

FILE

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio	)	
Power Company and Columbus Southern	)	Case No. 10-2376-EL-UNC
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	)	Case No. 10-343-EL-ATA
to Amend its Emergency Curtailment	)	
Service Riders	)	

In the Matter of the Application of	)	
Ohio Power Company	)	Case No. 10-344-EL-ATA
to Amend its 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	)	Case No. 11-4921-EL-RDR
Deferred Fuel Costs Ordered Under	)	
Ohio Revised Code 4928.144	)	

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**POST-HEARING BRIEF  
SUBMITTED ON BEHALF OF THE STAFF  
OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**Mike DeWine**  
Ohio Attorney General

**William L. Wright**  
Section Chief

**Werner L. Margard III**  
**John H. Jones**  
**Steven L. Beeler**  
Assistant Attorneys General  
Public Utilities Section  
180 East Broad Street, 6<sup>th</sup> Fl  
Columbus, OH 43215-3793  
614.466.4397 (telephone)  
614.644.8764 (fax)  
[werner.margard@puc.state.oh.us](mailto:werner.margard@puc.state.oh.us)  
[john.jones@puc.state.oh.us](mailto:john.jones@puc.state.oh.us)  
[steve.beeler@puc.state.oh.us](mailto:steve.beeler@puc.state.oh.us)

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**INTRODUCTION**

This case presents the Commission with a highly beneficial alternative to the MRO. The stipulation would preserve the market rate benefits of the MRO proposal while creating many new advantages not the least of which is the preservation of the ESP structure. It retains the vital flexibility that this Commission needs to address the complex problems, anticipated and unanticipated, that the future of the electric industry in Ohio holds. Approval would give the stakeholders what is sorely needed, stability today and predictability for tomorrow.

**DISCUSSION**

Rule 4901-1-30, O.A.C, authorizes parties to Commission proceedings to enter into stipulations. Although not binding upon the Commission, the terms of such an agreements are to be accorded substantial weight.<sup>1</sup> 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. The standard of review for considering the reasonableness of a stipulation has been discussed

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<sup>1</sup> *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St, 3d 123, at 125, citing *Akron v. Pub. Util. Comm.* (1978), 55 Ohio St, 2d 155.

in a number of prior Commission proceedings.<sup>2</sup> In considering the reasonableness of a stipulation, the Commission has used the following criteria;

- (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?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve cases.<sup>3</sup> When the Commission reviews a contested stipulation, as is the case here, the Court has also been clear that the requirement of evidentiary support remains operative. While the Commission “may place substantial weight on the terms of a stipulation,” it “must determine, from the evidence, what is just and reasonable.”<sup>4</sup> The agreement of some parties is no substitute for the procedural protections reinforced by the evidentiary support requirement.<sup>5</sup>

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<sup>2</sup> See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Ohio Edison Co.*, Case No. 92-1463-GA-AIR, et al. (August 26, 1993); *Ohio Edison Co.*, Case No. 89-1001-EL-AIR (August 19, 1993); *The Cleveland Electric Illumination Co.*, Case No. 88-170-EL-AIR (January 31, 1989); and *Restatement of Accounts and Records (Zimmer Plant)*; Case No. 84-1187-EL-UNC (November 26, 1985).

<sup>3</sup> *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St. 3d 559, citing, *Consumers' Counsel*, *supra*, at 126.

<sup>4</sup> *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126, 592 N.E.2d 1370.

<sup>5</sup> *In re Application of Columbus S. Power Co.* (2011), 129 Ohio St.3d 46.

The signatory parties, and the Commission staff, respectfully submit that the stipulation here satisfies the reasonableness criteria, and that the evidence of record supports and justifies a finding that its terms are just and reasonable.

**A. Serious Bargaining**

The list of parties that signed the stipulation represents a variety of diverse interests, which include industrial and commercial customers, municipalities, CRES providers, competitive generation suppliers, alternative energy resource and energy efficiency providers, and environmental advocacy groups.<sup>6</sup> The signatories are a listing of the major users of power in the AEP Ohio service territory. The signatory parties have an extensive history of participation and experience in matters before the Commission.<sup>7</sup>

The meeting process that lead to the stipulation was open and available to all parties.<sup>8</sup> Meetings were noticed and well attended. Those non-signatories who were parties during the discussions participated.<sup>9</sup> After engaging in settlement negotiations for approximately one month with the signatory parties, the non-signatory parties chose to stop participating when the August hearing date arrived.<sup>10</sup> The non-signatory parties

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<sup>6</sup> *Id.* at 4-5; Direct Testimony of David I. Fein (Constellation Ex. 1) at 13; Direct Testimony of Teresa L. Ringenbach (RESA Ex. 1) at 13.

<sup>7</sup> Prefiled Testimony of Robert B. Fortney (Staff Ex. 4) at 2.

<sup>8</sup> Direct Testimony of Joseph Hamrock in Support of the Stipulation (AEP Ex. 8) at 9; Supplemental Testimony of Joseph Dominguez (Exelon Ex. 1) at 2.

<sup>9</sup> AEP Ex. 8 at 9.

