

**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	)	

**RETAIL ENERGY SUPPLY ASSOCIATION'S  
POST-HEARING BRIEF IN SUPPORT OF THE  
STIPULATED ELECTRIC SECURITY PLAN PROVIDED IN THE  
STIPULATION AND RECOMMENDATION FILED SEPTEMBER 7, 2011**

**November 10, 2011**

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## INTRODUCTION

### I. Position of RESA in Support of the Stipulation

Now comes Retail Energy Supply Association (“RESA”)<sup>1</sup>, and pursuant to the procedural schedule established by the Attorney Examiners, submits its initial post-hearing brief in the above styled docket. RESA appears as a full party of record in this proceeding by virtue of the Attorney Examiner’s Entry of March 23, 2011. In addition, RESA is a signatory party to the Stipulation submitted on September 7, 2011 and sponsored an expert witness to offer testimony supporting the Stipulation<sup>2</sup> as the basis of AEP Ohio’s second Electric Security Plan.

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 II”) on January 27, 2011. AEP Ohio also had filed a number of other applications which directly affected or would be affected by the ESP II. These applications included 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 in Case Nos. 11-4920-EL-RDR and 11-4921-EL-RDR (“Fuel Deferral Cases”).

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<sup>1</sup> RESA is a trade association whose members include: Champion Energy Services, LLC, ConEdison *Solutions*, Constellation Energy, Inc., Direct Energy Services, LLC, Engentrix, Inc, Energy Plus Holdings, LLC, Exelon Energy Company, GDF SUEZ Energy Resources NA, Inc., Green Mountain Energy Company, Hess Corporation, Integrys Energy Services, Inc., Just Energy, Liberty Power, MC Squared Energy Services, LLC, Mint Energy, LLC, MX Energy, NextEra Energy, Noble Americas Energy Solutions, PPL EnergyPlus, LLC; Reliant Energy Northeast LLC, and TriEagle Energy, L.P.

<sup>2</sup> See RESA Exhibit No. 1, Direct Prepared Testimony of Teresa Ringenbach.

A Stipulation and Recommendation (“Stipulation”) was signed by AEP Ohio, the Public Utilities Commission of Ohio (“PUCO” or “Commission”) Staff, and eighteen third-party intervenors, including RESA. The Stipulation was designed as a far reaching and, to the extent practical, all-inclusive document designed to move AEP Ohio from providing standard service based on its legacy generation, including all future upgrades and changes to that generation, to an open access provider using public auctions to procure both capacity and energy. The Stipulation was filed with the Commission on September 7, 2011. The Stipulation was followed by a joint motion for consolidation which included the Merger Case, Capacity Charge Case, the Energy Curtailment Cases, and the Fuel Deferral Cases. The motion to consolidate was granted by the Attorney Examiner in the Entry dated September 16, 2011.

RESA opposed the ESP II as filed January 27, 2011 as it maintained the legacy generation approach, but shifted the financial risk to the customers via several non-bypassable generation cost riders. In sharp contrast, this Stipulation represents a fundamentally different approach to standard service procurement and capacity pricing for shopping customers. As noted by RESA witness Ms. Ringenbach, the Stipulation generally resolves the major policy and tariff issues RESA found with the original application. The Stipulation eliminates seven non-bypassable riders that would have interfered with retail competition by forcing shopping customers to pay for generation services they were not using.<sup>3</sup> The Stipulation provides for a transition to a competitive wholesale procurement of capacity and energy in just 41 months, which is 18 months faster than can be achieved under a market rate offer (“MRO”). The Stipulation resolves the capacity pricing issue raised by AEP Ohio at the Federal Energy Regulatory Commission (“FERC”) and the PUCO, bringing closure and regulatory certainty to

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<sup>3</sup> RESA Ex. No. 1, p. 5

capacity pricing.<sup>4</sup> The Stipulation protects retail market development by limiting the number of projects and MWh of generation that shopping customers would be forced to purchase. Finally, the Stipulation also eliminates a number of long-standing shopping barriers in AEP Ohio's territory including minimum stay periods, notice periods, and also expands data sharing between the utility and competitive retail electric service ("CRES") providers.<sup>5</sup>

RESA supports the Stipulation as it is a commitment by AEP Ohio to move to "...a competitive wholesale market which should be of great benefit to all retail customers", and creates "...a more workable market structure that will lead to further development of retail competition."<sup>6</sup> Finally, the Stipulation fulfills Ohio's Energy Policy by requiring provision of both reasonably priced energy and capacity as well as a regulatory structure which will provide a diversity of supplies and suppliers for retail customers. This transition to market will result in economic benefits to retail customers, both immediately and over the long term, by allowing access to the lowest overall price and by opening the Ohio electricity market to competition spurring investment.

