability in making offers to customers in Ohio. As noted by Exelon witness Mr. Dominguez, the finality on capacity pricing in Ohio will provide clarity in pricing for CRES providers in light of the pending cases at both the FERC and PUCO.²⁶ The outcome of these proceedings is not certain, and is subject to the decision-making of two separate commissions.²⁷ As noted by FES witness Mr. Shanker, there are three potential outcomes of this litigation for capacity pricing: 1) a state compensation

²³ Stipulation and Recommendation, ¶ IV(b)(3).

²⁴ *Id.*

²⁵ Stipulation and Recommendation, ¶ IV(b)(1).

²⁶ Tr. Vol. VI, p. 1014.

²⁷ See cross examination of FirstEnergy Solutions witness Mr. Shanker, Tr. Vol. VII, p. 1144 (Q: "And it's probably fair to say that this Commission cannot predict the outcome of the FERC actions; is that correct?" A: "Yes, I agree." Q: "And the FERC cannot predict the outcome of the state compensation mechanism case here at this Commission." A: "Correct.").

mechanism, which could be higher than RPM market pricing; 2) a FERC determined rate that is just and reasonable in the absence of a state compensation mechanism, which could be higher than RPM market pricing; or 3) a default price set at the RPM auction price.²⁸ While parties in opposition, such as FirstEnergy Solutions represented by Mr. Shanker, may believe that RPM pricing for capacity is the only “right” price and that other prices are “wrong”, the fact is that all three options are legal and could be granted by the FERC or the PUCO.²⁹

This transition to 100% competitive, market-based pricing regime, for both capacity and energy, removes the “cloud” on the competitive market in Ohio.³⁰ Further, the phase-in method for both energy and capacity creates a “glide path” of increasing percentages of shopping load that can purchase capacity at the applicable RPM rates.³¹ AEP Ohio’s transition to a competitive market in the Stipulation provides certainty to consumers, wholesalers, and retailers, and will encourage investment from retail electric suppliers by providing a favorable market for retail electric suppliers to flourish.³²

Further, it should be noted that almost all, if not all, the parties to this proceeding support a competitive bid auction for both energy and capacity for 100% of AEP Ohio load; they largely disagree only on how quickly the transition should be completed.³³

²⁸ Tr. Vol. VI, pp. 1143–44.

²⁹ *Id.*

³⁰ Cross examination of Exelon witness Mr. Dominguez, Tr. Vol. VI, p. 1013–15.

³¹ Constellation Ex. 1, p. 9.

³² *See* Cross examination of Exelon witness Mr. Dominguez, Tr. Vol. VI, pp. 1064–67.

³³ Exelon Exhibit No. 1., p. 2. (“The overwhelming majority of parties in this proceeding, including the non-settling parties, wanted [AEP Ohio] to use a competitive process to procure energy and capacity.”).

3. *Removal of Generation Related Non-Bypassable Riders*

Originally AEP Ohio proposed a number of generation related non-bypassable riders. Non-bypassable generation riders are disadvantageous to customers of CRES providers, because the riders essentially charge CRES customers twice for the same service.³⁴ These riders potentially would wipe out any savings achieved by customers purchasing lower cost generation from CRES providers. That, in turn, creates an anticompetitive subsidy that discourages competitive retail competition and investment.³⁵ Such an outcome is inequitable and “...has the potential to destroy the development of the competitive retail market.”³⁶ The Stipulation is a fundamental change from the initial Application in that it removes seven non-bypassable riders, thus “...preserv[ing] and enhance[ing] competitive opportunities in the AEP Ohio service territory.”³⁷

4. *GRR*

The Stipulation limits AEP Ohio’s ability to impose a non-byassable surcharge in order to capture the cost of energy and capacity for new generation projects.³⁸ In the original Application, AEP Ohio sought to receive recovery for new generation projects without showing a need for new generation and proper dedication of such generation. The Stipulation now provides a placeholder for recovery of generation, but AEP Ohio must apply for such recovery and must demonstrate to

³⁴ Constellation Ex. 1, p. 6.

³⁵ *Id.*; cross examination of Constellation witness Mr. Fein, Tr. Vol. VI, p. 967.

³⁶ Constellation Ex. 1, p. 6.

³⁷ Constellation Ex. 1, pp. 6–7. These riders include: Facilities Closure Cost Recovery Rider; the NERC Compliance Cost Recovery Rider; the Carbon Capture and Sequestration Rider; the POLR; the Environmental Investment Carrying Charges Rider (“EICCR”); the Rate Security Rider; and the non-bypassable charges for environmental unit/rededication charges.