<sup>10</sup> EAP Ex. 8 at 9.

opposed a motion to continue the hearing date for the purpose of continuing the settlement discussions. Even after the signatory parties had their motion to continue granted, AEP Ohio continued to reach out to the non-signatory parties in an attempt to keep an open settlement dialogue.<sup>11</sup> Furthermore, the day before the stipulation was filed, AEP Ohio sent the stipulation to all Parties, including non-signatory parties, and requested a final counter-offer or solicitation for additional discussions.<sup>12</sup> It is abundantly clear that the stipulation is the result of serious bargaining among knowledgeable parties.

Although the conclusion that the stipulation results from serious bargaining among knowledgeable parties is obvious, that does not prevent a few parties from challenging it. The criticisms have no merit. In sum, the stipulation is the product of serious negotiations among knowledgeable parties.

## **B. Public Interest**

The benefits of the proposed stipulation to the public are large and broad. It provides:

- The term of the ESP will begin January 2012 and continue through May 31, 2016. Beginning June 1, 2015 through May 31, 2016 AEP Ohio will use a competitive bid process (CBP) to meet its SSO obligation. This will yield a fully competitive SSO rate into the future.

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<sup>11</sup> *Id.*; Tr. Vol. V at 872-873; Vol. VI at 940-942.

<sup>12</sup> AEP Ex. 8 at 10; Tr. Vol. VI at 903-909.



- Compared to an MRO, an ESP price benefit of \$130 million for non-shopping customers.
- A substantially reduced carrying cost on the unamortized balance of deferred fuel cost as a result of AEP Ohio agreeing to utilize a long-term debt interest rate instead of the weighted average cost of capital that included a cost of equity component that the Commission previously authorized for the amortization and recovery period.
- A discounted capacity price over the term of the ESP to CRES providers that will amount to \$856 million.
- A transition to complete corporate separation and full market pricing for generation services that is materially quicker than what would be possible otherwise, and it provides for transparent and stable pricing during that transition.
- The withdrawal of a number of existing and proposed nonbypassable generation-related riders, such as the Facilities Closure Cost Recovery Rider, Carbon Capture and Sequestration Rider, Provider of Last Resort Rider (POLR), Environmental Investment Carrying Cost Rider (EICCR), and Rate Security Rider. The withdrawal of these proposals provides significant rate benefits to customers.
- Shopping customers who return to the SSO will obtain service at the applicable SSO rate, rather than at market prices.

- Automatic annual increases or decreases to the (non-fuel) bypassable generation rate will be made as necessary to achieve an average rate from January 2012 through May 31, 2015. This provides rate stability and predictability for customers, while shifting risks to AEP Ohio.
- A commitment from AEP Ohio to do a substantial fleet transformation and fuel diversification utilizing Ohio shale gas. This would not have been possible absent settlement. Having AEP enter into competitively priced long term shale gas contracts with Ohio producers promotes investment and employment growth in Ohio.
- AEP Ohio will pursue up to 350 MW of customer sited combined heat and power (CHP), waste energy recovery (WER) and distributed generation resources in its service territory, supporting the development of alternative capacity resources.
- During the term of the plan, AEP Ohio has committed to work with the Ohio Hospital Association to identify specific distribution circuits that serve hospitals for targeted reliability improvement up to \$5 million per year during the term of the ESP. AEP Ohio has also committed to \$3 million annually for the benefit of low-income customers and \$5 million a year for the benefit of economic development for the term of the ESP provided that its ROE exceeds 10% for the prior calendar year

These benefits touch many customers and are self-explanatory. They are not associated with the MRO and show, therefore, that not only is this plan in the public interest but it is

also more favorable than the MRO alone would have been. This ESP-based stipulation is, in a financial sense, superior to the MRO from the perspective of the ratepayer. Further the stipulation provides additional, less tangible benefits. Simply having an overall *plan* that promotes enhancements in the distribution system, saves ratepayers millions in transmission costs, promotes energy efficiency, provides rate stability, promotes economic development with specific, tangible commitments and supporting low income ratepayers is an advantage. Even if some of these attributes could have been done separately, achieving them in one group is advantageous by enhancing the perception of stability in the state. Likewise, the preservation of the ESP form of regulation is an advantage in itself. While the future is always unknown, it appears particularly threatening from the current vantage point. Maintaining the regulatory flexibility of an ESP is particularly wise when the future appears so very threatening.

Staff further supports the analysis of ratepayer and public interest benefits set forth in the Companies' post-hearing brief. The signatory parties ask that the Commission exercise its discretion to find that the stipulation, as a whole, benefits the public interest.