## **II. Criteria for the Commission's Acceptance of the Stipulation**

Rule 4901-1-30 of the Ohio Administrative Code allows parties to a rate proceeding to enter into a Stipulation as the parties have in this case. The Ohio Supreme Court has found that stipulations are not binding on the Commission, but are to be accorded "substantial weight."<sup>7</sup> In determining whether to adopt a stipulation, "the ultimate issue for [the Commission's]

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<sup>4</sup> *Id.* at p. 7.

<sup>5</sup> *Id.* at p. 10-11.

<sup>6</sup> *Id.* at p. 13.

<sup>7</sup> *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).

consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted.”<sup>8</sup> The Commission has developed a three-part test for making that determination:

- (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?<sup>9</sup>

RESA believes the Stipulation was negotiated among knowledgeable and informed parties, and is supported by a broad and diverse group of stakeholder interests. The Stipulation is a great benefit to consumers and the public interest because it is a commitment by AEP Ohio to move to a competitive wholesale market that will provide choices to consumers and benefit Ohio’s economy. Finally, the Stipulation furthers the policy laid out in Section 4928.02, Revised Code, and violates no law, rule, or regulatory principle.<sup>10</sup> For these reasons, and those discussed below, RESA supports approval of the Stipulation.

A. The Stipulation is a Product of Serious Bargaining Among Capable, Knowledgeable Parties.

The Stipulation represents an integrated settlement and compromise that results in reasonable resolutions of the signatory parties’ issues. RESA asserts that the Stipulation was the result of serious bargaining among the parties. Extensive and lengthy discussions among the

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<sup>8</sup> *In re Ohio Edison Co., et al.*, Case No. 10-388-EL-SSO, Opinion and Order at 20 (Aug. 25, 2010).

<sup>9</sup> *Office of Consumers’ Counsel*, 592 N.E.2d at 1373.

<sup>10</sup> RESA Ex. No. 1, p. 13.

parties occurred.<sup>11</sup> The Stipulation was the result of weeks of intensive negotiations.<sup>12</sup> As noted by Exelon witness Mr. Dominguez, “[t]he process was fair, transparent, and open.”<sup>13</sup> The interested parties to this proceeding, signatory and non-signatory, attended numerous settlement conferences to discuss resolution to their issues and attempt a proposed stipulation. All interested parties were invited to the table and given an opportunity to participate in the negotiations. To the extent any parties were excluded, this was by their own decision and their own expressed disinterest in moving forward with settlement negotiations.<sup>14</sup>

The signatory parties to the Stipulation represent a diverse group and cross section of customers and market players. The consumer groups who have signed the Stipulation include colleges and universities, municipalities (including their residential customers), 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 mercantile and non-mercantile customers, for-profit and charitable institutions, energy suppliers and environmental groups interested in energy conservation.

The signatory parties are thus a diverse group representing many different interests. The signatory parties are capable and knowledgeable. The signatory parties routinely participate in complex Commission proceedings and counsel for the signatory parties have extensive

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<sup>11</sup> PUCO Staff Exhibit No. 4, Direct Prepared Testimony of Robert Fortney, p. 2.

<sup>12</sup> Exelon Generation Exhibit No. 1, Direct Prepared Testimony of Joseph Dominguez, p. 1.

<sup>13</sup> *Id.* at p. 2.

<sup>14</sup> 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.”).



experience practicing before the Commission in utility matters. Industrial Energy Users-Ohio (“IEU”) witness Mr. Murray asserted that three parties, Paulding Wind Farms II, L.L.C. and the cities of Grove City and Hilliard, have not extensively participated at Commission hearings in the past.<sup>15</sup> However, these parties were represented by competent and renowned law firms throughout the negotiation process and are capable at bargaining and evaluating proposals.<sup>16</sup> Even if the Commission were to deem Paulding Wind Farm II, L.L.C., Grove City and the City of Hilliard novices, that is only three of twenty signatory parties, and other signatory parties include trade associations like the OMA Energy Group, the Ohio Energy Group and RESA with experience in energy regulation in Ohio, at the federal level and in other states. In sum, given the diversity of interests, the experience of the intervenors and their counsel, and the vast difference in the Stipulation versus the application, no credible argument can be raised that AEP Ohio controlled the Stipulation or tricked the Staff and the eighteen other signatory parties into a one-sided bargain.

B. The Stipulation, as a Package, Benefits Ratepayers and the Public Interest.

- i. *AEP Ohio’s Commitment to Transition to a Competitive Market and Reform its Business Structure is a Significant Benefit to Rate Payers and the Public Interest.*

The Stipulation is a commitment by AEP Ohio to reform its business structure and 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

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<sup>15</sup> Tr. Vol. XI, p. 1838.

