

**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	)	

**EXELON GENERATION COMPANY, LLC'S  
INITIAL 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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Pursuant to Section 4901-1-31 of the Ohio Administrative Code and the schedule established by the Attorney Examiners, Exelon Generation Company, LLC (“Exelon Generation”) hereby submits the following initial post-hearing brief in support of the stipulated electric security plan provided in the Stipulation and Recommendation filed in the above-captioned proceedings on September 7, 2011 (the “Stipulation”).

## **INTRODUCTION**

In this proceeding, Columbus Southern Power Company and Ohio Power Company (collectively “AEP Ohio”) seek to establish a standard service offer (“SSO”) in the form of an electric security plan (“ESP”). The ESP that is currently pending before the Public Utilities Commission of Ohio (the “Commission”) is the product of a Stipulation and Recommendation signed by AEP Ohio, Commission Staff, and eighteen third-party intervenors, including Exelon Generation (the “Stipulated ESP”). The signatory parties include stakeholders representing a diverse set of interests.

The Stipulated ESP is substantially different from the ESP originally proposed in AEP Ohio’s January 27, 2011 application, which Exelon Generation opposed. Unlike AEP Ohio’s initial proposal, the Stipulated ESP provides for the competitive wholesale procurement of capacity and energy, with the transition to full wholesale competition for AEP Ohio occurring at the first practically achievable opportunity and faster than would have been accomplished under a market rate offer (“MRO”). The Stipulated ESP also eliminates significant non-bypassable riders that would have interfered with retail competition, thereby preserving and expanding the ability of customers to shop for competitive retail energy and capacity. Enhanced wholesale and retail competition, made

possible by the Stipulation, will result in economic benefits to retail customers, both immediately and over the long term.

The structured transition to competitive procurement of both energy and capacity is a critically important benefit of the Stipulated ESP. 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. The Stipulated ESP achieves this outcome in two ways. *First*, it resolves pending proceedings at the Federal Energy Regulatory Commission (“FERC”) and before this Commission concerning the cost of capacity charged to competitive retail electric suppliers that, in turn, is embedded in those supplier’s contracts with customers. The Stipulated ESP requires AEP Ohio to provide competitively priced capacity that will allow retail shopping to continue to expand. By 2015, all customers will have access to competitively priced capacity. *Second*, by 2015, the Stipulated ESP will require all suppliers to compete head-to-head on a best-price basis for the right to serve AEP Ohio’s standard service offer customers.

The end result of this process is that uncertainties concerning customer choice will be eliminated immediately and the full benefits of the competitive market will be realized for all customers nearly three years earlier than they could be under a MRO, where the transition to full competition occurs gradually over a minimum of five years. *See* Section 4928.142 (D), Revised Code.

For these reasons, and those discussed below, Exelon Generation supports approval of the Stipulated ESP.

## APPLICABLE LAW

The legal standard for Commission approval of an ESP is found in Section 4928.143(C)(1), Revised Code, which provides in relevant part for Commission approval where the proposed ESP “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.” In conducting this analysis, the Commission should take into account any qualitative benefits of the ESP that are not provided in a MRO. *See In re Ohio Edison Co., et al.*, Case No. 10-388-EL-SSO, Opinion and Order at 44 (Aug. 25, 2010).

Pursuant to Ohio Administrative Code Rule 4901-1-30, parties to a rate proceeding are authorized to enter into stipulations like the one before the Commission in this case. While stipulations are not binding on the Commission, the Ohio Supreme Court has observed that they are to be accorded “substantial weight.” *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). In determining whether to adopt a stipulation, the ultimate issue is whether the stipulation is a reasonable compromise. The Commission has developed a three-part test (since endorsed by the Ohio Supreme Court) 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?

*Office of Consumers' Counsel*, 592 N.E.2d at 1373. The Stipulated ESP satisfies each of these requirements.

## **ARGUMENT**

The Stipulation is a product of serious bargaining among capable and knowledgeable parties, benefits customers and the public interest, and does not violate any important regulatory principle or practice. Moreover, key qualitative benefits of the Stipulation—particularly the timely and efficient transition to full competition in the AEP Ohio service territory—are better than could be achieved through a MRO and weigh in favor of adopting the Stipulated ESP.