**C. The stipulation does not violate any important regulatory principle or practice, rather it promotes public policy.**

The final prong of the Commission's three-part test is passed, as the stipulation does not violate any important regulatory principle or practice. In fact, the stipulation furthers important regulatory policies, it does not violate them. The General Assembly is clear about the policies it intends to promote through electric regulation restructuring and

has provided a list of these policies in R.C. 4928.02. The Commission has recognized that the state policy codified by the General Assembly in Chapter 4928, Revised Code, sets forth important objectives. And it has determined that, in determining whether an ESP meets the requirements of R.C. 4928.143, it will take into consideration the policy provisions of R.C. 4928.02, and use those policies as a guide in its implementation of R.C. 4928.143.<sup>13</sup>

**D. Public policy goals are achieved.**

The Commission is charged to "[e]nsure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service."<sup>14</sup> The stipulation furthers these goals in multiple ways providing a reasonable and steady path to fully competitive markets for supplying electricity to AEP Ohio's customers.<sup>15</sup> With corporate separation of AEP Ohio's generation and non-generation functions, along with associated changes to AEP's business model, the path is being cleared for competitive auctions to serve AEP Ohio's SSO load.<sup>16</sup> Implementing an auction-based SSO could potentially create a fully competitive rate into the future.<sup>17</sup> AEP Ohio will

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<sup>13</sup> *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets, et al.*, Case Nos. 08-917-EL-SSO, *et al.* (Opinion and Order) (March 18, 2009) at 13.

<sup>14</sup> R.C. 4928.02(A).

<sup>15</sup> AEP Ex. 8 at 6.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

also switch to PJM's Reliability Pricing Model (RPM), thereby eliminating the distinction between the compensation model for AEP Ohio's generating resources and the compensation model adopted by competitive retail electric suppliers.<sup>18</sup> During the transition, AEP Ohio will provide discounted capacity prices to competitive suppliers for increasing portions of AEP Ohio's generation portfolio in order to support growth of robust competitive supply options for customers and to resolve the pending capacity compensation case for AEP Ohio.<sup>19</sup> The generation prices for SSO customers during this transition will reflect a highly simplified pricing structure that essentially fixes the base generation rate and varies primarily based on the cost of fuel and other components of the FAC rate.

The stipulation also provides mechanisms, the DIR and ESRR, to speed the funding for reliability enhancements. Energy efficiency is directly benefitted. Transmission costs are avoided leading to more reasonably priced electricity. It provides an opportunity for AEP Ohio to build new generating resources that will be dedicated to its retail customers that can serve as a hedge against potentially volatile market prices.

The Commission is charged to "[e]nsure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs."<sup>20</sup> The stipulation accomplishes this through the Market Transition Rider, a Load Factor

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> R.C. 4928.02(B).

Provision, and the interruptible rate program which are rate design features which are very important to customers who are large customers.

The Commission must "[e]nsure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers."<sup>21</sup> The stipulation furthers this goal by enabling more shopping. During the ESP, AEP Ohio will provide discounted capacity prices to CRES providers for substantial and increasing portions of AEP Ohio's capacity resources in order to support growth of robust competitive supply options for customers and to resolve the pending capacity compensation case for AEP Ohio.<sup>22</sup> As Company witness Munczinski testifies, the RPM-priced set aside under the stipulation for 2012 is roughly equal to the entire load of Toledo Edison, for 2013 is roughly equal to the entire load of Dayton Power & Light and for 2014 is roughly equal to the entire load of Duke Energy Ohio.<sup>23</sup> The generation prices for SSO customer during this transition will reflect a highly simplified pricing structure.<sup>24</sup> In short, the stipulation provides a transition to complete corporate separation and full market pricing for generation services that is materially quicker than what would be possible otherwise, and it provides for transparent and stable pricing during that transition.<sup>25</sup>

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<sup>21</sup> R.C. 4928.02(C).

<sup>22</sup> AEP Ex. 8 at 12-13.

<sup>23</sup> *Id.* at 13.

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

<sup>25</sup> *Id.*

The Commission must “[p]rotect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource.”<sup>26</sup> The continued funding for the Partnership with Ohio (PWO) initiative of \$3 million annually helps protect at-risk populations.<sup>27</sup> The PWO fund has benefitted qualifying low-income customers through assistance in paying their electric bills, and it also has helped support food banks and United Way funded programs that provided targeted assistance to low income households in AEP Ohio’s service territory.

The Commission must “[f]acilitate the state's effectiveness in the global economy.”<sup>28</sup> The stipulation does this quite directly by providing necessary support and discount pricing for Ohio manufacturing customers. Furthermore, other non-earmarked shareholder money is provided for economic development. AEP Ohio has agreed to provide funding the Ohio Growth Fund initiative of \$5 million annually during the term of the ESP will be utilized to attract new businesses and provide economic development opportunities within the state.<sup>29</sup> AEP Ohio has also committed to substantial fleet transformation and fuel diversification utilizing Ohio shale gas.<sup>30</sup> AEP Ohio will endeavor to enter into competitively priced long-term shale gas contracts for AEP Ohio

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<sup>26</sup> R.C. 4928.02(L).

<sup>27</sup> AEP Ex. 8 at 23.

<sup>28</sup> R.C. 4928.02(N).

<sup>29</sup> AEP Ex. 8 at 23.

<sup>30</sup> *Id.* at 16.

generation plants with Ohio producers who commit to investment and employment growth in Ohio.<sup>31</sup>

The stipulation will be subject to continuing review and oversight and should be approved. These are just a few of the numerous benefits provided by the stipulation. These benefits further the important policy goals of the General Assembly and show that the stipulation meets the third prong of the Commission's three-part test on the reasonableness of a contested stipulation.