<sup>16</sup> Tr. Vol. XI, pp.1838–1840 (discussing that Paulding Wind Farm II, LLC is represented by the Bricker & Eckler law firm and the municipalities are represented by the Schottenstein law firm.).

auction....”<sup>17</sup> These commitments could not be achieved as quickly under an MRO. The move to a competitive market is consistent with Ohio’s Energy Policy supporting consumer choice and is valuable to consumers.<sup>18</sup> The overwhelming benefits of AEP Ohio’s transition to market is further proven by the fact that almost all, if not all, of the parties to this proceeding support a transition to a competitive market.<sup>19</sup>

AEP Ohio has committed to auction 100% of its SSO load through a competitive bid process by June 1, 2015. The competitive bid auction will provide consumers with “...the opportunity to choose less costly options rather than be captive to one provider.”<sup>20</sup> In a competitive market, as noted by Exelon witness Mr. Dominguez, “...power plants will have to compete on a best-price basis with other resources in the market for the right to serve default customer load.”<sup>21</sup> This will result in “lower default service rates and will foster retail competition by giving customers a fixed-rate, default offer that that can be readily compared to retail offers.”<sup>22</sup> AEP Ohio’s commitment to transition to a competitive market includes capacity as well as energy. Starting on June 1, 2015, CRES providers will be charged PJM’s Reliability Pricing Model (“RPM”) market price for all capacity in the AEP Ohio service territory.<sup>23</sup> In addition, the Stipulation provides that even before June 1, 2015, RPM-priced capacity will be

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<sup>17</sup> Constellation Exhibit No. 1, Direct Prepared Testimony of David Fein, p. 9.

<sup>18</sup> See Section 4928.02, Revised Code; *see also* RESA Ex. 1, p. 13 (“Finally, the Stipulation will ultimately move AEP Ohio to a competitive wholesale market which should be of great benefit to all retail customers.”).

<sup>19</sup> 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.”).

<sup>20</sup> *Id.* at 4.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> RESA Ex. 1, p. 8.

made available to CRES providers in ever-increasing percentages of AEP Ohio’s retail load through 2012, 2013, and 2014.<sup>24</sup> As part of this transition, AEP Ohio has also committed to complete full legal corporate separation and transfer its generating assets to an affiliate.<sup>25</sup>

This transition to 100% competitive, market-based pricing regime and the change of AEP Ohio’s business structure removes the “cloud” on the competitive market in Ohio.<sup>26</sup> As Exelon witness Mr. Dominguez notes, Ohio’s legal structure has been unclear and inconsistent for more than a decade—moving from regulation, to deregulation, to a hybrid regulatory structure.<sup>27</sup> 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.<sup>28</sup>

RESA believes this commitment by AEP Ohio to transition its business model is a serious and enforceable one, as Appendix B provides for timetables with milestones and the Stipulation provides for penalties to ensure the administrative requirements are met in order to complete the change to wholesale auction standard service procurement by the 2015 PJM service year.<sup>29</sup> Specifically, the Stipulation provides that in March of 2012 AEP Ohio will notify PJM that it will participate in the Base Residual Auction for the 2015-2016 delivery year. Although

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<sup>24</sup> *Id.*

<sup>25</sup> Stipulation and Recommendation, ¶IV(1)(r). *see also* AEP Ohio’s filing in Case No. 11-5333-EL-UNC.

<sup>26</sup> Tr. Vol. VI, pp. 1013–1015.

<sup>27</sup> Tr. Vol. VI, pp. 1064–65 (noting that Ohio’s “...appetite for competition has had an ebb and flow to it.”).

<sup>28</sup> *See* redirect examination of Exelon witness Mr. Dominguez, Tr. Vol. VI, pp. 1064–1067.

<sup>29</sup> RESA Ex. 1, p. 6; *see also* Stipulation and Recommendation, ¶IV(1)(t) and Appendix B.

that is three years out, since the Base Residual Auctions are conducted three years in advance, it means AEP Ohio will begin participating in the Base Residual Auctions by 2012.<sup>30</sup>

Further, it is important to note that AEP Ohio's commitment to move to competitive procurement, while consistent with the goals of Senate Bill 221 and Ohio's Energy Policy<sup>31</sup>, is not the only alternative provided by Senate Bill 221. AEP Ohio has the option under Senate Bill 221 to offer electricity generation service under an ESP-priced SSO based on its existing rates, which in the case of AEP Ohio is legacy generation, plus adjustments for fuel, transmission, and new generation investments including construction work in progress rather than a competitive market.<sup>32</sup> The statute is clear that the election of an MRO or an ESP is left to the electric distribution utility.<sup>33</sup> In fact, an electric distribution utility can apply for both an MRO and an ESP simultaneously.<sup>34</sup> FirstEnergy Solutions ("FES") witness Mr. Banks suggested that the Commission could amend an ESP application to provide for an order under an ESP at the market rates. However, as noted by FES witness Mr. Banks, even if the Commission were to modify the ESP to require a competitive bid auction for the full standard service offer load in 2012, as Mr. Banks proposes, AEP Ohio could reject these modifications and withdraw the Stipulation.<sup>35</sup>

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<sup>30</sup> Stipulation and Recommendation, ¶IV(1)(r).