³⁸ Stipulation and Recommendation, ¶ IV(1)(d).

the Commission that the new generation meets the appropriate standards under Section 4928.143, Revised Code in order to be recovered on a non-bypassable basis.³⁹ Further, the Stipulation allows AEP Ohio to recover costs relating only to the Turning Point and MR6 projects.⁴⁰

Constellation and other signatory parties have retained full rights to oppose or determine the appropriateness of any costs to be flown through this rider.⁴¹ Thus, the GRR, while characterized as a generation rider, is merely a placeholder, and recovery under this rider is not preordained by the Commission.⁴²

5. *Removal of Shopping barriers*

The Stipulation further promotes and enhances retail competitive by removing a number of barriers to shopping that have been a part of AEP Ohio's tariffs and business practices for some time, in some cases since opening on the marketplace in the early 2000s.⁴³ The removal of these shopping barriers is an important step in facilitating CRES providers' ability to provide service to retail customers in AEP Ohio's service territory.⁴⁴ Under the Stipulation, by January 1, 2012 AEP Ohio CRES providers will be provided with a Master Customer List, as well as with PLC capacity and NSPL transmission information.⁴⁵ This information will be updated every 15 days. Participating CRES providers on the AEP Ohio system will get historic usage via EDI 867

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*; Constellation Ex. 1, p. 10.

⁴² Constellation Ex. 1, p. 10.

⁴³ Cross examination of Constellation witness Mr. Fein, Tr. VI, p. 978 ("There are a number of items that have been on the books in [AEP Ohio's] tariffs since the opening on the marketplace.").

⁴⁴ Constellation Ex. 1, p. 11.

⁴⁵ Stipulation and Recommendation, ¶IV(1)(s); Constellation Ex. 1, pp. 11–12.

protocols and enrollments responses via the EDI 814 protocols.⁴⁶ Additionally, by the end of 2011, AEP Ohio will eliminate the 90 day notice that certain customers have to provide before they can shop.⁴⁷ AEP Ohio has further agreed to discuss reducing the \$10 switching fee.⁴⁸ Finally, AEP Ohio will eliminate the 12 month minimum stay by June 1, 2015 SSO auction, and the minimum seasonal stay for residential and small commercial customers is also eliminated.⁴⁹

These agreements will allow CRES providers to more effectively provide service to their customers by receiving necessary data and information about their customers' usage of electricity. Further, customers will be allowed to more meaningfully participate in the competitive market, as they will no longer be restrained by arbitrary minimum stay and notice periods prior to and after switching.

III. CONCLUSION

The Commission has long had a policy of encouraging stipulations that have a broad base of support.⁵⁰ In general, a compromise worked out among the parties is more likely to result in an internally consistent, well thought through plan; especially compared with the alternative outcome of a litigated decision in which various issues are decided on their individual legal merits. In the matter at bar, there is general consensus among both the proponents and the opponents of the

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *In the Matter of the Restatement of the Accounts and Records of The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, and Columbus & Southern Ohio Electric Company*, Case No. 84-1187-EL-UNC (November 26, 1985), p. 7 (“The Commission agrees with Dr. Hall that it is sound regulatory policy to encourage parties to its proceedings to resolve issues through negotiated settlements.”).

Stipulation that AEP Ohio should be using a competitively bid wholesale procurement process to obtain the energy and capacity for the default standard service, that AEP Ohio charge to CRES for capacity costs should be based on RPM auction prices, and that existing barriers to retail shopping should be removed. As described above, the Stipulation achieves all of these goals and does so in detail. The Stipulation provides the exact bidding procedure, the agreed upon master supply agreement, as well as commitment by AEP Ohio to participate in the next Base Residual Auction and to institute RPM pricing starting next year for a fifth of shopping customers, which escalates to 100% by June 2015.⁵¹ Finally, the Stipulation provides CRES providers with needed information and data, as well as removes certain notice and timing barriers to shopping.

In sum, when all the witness testimony is considered, the main difference between those who support the Stipulation and those who urge the Commission to reject it is the appropriate time by which the goals of competitive bid auctions, RPM pricing and retail shopping barriers are to be implemented. The Stipulation provides a detailed program to achieve the goals in 41 months.⁵² The opponents, in the name of implementation, would have the Commission embark on the course of lengthy litigation in which novel theories of how the Commission could compel competitive wholesale auctions would be tested. Further, without the Stipulation, the subject of setting the proper capacity rate-making in Case No. 10-2929-EL-UNC would have to be tried, as well the pending litigation at the FERC on the capacity issue.⁵³

Constellation urges the Commission to approve the Stipulation, which sets forth a defined

⁵¹ Stipulation and Recommendation, ¶¶ IV(1)(r),(s), (q); IV(2)(b).

⁵² Stipulation and Recommendation, ¶¶ IV(1)(q),(r); IV(2)(b).

⁵³ AEP Ohio filed a Section 205 application on November 1, 2010 in FERC Docket No. ER11-1995-000. On November 24, 2010, AEP Ohio refiled its application in Docket No. ER11-2183-000. AEP Ohio also filed a complaint under Section 206 in FERC Docket No. EL11-32-000. Stipulation and Recommendation, ¶IV(2)(b)(4) (AEP Ohio's commitment to stay and/or withdraw the above proceedings).

41 month plan to competitive procurement of standard service capacity and energy, RPM pricing for all, increased access to data for CRES providers, and a greater ability for retail customers to have meaningful opportunities to shop for competitive supply. The Stipulation, which is supported by the vast majority of parties who represent a variety of different interests, is far superior to lengthy additional litigation that may or may not achieve those important goals, let alone do so in less than 41 months.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing documents was served this 10th day of November, 2010 by regular U.S. mail, postage prepaid, or by electronic mail, upon the persons listed below.

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