**E. No important regulatory principle or practice is violated.**

IEU, FES and OCC argue that the stipulation violates sound regulatory policy. They are wrong. Their multitude of regulatory principle claims can be summarized as follows: (1) the stipulation creates arbitrary rate increases through the DIR and PIRR; (2) the stipulation is anti-competitive and discriminatory; and (3) the stipulation fails the "in the aggregate" test on the reasonableness of an ESP.<sup>32</sup> These arguments are all misguided.

**1. The DIR and PIRR are reasonable.**

The stipulation does not create arbitrary rate increases for AEP Ohio customers through the DIR and PIRR. Rather, the DIR and PIRR provide fair and reasonable rates to all customer classes. First, IEU and OCC claim that that the DIR violates regulatory

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<sup>31</sup> *Id.*

<sup>32</sup> Direct Testimony in Opposition to the Stipulation of Kevin Murray (IEU Ex. 9A) at 9.



practices and principles because the signatory parties failed to provide support under R.C. 4928.143(B)(2)(h).<sup>33</sup> This is incorrect. Staff has examined the AEP Companies' reliability to ensure that the reliability expectations of these Companies are in alignment with those of their customers.<sup>34</sup> Staff performs a continual review of reliability under O.A.C. 4901:1-10-10-(B)(2) which requires each electric utility in the state to file an application with the Commission to establish company-specific minimum reliability performance standards.<sup>35</sup> As part of that application, electric utilities are to include supporting justification for the proposed methodology and each resulting performance standard.<sup>36</sup> The performance standards reflect historical system performance, system design, technological advancements, service area geography, customer perception surveys, and other relevant factors.<sup>37</sup> Staff works with the company and other interested parties in establishing commission approved reliability standards that incorporate a consideration of historical performance, customer survey results, and input from customer groups.<sup>38</sup> Once the performance standards are set, the second step is to monitor

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<sup>33</sup> Direct Testimony in Opposition to the Stipulation of Joseph Bowser (IEU Ex. 8) at 7; Revised Direct Testimony in Opposition to the Stipulation of Daniel J. Duann (OCC Ex. 1) at 31.

<sup>34</sup> Rebuttal Testimony in Support of the Stipulation of Peter Baker (Staff Ex. 5) at 3.

<sup>35</sup> *Id.* at 3-4.

<sup>36</sup> *Id.* at 4.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

the utility's performance against its reliability standards to ensure that the standards are met.<sup>39</sup>

OCC participated in the standards proceeding by filing comments (and replies), and also signed the joint stipulation recommending reliability standards for the AEP Companies.<sup>40</sup> The Commission approved that stipulation on September 8, 2010.<sup>41</sup> The AEP Companies have met their standards since they became effective (beginning for year 2010). As a result, there is requisite support for the DIR under R.C. 4928.143(B)(2)(h).

IEU, FES and OCC also argue that the establishment of a DIR effective January 2012 based on post-2000 investment, as proposed in the stipulation, is essentially double recovery given that AEP Ohio already has filed a distribution rate.<sup>42</sup> This, again, is not true. Any cost recovery through AEP Ohio's base distribution rate case will not be recovered under the ESP.<sup>43</sup>

Second, IEU and OCC claim that the PIRR is unreasonable and violates regulatory practices and principles.<sup>44</sup> IEU opines that the proposed PIRR misaligns cost

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 5.

<sup>41</sup> *Id.* citing *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Proposed Reliability Standards*, Case No. 09-756-EL-ESS (Opinion and Order) (September 8, 2010).<sup>41</sup>

<sup>42</sup> OCC Ex. 1 at 29-30; IEU Ex. 8 at 5; Direct Testimony in Opposition to the Stipulation of Jonathan A. Lesser (FES Ex. 8) at 49.

<sup>43</sup> Rebuttal Testimony in Support of the Stipulation of William Allen (AEP Ex. 20B) at 5; Tr. Vol XII at 2055.

<sup>44</sup> OCC Ex. 1 at 8-9; IEU Ex. 8 at 14-15.

responsibility with benefits.<sup>45</sup> However, if the stipulation is approved, CSP and OPCo will be a single, merged company.<sup>46</sup> As a merged company, it is appropriate for AEP Ohio to allocate the costs in the manner proposed in the stipulation. Furthermore, CSP customers benefit from reduced FAC costs as a result of the merger that effectively offset any perceived burden imposed by paying the PIRR.<sup>47</sup> IEU also argues that the carrying cost rate of 5.34% related to the PIRR is unreasonable. On the contrary, the stipulated carrying cost rate of 5.34% based on AEP Ohio's long term debt rate is a significant concession.<sup>48</sup>

**2. The stipulation is neither anti-competitive nor discriminatory.**

The stipulation promotes shopping in line with the General Assembly's policy seeking diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers."<sup>49</sup> Again, the stipulation furthers this goal by enabling more shopping in AEP Ohio's service territory. As described above, during the ESP, AEP Ohio will provide discounted capacity prices to CRES providers for substantial and increasing portions of AEP Ohio's capacity resources in order to support growth of robust competitive supply options for customers and to

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<sup>45</sup> IEU Ex. 9A at 21-22.