<sup>31</sup> Section 4928.02, Revised Code.

<sup>32</sup> Sections 4928.141, 4928.143, Revised Code.

<sup>33</sup> Section 4928.141, Revised Code ("To that end, the electric distribution utility shall apply to the public utilities commission to establish the standard service offer in accordance with section 4928.142 or 4928.143 of the Revised Code and, at its discretion, may apply simultaneously under both sections, except that the utility's first standard service offer application at minimum shall include a filing under section 4928.143 of the Revised Code.").

<sup>34</sup> *Id.*

<sup>35</sup> Tr. Vol. VII, p. 1194; Section 4928.143(C)(2)(a), Revised Code.

RESA would prefer to see the transition to a full competitive auction immediately. However, as noted by RESA witness Ms. Ringenbach, "...RESA understands that there are unique factors associated with AEP's structure which inhibit an immediate move to the [competitive bid process]."<sup>36</sup> The reality is that it is unrealistic for AEP Ohio to transition to a competitive bid process immediately.<sup>37</sup> Although the Stipulation may not require AEP Ohio to move immediately to a competitive market, the Stipulation creates a "glide path" to a full competitive market promoting state goals and objectives in the long-term that offset any short-term shopping setbacks.<sup>38</sup>

Thus, AEP Ohio's commitment to move to a competitive bid auction is a substantial benefit to consumers that may not be achieved as quickly outside this Stipulation. As a result, RESA believes AEP Ohio's commitment to move to a 100% competitive, market-based pricing regime and complete full legal corporate separation in 41 months is reasonable and a fair compromise that benefits rate-payers and the public interest.<sup>39</sup>

ii. *The Stipulation Provides Stability and Regulatory Certainty.*

The Stipulation also provides for a stable marketplace for competition by creating certainty and stability by resolving the litigation at the FERC and PUCO regarding AEP Ohio's

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<sup>36</sup> RESA Ex. 1, p. 6.

<sup>37</sup> AEP Ohio had previously elected to be an FRR entity and thus did not participate in the RPM capacity auctions for delivery years 2012–2015. Exelon Ex. 1, pp. 3–4. Because the next capacity auction occurs on May 2012, for delivery years June 1, 2015–May 2016, this was determined by the parties to be the best date to transition to full market. *Id.*

<sup>38</sup> Constellation Ex. 1, p. 9; RESA Ex. 1, p. 8; Cross Exam of Staff Witness Fortney, Tr. Vol. X, p. 1753 ("Q: Do you believe that the stipulation as proposed promotes state goals and objectives in the long term that offset any shopping setbacks?" A: "I believe that the stipulation as proposed promotes state goals and objectives in the long term that offset any shopping setbacks.").

<sup>39</sup> *Id.*; RESA Ex. 1, p. 13.

capacity charges.<sup>40</sup> Currently, AEP Ohio has three separate cases filed at the FERC and PUCO including suits under Sections 205 and 206 of the Federal Power Act<sup>41</sup>, as well as Case No. 10-2929-EL-UNC at the PUCO.<sup>42</sup> The Stipulation resolves the uncertainty caused by this litigation by setting the capacity prices at \$255/MW-day (almost \$100 MW day less than those requested by AEP Ohio) with a three year phase-in to full RPM market pricing.<sup>43</sup>

As noted by Exelon witness Mr. Dominguez, the uncertainty of capacity pricing in Ohio has been a “cloud” on the Ohio retail electric market, limiting investment by retail electric service providers.<sup>44</sup> FES witness Mr. Shanker admitted the outcome of these proceedings is not certain, and is subject to the decision-making of two separate commissions.<sup>45</sup> Mr. Shanker notes there are three potential outcomes of the litigation for capacity pricing: 1) a state compensation mechanism, 2) a FERC determined rate that is cost-based or just and reasonable in the absence of a state compensation mechanism, or 3) an RPM default.<sup>46</sup> While parties in opposition, such as FES represented by Mr. Shanker, may believe RPM-pricing for capacity is the only “right” price

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<sup>40</sup> RESA Ex. 1, p. 7.

<sup>41</sup> 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.

<sup>42</sup> Cross examination of FES witness Mr. Shanker , Tr. Vol. VI, pp. 1139–40.

<sup>43</sup> Stipulation and Recommendation, ¶IV(2)(b); *see also* Stipulation and Recommendation, ¶IV(2)(b)(4) (AEP Ohio’s commitment to stay and/or withdraw the above proceedings).

<sup>44</sup> Tr. Vol. VI, pp. 1013–1015.

<sup>45</sup> Tr. Vol. VI, p. 1140.

<sup>46</sup> Tr. Vol. VI, pp. 1143–44.

and other prices are “wrong”, the fact is that all three options are legal and could be granted by the FERC or the PUCO.<sup>47</sup>

As noted by Exelon witness Mr. Dominguez, the agreement on capacity pricing in Ohio has provided clarity in pricing for CRES provides.<sup>48</sup> The Stipulation also provides certainty as to other pending AEP matters that were consolidated in the Stipulation hearing and which are inextricably linked to this ESP case.

iii. *The Stipulation Removes a Number of Barriers to Shopping.*

The Stipulation removes a number of tariff requirements and business practices that were barriers to retail competition in the original ESP application.<sup>49</sup> The Stipulation provides the following changes to the tariff:

- 1) CRES providers will be provided with a Master Customer List, with capacity (PLC) and transmission (NSPL) information, by January 1, 2012 and will update this information every 15 days.
- 2) Further, within 30 days after the Commission’s approval of the Stipulation, and prior to the addition of the information to the Master Customer List, AEP Ohio will provide PLC and NSPL information via email to brokers and marketers within five 5 business days of receipt of an email request for such information.
- 3) Participating CRES providers on the AEP Ohio system will receive historic usage via EDI 867 protocols and enrollments response via the EDI 814 protocols.
- 4) AEP Ohio will eliminate the 90 day notice that certain customers have to provide before they can enroll with a CRES provider by the end of 2011.
- 5) AEP Ohio has agreed beginning in January 2012 to discuss reducing the \$10 switching fee for customers who wish to enroll with a CRES provider.

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<sup>47</sup> *Id.*

<sup>48</sup> Tr. Vol. VI, p. 1014.

<sup>49</sup> Stipulation and Recommendation, ¶(IV)(1)(s); Constellation Ex. 1, pp. 11–12; RESA Ex. 1, pp. 10–11.

- 6) AEP Ohio will eliminate the 12 month minimum stay by June 1, 2015 SSO auction and the minimum seasonal stay requirement for residential and small commercial customers will also be eliminated.

The removal of these restrictions and limitations will further encourage shopping in AEP Ohio's service territory.

iv. *The Stipulation Removes a Number of Non-bypassable Generation Riders.*

The Stipulation is also an improvement from the original ESP as it removes seven non-bypassable riders from the original application.<sup>50</sup> AEP Ohio does retain the Generation Resource Rider ("GRR"), a generation related rider that is proposed as non-bypassable.<sup>51</sup> The GRR under the Stipulation, however, differs from the one in the original ESP application in that it is limited to two projects: the Turning Point solar project and the conversion of the Muskingum River 5 coal unit to an Ohio shale gas combined cycle unit (referred to in the hearing and Stipulation as MR6). Thus, only 550 MW at most can be the subject of the GRR and those two projects are not "preordained" by the Commission.<sup>52</sup> AEP Ohio must in a separate application demonstrate the need for such generation and demonstrate that the GRR would meet certain statutory standards in order to recover the costs on a non-bypassable basis.<sup>53</sup> The signatory parties are free to contest any claimed expenses under this rider and "...retain a variety of rights

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<sup>50</sup> RESA Ex. 1, p. 5; Stipulation and Recommendation, ¶IV(1)(a). The riders dropped are Provider of Last Resort Rider ("POLR"), Environmental Investment Carrying Charge Rider ("EICCR"), Generation NERC Compliance Cost Recovery Rider, Facility Closure Cost Recovery Rider, Carbon Capture and Sequestration Rider, Rate Security Rider and the non-bypassable environmental unit conversion/re-dedication structure is also being eliminated.

<sup>51</sup> Stipulation, ¶¶IV(1)(d);IV(2)(a).

<sup>52</sup> Constellation Ex. 1, p. 10.

<sup>53</sup> *Id.*; Cross examination of Constellation witness Mr. Fein, Tr. Vol. VI, pp. 989–90.



with respect to any future proceeding that is to determine whether to establish a non-bypassable charge and the appropriate level of the charge through the GRR.”<sup>54</sup>

The Stipulation addresses and generally resolves RESA’s five policy issues with the original ESP, and will provide significant benefits to ratepayers and the public interest.

C. The Stipulation 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 furthers the policies of the state codified in Section 4928.02, Revised Code. The Stipulation provides for a transition to a competitive electric market. Staff witness Mr. Fortney notes that the Stipulation provides for “[f]air and reasonably priced rates which support the provision of safe and reliable service.”<sup>55</sup> The Stipulation “gives customers effective choices that ensure diversity of electric supply and suppliers.”<sup>56</sup>

i. *An ESP Must be More Favorable in the Aggregate than the Results of an MRO.*

Section 4928.143(C)(1), Revised Code requires that in order for the Commission to approve the ESP, the Commission must find that the ESP is more favorable in the aggregate than the expected results under an MRO (the “in the aggregate test”).<sup>57</sup> The parties in this case have

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<sup>54</sup> *Id.*

<sup>55</sup> Staff Ex. 4, pp. 1–2; Section 4928.02(A), Revised Code.

<sup>56</sup> Staff Ex. 4, p. 2; Section 4928.02(C), Revised Code.