<sup>46</sup> Rebuttal Testimony in Support of the Stipulation of David M. Roush (AEP Ex. 22) at 7.

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

<sup>48</sup> AEP Ex. 20B at 10.

<sup>49</sup> R.C. 4928.02(C).

resolve the pending capacity compensation case for AEP Ohio.<sup>50</sup> The RPM-priced set aside under the stipulation for 2012 is roughly equal to the entire load of Toledo Edison, for 2013 is roughly equal to the entire load of Dayton Power & Light and for 2014 is roughly equal to the entire load of Duke Energy Ohio.<sup>51</sup> The generation prices for SSO customer during this transition will reflect a highly simplified pricing structure.<sup>52</sup> Overall, the stipulation provides a transition to complete corporate separation and full market pricing for generation services that is materially quicker than what would be possible otherwise, and it provides for transparent and stable pricing during that transition.<sup>53</sup>

FES and IEU argue that the stipulation is anti-competitive.<sup>54</sup> This is simply not true. FES and IEU claim that the stipulation will block shopping for the vast majority of AEP Ohio's customers through arbitrary and minimal incremental caps on amount of shopping load that may receive RPM market capacity prices.<sup>55</sup> To the contrary, the stipulation is not anti-competitive because there are no shopping caps in the stipulation.<sup>56</sup>

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<sup>50</sup> AEP Ex. 8 at 12-13.

<sup>51</sup> *Id.* at 13.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Direct Testimony in Opposition to the Stipulation of Tony Banks (FES Ex. 1) at 7-10; IEU Ex. 9A at 17.

<sup>55</sup> FES Ex. 1 at 7-8.

<sup>56</sup> AEP Ex. 20B at 8.

The stipulation includes two levels of discounted capacity to CRES providers that provide sufficient optionality for a CRES provider to compete through shopping.<sup>57</sup> CRES providers have the option to structure multi-year contracts with customers that could allow them to purchase capacity at \$255/MW-day in 2012 and/or 2013 and at RPM in the remaining years of the contract depending upon the customer's position in the RPM set-aside queue.<sup>58</sup> For Example, a CRES could offer a customer a 41-month contract starting in January 2012 to a customer that receives an RPM set aside allotment in January 2013.<sup>59</sup> Under this scenario a CRES provider could offer customer s a 5% discount to the price to compare and still have available headroom of approximately \$5/MWh.<sup>60</sup>

FES also claims that the caps on RPM market-based capacity prices in the stipulation are discriminatory in that shopping customers who fall under the cap pay one price, while shopping customers who do not receive an allotment will pay more for capacity.<sup>61</sup> This is incorrect. Again, the stipulation contains no shopping caps; rather, as explained above, the stipulation has two levels of discounted capacity to CRES providers that provide sufficient optionality for a CRES provider to compete through shopping.<sup>62</sup>

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<sup>57</sup> *Id.*

<sup>58</sup> *Id* at 8-9.

<sup>59</sup> *Id* at 9.

<sup>60</sup> *Id.*

<sup>61</sup> FES Ex. 1 at 19.

<sup>62</sup> AEP Ex. 20B at 9.

FES also argues that a RPM cap process is discriminatory because it will prevent additional governmental aggregation.<sup>63</sup> To the contrary, the Stipulated ESP encourages governmental aggregation and, since the stipulation has been signed, AEP Ohio has seen additional governmental aggregation.<sup>64</sup> Furthermore, nearly 30 communities have passed governmental aggregation initiatives.<sup>65</sup> If those communities choose to pursue governmental aggregation, they will have the same access to RPM priced capacity as any other customer.<sup>66</sup>

### **3. The stipulation passes the “in the aggregate” test.**

Section 4928.143, Revised Code, sets out the requirements for approval of an ESP. The statute provides that the Commission is required to approve, or modify and approve the ESP, if the ESP, including its pricing and all other terms and conditions, including deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under R.C. 4928.142.

IEU, FES and OCC argue that the ESP option in the stipulation is not more favorable in the aggregate than the MRO option. They are wrong. The stipulation does pass the “in the aggregate” test because the stipulation recommending approval of this ESP “as a package” provides qualitative benefits to all of AEP Ohio’s ratepayers.

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<sup>63</sup> FES Ex. 1 at 19, 31-32.

<sup>64</sup> AEP Ex. 20B at 11.

<sup>65</sup> *Id.* at 11-12.

<sup>66</sup> *Id.* at 12.

Staff witness Fortney testified that the stipulated ESP would, on a strictly quantitative basis, fail the aggregate test for each year of the plan.<sup>67</sup> But Mr. Fortney went on to testify that the stipulation would produce benefits that “are just simply impossible to quantify.”<sup>68</sup> He specifically referred to two significant unquantifiable benefits, the change in business model to a competitively bid SSO in 2015, and the construction of a generation plant that uses exclusively Ohio shale natural gas.<sup>69</sup> Ultimately , the qualitative benefits make an ESP better than an MRO in the aggregate.