<sup>57</sup> “Subject to division (D) of this section, the commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that 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.”

conducted both quantitative and qualitative analyses to determine whether the Stipulated ESP is indeed more favorable in the aggregate than the expected results under an MRO.<sup>58</sup>

Opponents of the Stipulation take the position that the “in aggregate test” should be based on a pure numerical calculation achieved by projecting an overall price per MWh they believe the ESP II will create and comparing that with a matching projection for what an MRO auction or series of auctions would produce. The opponents find that the projected price for the ESP II is higher than for the MRO, but the results and methodologies are different. IEU witness Mr. Murray finds Columbus Southern Power Company’s proposed ESP II to be \$8.55 per MWh and Ohio Power Company’s proposed ESP II to be \$4.83 per MWh more expensive than his projection of the MRO price.<sup>59</sup> FES witness Mr. Schnitzer finds the ESP II to be more expensive in the range of \$2.19 to \$4.93 per MWh depending where the Pool Modification Rider (“PMR”) and EICCR come in.<sup>60</sup> Mr. Schnitzer’s projections—both what the ESP II rates would be and the results of the MRO auction(s)—are inherently speculations about future events. In fact, Mr. Schnitzer, on cross examination, acknowledged that under some variations of his own projections, the ESP II would be more favorable than the MRO—specifically, if the PMR rate was at zero, the EICCR rate was high, and the capacity cost was set at \$162 per MW/day.<sup>61</sup>

Staff witness Mr. Fortney’s Direct Prepared Testimony before the decision was rendered in AEP Ohio’s first ESP, Case Nos. 08-917-EL-SSO et al. (“ESP I”), found the ESP \$0.034/kWh

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<sup>58</sup> See, for example, the testimonies of AEP Ohio witnesses Ms. Thomas, Mr. Hamrock, and Mr. Allen (AEP Ohio Exs. 4,5,8) and OMAEG witness Ms. Claytor (OMAEG Ex. 1) and OEG witness Mr. Baron (OEG Ex. 1).

<sup>59</sup> Tr. Vol. VIII, p. 1531.

<sup>60</sup> See FES Ex. 3, Direct Prepared Testimony of Michael Schnitzer and Ex. MMS-4. The PMR proposes to collect costs associated with termination of the AEP Power Pool. EICCR covers the carrying costs of certain environmental investments.

<sup>61</sup> TR. Vol. VII, p. 1455.

less than the MRO. When asked if he had done similar studies post the ESP I decision which pulled the POLR charges out of the MRO, he responded that a quantitative analysis now would show the ESP II to be roughly \$2.12 more per MWh.<sup>62</sup> AEP Ohio witness Ms. Thomas's price comparison comes out with a different numerical result, also finding the MRO slightly more favorable than the ESP after removing the POLR charges from her analysis.<sup>63</sup> However, both Mr. Fortney and Ms. Thomas note there is uncertainty and lack of precision relating to these price tests, and conclude that the ESP is more favorable than the MRO when considering qualitative and other non-price quantitative factors.<sup>64</sup>

The difference between the experts as to the projected prices that the Stipulation and MRO will produce in the future is understandable, as no one can say with certainty what fuel prices will be a couple years out, let alone how the capacity rate will be determined by the FERC or this Commission. The multiple methodologies and results, even from witnesses that are united in opposing the Stipulation, demonstrates that the pure numeric price analysis is too imprecise and uncertain to be conclusive. More important, a pure numeric price analysis of the type presented by the IEU or FES fails to consider other quantitative benefits and important qualitative benefits that will flow from the Stipulation. While such a quantitative analysis may be useful and informative, it cannot be conducted with the level of precision in order for it to be the sole determinative factor for the outcome of this case.

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<sup>62</sup> Tr. Vol. X, p. 1697.

<sup>63</sup> AEP Ohio Ex. 5, Direct Prepared Testimony of Laura Thomas and Ex. LJT-3.

<sup>64</sup> Staff witness Mr. Fortney notes, "the Market rate is subject to significant uncertainty due to the volatility of forward contract prices." (Staff Ex. 4, p. 4). Ms. Thomas also notes that the GRR value, for example, "...is unknown at this time and not capable of being forecast." (Tr. Vol. XIII, pp. 2349–50).

- ii. *Section 4928.143(C)(1), Revised Code Requires More Than a Cost of Service Type Analysis.*

Reliance on a pure numeric analysis of the type used for cost of service rate making is inconsistent with the purpose of Section 4928.143(C)(1), Revised Code. The statutory wording of the “in the aggregate test” and the history of electricity ratemaking in Ohio establishes that a cost of service type analysis of projected ESP and MRO prices alone is not enough to determine whether the Commission should accept an ESP application. Prior to Ohio’s restructuring of the electric service industry, electric service rates were established using a cost of service formula prescribed by statute.<sup>65</sup> The General Assembly required the Commission when there was an application to raise existing utility service rates to: establish a test year; determine the depreciated value of the capital assets which are used and useful to provide service during that test year; determine a fair and reasonable rate of return on such assets; determine the reasonable operation, maintenance, administrative and executive expenses during the test year in order to determine a revenue requirement. Then the Commission was to set rates designed to collect that revenue requirement.<sup>66</sup> In sum, rate making in Ohio before restructuring for energy and capacity was based on criteria supplied by the General Assembly with objective finding of facts to be made by the Commission.<sup>67</sup>

In 1999, with the passage of Senate Bill 3, the rate making formula as to electric energy and capacity was eliminated. The General Assembly declared energy and capacity to be

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<sup>65</sup> Section 4909.15, Revised Code.

<sup>66</sup> *Id.*; *see also* Section 4909.18, Revised Code.

<sup>67</sup> Sections 4909.15, 4909.18, Revised Code still applies for distribution or “wire” service.

“competitive services”.<sup>68</sup> Competitive services were to be supplied by the electric distribution company for the default standard service, rather than being based on the cost of service using the electric distribution utilities dedicated generation facilities, the competitive services were to be priced at market. In 2008, the General Assembly, altered its approach again with the passage of Senate Bill 221. Under Senate Bill 221, which the Governor called a “hybrid system”<sup>69</sup>, the electric distribution companies could either go to market procurement for generation and capacity using the “market rate option”<sup>70</sup>, or an electric distribution utility could elect to submit an “electric security plan”.<sup>71</sup>

Under the ESP, the electric distribution utility would start with its then-current rates and adjust those current rates for specified expenses authorized in Section 4928.143, Revised Code. Unlike the cost of service methodology which preceded it, the ESP did not call for a strict numeric analysis of all costs and revenues. Instead, Section 4928.143 (C)(1) tested the reasonableness of the ESP by requiring a determination that:

... 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)

This reasonableness determination calls for the Commission to consider a number of factors, both qualitative and quantitative in determining whether the ESP is more favorable in the aggregate than the expected results under an MRO.

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<sup>68</sup> Section 4928.03, Revised Code to which the Commission could add other services it deemed competitive.

<sup>69</sup> Senate Bill 221 Introduction speech at the State House by Governor Strickland May 1, 2008.

<sup>70</sup> Section 4928.142, Revised Code.

<sup>71</sup> Section 4928.143, Revised Code

It is clear when examining the history of electricity regulation in Ohio, that the General Assembly has used a pure cost of service numeric test for approving electricity rate structures in the past. Thus if the General Assembly wanted just cost component analysis to decide if the ESP was more favorable it could have done so. Section 4928.143, Revised Code clearly requires more than a cost component analysis, Thus, one cannot consider Mr. Murray or Mr. Schnitzer's studies alone and conclude that the ESP II is less favorable than an MRO.<sup>72</sup>

- iii. *The Qualitative Benefits Under the Stipulation Demonstrate that the Stipulation is More Favorable in the Aggregate than the Expected Results in an MRO.*

The qualitative benefits of the Stipulation demonstrate that the ESP Stipulation is more favorable in the aggregate than the expected results of an MRO. The Stipulation provides certainty, stability, and predictability of rates for customers for the life of the ESP, and beyond. The Stipulation also eliminates the risk and uncertainty associated with extended litigation with regard to a number of matters, including capacity costs. The Stipulation allows consumers to obtain the advantages of pricing of electricity through a competitive bid auction, but retain the flexibility and Commission oversight of an ESP.

A significant benefit of the Stipulation is that it brings AEP Ohio's retail electricity service to competitive market faster than is possible under an MRO.<sup>73</sup> The Stipulation requires AEP Ohio to conduct a competitive bid process by June 1, 2015, whereas under an MRO, AEP Ohio's full SSO load would not be subject to a competitive bid auction until 2017,<sup>74</sup> at the

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<sup>72</sup> The Office of the Consumers' Counsel also presented a quantitative analysis conducted by Dr. Duann. However, that study however failed to follow the Commission's order on treatment of the EICCR and significant portions of Dr. Duann's Direct Prepared Testimony were not admitted into the record.

<sup>73</sup> Exelon Ex. 1, p. 3.

<sup>74</sup> Assuming the first auction would occur in 2012.

earliest. Section 4928.142(D), Revised Code provides that the first five years of the MRO is subject to a blending period, or phase-in, of the load bid through the competitive process. The blending period subjects ten percent of the SSO load to a competitive bid process in year one, and *not more than* twenty percent in year two, thirty percent in year three, forty percent in year four, and fifty percent in year five.<sup>75</sup> As confirmed by IEU Witness Mr. Murray, under an MRO, AEP Ohio would not transition to a full competitive bid process for a minimum of six years, resulting in a blending period for a minimum of five years.<sup>76</sup> The Stipulation is thus more beneficial than the MRO because it allows AEP Ohio to conduct a competitive bid auction for its full SSO load in 41 months, and eliminates the uncertainty related to the MRO blending period.