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<sup>67</sup> Tr. Vol. X at 1714.

<sup>68</sup> Tr. Vol. X at 1751.

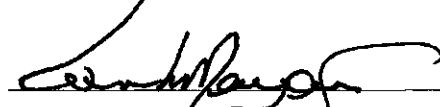
<sup>69</sup> Tr. Vol. X at 1752.

## **CONCLUSION**

The stipulation meets all prongs of the three-part test. Further, the ESP contained within it is better in the aggregate than the MRO. On these bases, the Commission should adopt the stipulation as its order in this case.

**Mike DeWine**  
Ohio Attorney General

**William L. Wright**  
Section Chief



**Werner L. Margard III**  
**John H. Jones**

**Steven L. Beeler**  
Assistant Attorneys General  
Public Utilities Section  
180 East Broad Street, 6<sup>th</sup> Fl  
Columbus, OH 43215-3793  
614.466.4397 (telephone)  
614.644.8764 (fax)  
[werner.margard@puc.state.oh.us](mailto:werner.margard@puc.state.oh.us)  
[john.jones@puc.state.oh.us](mailto:john.jones@puc.state.oh.us)  
[steve.beeler@puc.state.oh.us](mailto:steve.beeler@puc.state.oh.us)



## **PROOF OF SERVICE**

I hereby certify that a true copy of the foregoing Post-Hearing Brief submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following parties of record, this 10th day of November, 2011.



**Werner L. Margard III**  
Assistant Attorney General

### **Parties of Record:**

**Steven T. Nourse**  
**Matthew J. Satterwhite**  
American Electric Power  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, OH 43215  
[stnourse@aep.com](mailto:stnourse@aep.com)  
[mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com)

**Daniel Conway**  
Porter, Wright, Morris & Arthur  
41 South High Street  
Columbus, OH 4321  
[dconway@porterwright.com](mailto:dconway@porterwright.com)

**ON BEHALF OF COLUMBUS SOUTHERN  
POWER COMPANY AND OHIO POWER  
COMPANY**

**Colleen L. Mooney**  
Ohio Partners for Affordable Energy  
231 West Lima Street  
Findlay, OH 45840  
[cmooney2@columbus.rr.com](mailto:cmooney2@columbus.rr.com)

**ON BEHALF OF OHIO PARTNERS FOR  
AFFORDABLE ENERGY**

**Dorothy Corbett**  
Duke Energy Ohio  
139 East Fourth Street  
Suite 1303  
P.O. Box 960  
Cincinnati, OH 45201  
[dorothy.corbett@duke-energy.com](mailto:dorothy.corbett@duke-energy.com)

**Philip P. Sineneng**  
Thompson Hine LLP  
41 South High Street, Suite 1700  
Columbus, OH 43215  
[Philip.sineneng@thompsonhine.com](mailto:Philip.sineneng@thompsonhine.com)

**ON BEHALF OF DUKE ENERGY RETAIL SALES**

**Michael Smalz**  
**Joseph Maskovyak**  
Ohio Poverty Law Center  
555 Buttles Avenue  
Columbus, OH 43215-1137  
[msmalz@ohiopoveritylaw.org](mailto:msmalz@ohiopoveritylaw.org)  
[jmaskovyak@ohiopoveritylaw.org](mailto:jmaskovyak@ohiopoveritylaw.org)

**ON BEHALF OF THE APPALACHIAN PEACE  
AND JUSTICE NETWORK**

**David Boehm**  
**Michael L. Kurtz**  
Boehm Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OH 45202  
[dboehm@bkllawfirm.com](mailto:dboehm@bkllawfirm.com)  
[mkurtz@bkllawfirm.com](mailto:mkurtz@bkllawfirm.com)

**ON BEHALF OF THE OHIO ENERGY GROUP**

**John Bentine**  
**Mark Yurick**  
Chester Willcox & Saxbe  
65 East State Street  
Suite 100  
Columbus, OH 43215  
[jbentine@cwsllaw.com](mailto:jbentine@cwsllaw.com)  
[myurick@cwsllaw.com](mailto:myurick@cwsllaw.com)

**ON BEHALF OF THE KROGER CO.**

**Lisa G. McAlister**  
**Matthew W. Warnock**  
Bricker & Eckler  
100 South Third Street  
Columbus, OH 43215-4291  
[lmcalister@bricker.com](mailto:lmcalister@bricker.com)  
[mwarnock@bricker.com](mailto:mwarnock@bricker.com)

**ON BEHALF OF OMA ENERGY GROUP**

**Jay E. Jadwin**  
American Electric Power Service Corp.  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, OH 43215  
[jedjadwin@aep.com](mailto:jedjadwin@aep.com)

**ON BEHALF OF AEP RETAIL ENERGY PARTNERS**

**Terry Etter**  
**Maureen R. Grady**  
Assistant Consumers' Counsel  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, OH 43215  
[etter@occ.state.oh.us](mailto:etter@occ.state.oh.us)  
[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us)

**ON BEHALF OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

**Richard L. Sites**  
Ohio Hospital Association  
155 East Broad Street, 15<sup>th</sup> Floor  
Columbus, OH 43215  
[ricks@ohanet.org](mailto:ricks@ohanet.org)

**Thomas J. O'Brien**  
Bricker & Eckler  
100 South Third Street  
Columbus, OH 43215-4291  
[tobrien@bricker.com](mailto:tobrien@bricker.com)

**ON BEHALF OF OHIO HOSPITAL ASSOCIATION**

**Terrence O'Donnell**  
**Christopher Montgomery**  
Bricker & Eckler  
100 South Third Street  
Columbus, OH 43215  
[todonnell@bricker.com](mailto:todonnell@bricker.com)  
[cmontgomery@bricker.com](mailto:cmontgomery@bricker.com)

**ON BEHALF OF PAULDING WIND FARM II AND THE DISTRIBUTED WIND ENERGY ASSOCIATION**

**Gregory Poulos**  
EnerNOC, Inc.  
101 Federal Street  
Suite 1100  
Boston, MA 02110  
[gpoulos@enernoc.com](mailto:gpoulos@enernoc.com)

**ON BEHALF OF ENERNOC, INC.**

**Tara Santarelli**  
Environmental Law & Policy Center  
1207 Grandview Avenue  
Suite 201  
Columbus, OH 43212  
[tsantarelli@elpc.org](mailto:tsantarelli@elpc.org)

**ON BEHALF OF THE ENVIRONMENTAL LAW  
& POLICY CENTER**

**Glen Thomas**  
1060 First Avenue  
Suite 400  
King of Prussia, PA 19406  
[gthomas@gtpowergroup.com](mailto:gthomas@gtpowergroup.com)

**ON BEHALF OF PJM POWER PROVIDERS  
GROUP**

**William L. Massey**  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
[wmassey@cov.com](mailto:wmassey@cov.com)

**Joel Malina**  
Compete Coalition  
1317 F Street, N.W.  
Washington, D.C. 2004  
[malina@wexlerwalker.com](mailto:malina@wexlerwalker.com)

**ON BEHALF OF THE COMPETE  
COALITION**  
**Douglas G. Bonner**

**Mark A. Hayden**  
FirstEnergy Corp.  
76 South Main Street  
Akron, OH 44308  
[haydenm@firstenergycorp.com](mailto:haydenm@firstenergycorp.com)

**James F. Lang**  
**Laura McBride**  
**N. Trevor Alexander**  
Calfee Halter & Griswold  
800 Superior Avenue  
Cleveland, OH 44114  
[jlang@calfee.com](mailto:jl原因@calfee.com)  
[lmcbride@calfee.com](mailto:lmcbride@calfee.com)  
[talexander@calfee.com](mailto:talexander@calfee.com)

**David Kutik**  
Jones Day  
North Point  
901 Lakeside Avenue  
Cleveland, OH 44114  
[dakutik@jonesday.com](mailto:dakutik@jonesday.com)

**Allison E. Haedt**  
Jones Day  
P.O. Box 165017  
Columbus, OH 43216-5017  
[aehaedt@jonesday.com](mailto:aehaedt@jonesday.com)

**ON BEHALF OF FIRSTENERGY SOLUTIONS  
CORP.**

**M. Howard Petricoff**  
**Stephen M. Howard**  
Vorys, Sater, Seymour and Pease  
52 East Gay Street  
P.O. Box 1008  
Columbus, OH 43215-1008  
[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)  
[smhoward@vorys.com](mailto:smhoward@vorys.com)

**ON BEHALF OF PJM POWER PROVIDERS  
GROUP AND THE RETAIL ENERGY SUPPLY  
ASSOCIATION**

**Emma F. Hand**  
**Keith C. Nusbaum**  
SNR Denton US LLP  
1301 K Street, N.W.  
Suite 600 East Tower  
Washington, D.C. 20005  
[doug.bonner@snrdenton.com](mailto:doug.bonner@snrdenton.com)  
[emma.hand@snrdenton.com](mailto:emma.hand@snrdenton.com)  
[keith.nusbaum@snrdenton.com](mailto:keith.nusbaum@snrdenton.com)

**ON BEHALF OF ORMET PRIMARY ALUMINUM CORPORATION**

**M. Howard Petricoff**  
**Michael J. Settineri**  
Vorys, Sater, Seymour and Pease  
52 East Gay Street  
P.O. Box 1008  
Columbus, OH 43215-1008  
[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)  
[mjsettineri@vorys.com](mailto:mjsettineri@vorys.com)

**ON BEHALF OF CONSTELLATION  
NEWENERGY, INC., CONSTELLATION ENERGY  
COMMODITIES GROUP, INC., AND THE  
COMPETE COALITION**

**Samuel C. Randazzo**  
**Frank P. Darr**  
**Joseph E. Olikier**  
McNees Wallace & Nurick  
21 East State Street, 17<sup>th</sup> Floor  
Columbus, OH 43215  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)  
[joliker@mwncmh.com](mailto:joliker@mwncmh.com)