The Stipulation also provides for a number of other benefits that would not occur under an MRO. Consumers are benefited through a shareholder-funded commitment focused on economic development and low-income assistance programs. The Ohio Growth Fund will fund scholarships and/or alternative energy upgrades related to energy efficiency and/or alternative energy for Ohio higher education institutions.<sup>77</sup> The fund will provide \$50,000 each year for the next three years of the ESP, and provide students with the opportunity to become involved in a growing industry.<sup>78</sup> Partnership With Ohio funding is also available for low-income customers and provides assistance in paying their electric bills and supports food banks and United Way

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<sup>75</sup> Cross Examination of Mr. Banks, Tr. Vol. VII, p. 1194 (“It’s my understanding under [the MRO] they could not take their full load to competitive bid, it would be limited to 10 percent for the first year.”); Section 4928.142(D), Revised Code; *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*, Case No. 102586-EL-SS0, Opinion and Order, February 23, 2011.

<sup>76</sup> Cross examination of Mr. Murray, Tr. Vol. XI, pp. 1878–79.

<sup>77</sup> AEP Ohio Ex. 8, Direct Prepared Testimony of Joseph Hamrock, p. 24.

<sup>78</sup> OMAEG Ex. 1, Direct Prepared Testimony of Peggy Claytor, pp. 6–7; AICUO Ex. 1, Direct Prepared Testimony of C. Todd Jones, pp. 3–4.

funded programs that provide assistance to low-income households in AEP Ohio's service territory.<sup>79</sup>

In sum, the qualitative benefits of the Stipulation are significant, and these benefits must be factored into the "in the aggregate test". A review of the quantitative analyses by witnesses Mr. Murray and Mr. Schnitzer fail to recognize the qualitative benefits and non-price quantitative benefits and thus, these analyses are incomplete. In stark contrast, Staff Witness Mr. Fortney and AEP Ohio witnesses Mr. Allen and Mr. Hamrock factor in the qualitative benefits, as well as other non-price related quantitative benefits, and find that ESP II in the aggregate is more favorable than the MRO.

Some of the non-signatory parties have argued that this Commission must reject the Stipulation based on their numeric tests predicting that electricity prices under an MRO will be less expensive than prices under the Stipulation.<sup>80</sup> These parties fail to understand the purpose of Section 4928.143(C)(1), Revised Code as a reasonableness test that requires the Commission to subjectively weigh a number of qualitative and quantitative factors in order to determine whether the Stipulation is more favorable than an MRO. While such a quantitative analysis may be useful and informative, a strict numeric test is not required by statute, cannot be conducted with precision, and thus cannot be determinative of the outcome of this case.

## **CONCLUSION**

The most important fact in this proceeding is that all parties support a competitive bid auction and a transition to a competitive market, but disagree on when and how AEP Ohio should get there. For AEP Ohio, the Staff and the eighteen other signatory parties, the path lies

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<sup>79</sup> AEP Ohio Ex. 8, p. 23.

<sup>80</sup> See, e.g. Direct Prepared Testimonies of Mr. Murray (IEU Ex. 9A, 9B) and Mr. Schnitzer (FES Ex. 3, 4).



in the Stipulation which will achieve the goal of public procurement of capacity and energy with RPM pricing for capacity for shopping customers in 41 months. The opponents object and demand that it be done now. It should be noted, though, that if the Commission finds that the Stipulation fails the “in the aggregate test”, this does not mean AEP Ohio must instead adopt an MRO or adjust the RPM pricing and keep the wholesale auction. If the Stipulation is rejected, AEP Ohio will no longer be under an obligation to move to a competitive wholesale auction, place its generation in the next PJM Base Residual Auction, provide the additional information and remove the switching barriers for retail shopping. What will happen is uncertainty over who will set the capacity charge and what that charge will be.

From the opponents’ perspective, the ideal would be having all the benefits of the Stipulation immediately, instead of in 41 months. The ideal, though, should not become the enemy of the good. As noted by Staff witness Mr. Fortney, an ESP may achieve a “greater good in the long term at the cost of some short-term goals and policies.”<sup>81</sup>

The Stipulation is a well-crafted bargain which was the product of serious bargaining among capable, knowledgeable parties. The Stipulation, as a package, benefits ratepayers and the public interest. The Stipulation does not violate any important regulatory principle or practice. The Stipulation provides significant benefits to consumers and meets the policy of this state by providing a clear path to a competitive market, faster than can be achieved under an MRO, among numerous other benefits. Thus, this Commission should approve the Stipulation as submitted.

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<sup>81</sup> Tr. Vol. X, p. 1753.

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## **CERTIFICATE OF SERVICE**

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

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Summary: Brief Retail Energy Supply Association's Post-Hearing Brief in Support of the Stipulated Electric Security Plan Provided in the Stipulation and Recommendation Filed September 7, 2011 electronically filed by M HOWARD PETRICOFF on behalf of Retail Energy Supply Association