**ON BEHALF OF INDUSTRIAL ENERGY USERS-  
OHIO**

**Henry W. Eckhart**  
1200 Chambers Road  
Suite 106  
Columbus, OH 43212  
[henryeckhart@aol.com](mailto:henryeckhart@aol.com)

**Christopher J. Allwein**  
Williams, Allwein and Moser, LLC  
1373 Grandview Ave., Suite 212  
Columbus, Ohio 43212  
[callwein@williamsandmoser.com](mailto:callwein@williamsandmoser.com)

**ON BEHALF OF THE NATURAL RESOURCES  
DEFENSE COUNCIL AND THE SIERRA CLUB**

**David Fein**  
**Cynthia Fonner Brady**  
Constellation Energy Resources  
550 West Washington Boulevard  
Suite 300  
Chicago, IL 60661  
[david.fein@constellation.com](mailto:david.fein@constellation.com)  
[cynthia.brady@constellation.com](mailto:cynthia.brady@constellation.com)

**ON BEHALF OF CONSTELLATION  
NEWENERGY, INC. AND CONSTELLATION  
ENERGY COMMODITIES GROUP, INC.**

**Barth Royer**  
Bell & Royer  
33 South Grant Avenue  
Columbus, OH 43215-3927  
[barthroyer@aol.com](mailto:barthroyer@aol.com)

**Gary A. Jeffries**  
Dominion Resources Services, Inc.  
501 Martindale Street, Suite 400  
Pittsburgh, PA 15212-5817  
[gary.a.jeffries@dom.com](mailto:gary.a.jeffries@dom.com)

**ON BEHALF OF DOMINION RETAIL**

**Pamela A. Fox/C. Todd Jones**  
**Steven J. Smith/Christopher Miller**  
**Gregory Dunn/Asim Haque**  
Schottenstein Zox and Dunn  
250 West Street, Suite 500  
Columbus, OH 43215  
[pfox@szd.com](mailto:pfox@szd.com)  
[cmiller@szd.com](mailto:cmiller@szd.com)  
[gdunn@szd.com](mailto:gdunn@szd.com)  
[ahaque@szd.com](mailto:ahaque@szd.com)

**ON BEHALF OF THE CITY OF HILLIARD,  
OHIO, THE CITY OF GROVE CITY, OHIO, AND  
THE ASSOCIATION OF INDEPENDENT  
COLLEGES AND UNIVERSITIES OF OHIO**

**Kenneth P. Kreider**  
Keating Muething & Klekamp  
One East Fourth Street  
Suite 1400  
Cincinnati, OH 45202  
[kpkreider@kmklaw.com](mailto:kpkreider@kmklaw.com)

**Holly Rachel Smith**  
Holly Rachel Smith, PLLC  
Hitt Business Center  
3803 Rectortown Road  
Marshall, VA 20115-3338  
[holly@raysmithlaw.com](mailto:holly@raysmithlaw.com)

**Steve W. Chriss**  
Wal-Mart Stores, Inc.  
Bentonville, AR 72716-0550  
[stephen.chriss@wal-mart.com](mailto:stephen.chriss@wal-mart.com)

**ON BEHALF OF WAL-MART STORES EAST  
AND SAM'S EAST**

**Sandy Grace**  
Exelon Business Services Company  
101 Constitution Avenue, N.W.  
Suite 400 East  
Washington, D.C. 20001  
[sandy.grace@exeloncorp.com](mailto:sandy.grace@exeloncorp.com)

**Jesse A. Rodriguez**  
Exelon Generation Company  
300 Exelon Way  
Kennett Square, PA 19348  
[jesse.rodriguez@exeloncorp.com](mailto:jesse.rodriguez@exeloncorp.com)

**M. Howard Petricoff**  
Vorys, Sater, Seymour and Pease  
52 East Gay Street  
P.O. Box 1008  
Columbus, OH 43215-1008  
[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)

**David M. Stahl**  
**Arin C. Aragona**  
**Scott C. Solberg**  
Elmer Stahl Klevorn & Solberg  
224 South Michigan Avenue  
Suite 1100  
Chicago, IL 60604  
[dstahl@eimerstahl.com](mailto:dstahl@eimerstahl.com)  
[aaragona@eimerstahl.com](mailto:aaragona@eimerstahl.com)  
[ssolberg@eimerstahl.com](mailto:ssolberg@eimerstahl.com)

**Anastasia Polek-O'Brien**  
Exelon Generation Company  
10 South Dearborn Street, 49<sup>th</sup> Floor  
Chicago, IL 60603

**ON BEHALF OF EXELON GENERATION  
COMPANY**

**Nolan Moser**  
**Trent A. Dougherty**  
Ohio Environmental Council  
1207 Grandview Avenue  
Suite 201  
Columbus, OH 43212-3449  
[nolan@theoec.org](mailto:nolan@theoec.org)  
[trent@theoec.org](mailto:trent@theoec.org)

**ON BEHALF OF THE OHIO ENVIRONMENTAL  
COUNCIL**