### **A. THE STIPULATION IS A REASONABLE COMPROMISE THAT MEETS THE THREE-PART TEST FOR APPROVAL OF SETTLEMENTS**

#### **1. The Stipulated ESP Is a Product of Serious Bargaining Among Capable and Knowledgeable Parties**

The Stipulated ESP is the result of serious, arms-length negotiations among capable and knowledgeable parties. The parties to the Stipulation include AEP Ohio, the Commission Staff, and eighteen other interested parties, including generators, retail electricity marketers, municipalities, colleges and universities, environmental groups, demand response providers, commercial and industrial customers and hospitals. Collectively, the signatories constitute a critical mass of stakeholders representing a broad range of diverse interests and points of view. *See* Exelon Ex. 1 at 1-2; AEP Ohio Ex. 8 at 9; RESA Ex. 1 at 13; Constellation Ex. 1 at 13; Staff Ex. 4 at 2; *see also* Signatories' Joint Ex. 1 at 31-32 (signature pages). The three principal opponents of the Stipulation—FirstEnergy Solutions Corp. ("FES"), Industrial Energy Users-Ohio ("IEU") and the Ohio Office of Consumer Counsel ("OCC")—represent constituencies that have other representatives who

support the settlement (suppliers, industrial customers and residential customers, respectively).

In its direct testimony, IEU argues that the Stipulation fails the first part of the test because each of the signatory parties focused primarily on its own area of "parochial" self-interest and not on the agreement as a whole. (IEU Ex. 9A at 5.) IEU is wrong. First, the Commission Staff's interests are global—not parochial—and Staff actively monitored and negotiated each aspect of the settlement to safeguard the public interest. (Exelon Ex. 1 at 1-2; Staff Ex. 4 at 2.) Second, the fact that each of the various settling parties focused on and fought for the particular items about which it was most knowledgeable and in which it was most interested, makes the overall settlement better, not worse, as it assures that detailed attention and consideration were given to all pertinent issues. (*Id.*; Staff Ex. 4 at 2.)

In the end, the Stipulation represents a balanced, well-reasoned compromise. AEP Ohio compromised its rate requests and ultimately its business model by agreeing to transition to the fully competitive model that the parties to the Stipulation unanimously support. Suppliers, like Exelon Generation, compromised their positions that AEP Ohio must provide all retail suppliers capacity at PJM Reliability Pricing Model ("RPM") prices immediately.<sup>1</sup> (Exelon Ex. 1 at 2; Tr. Vol. VI at 1065-66.) The end result is a durable settlement which achieves a fully competitive model faster than a MRO and with AEP Ohio's willing participation.

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<sup>1</sup> While certain non-settling parties have charged that the Stipulation presents a "windfall" for AEP Ohio, there is no reason to accept such rhetoric as true. Indeed, market experts and analysts who have followed these proceedings have uniformly concluded that the Stipulation is a reasonable, balanced and constructive compromise, and not a windfall to AEP Ohio. (Exelon Ex. 1 at 8.)

## **2. The Stipulated ESP Benefits Ohio Consumers and the Public Interest**

The compromise embodied in the Stipulated ESP is substantially better than the ESP proposed in AEP Ohio's original application. AEP Ohio's originally filed ESP had two central problems: (1) it continued to rely on a flawed, non-market based approach to procuring energy and capacity for default customers; and (2) it included numerous non-bypassable generation-related riders that would impede retail shopping. (Exelon Ex. 1 at 2.) The overwhelming majority of parties in this proceeding, including non-settling parties, wanted AEP Ohio to use a competitive process to procure energy and capacity. (*Id.*) The Stipulation achieves that outcome. It embodies a fundamental change in AEP Ohio's business model under which, beginning June 1, 2015, AEP Ohio's SSO rate will be based on costs associated with capacity and energy procured through competitive means. (Exelon Ex. 1 at 2-3.) The Stipulation also eliminates the significant proposed non-bypassable generation-related riders, thereby preserving the ability for customers to shop for competitive retail supply and protecting customers from uneconomic generation investment costs. (*Id.* at 3.)

### *a. The Stipulation Resolves Capacity Charge Issues to the Benefit of Consumers*

The competitive bidding process provided for in the Stipulation benefits customers and the public interest. Under such a process, customers will have the opportunity to choose less costly options rather than be captive to one provider. (Exelon Ex. 1 at 4.) All power generation units will have to compete on a best-price basis with other resources in the market for the right to serve default customer load. (*Id.* at 4-5.) Such competition will yield lower default service rates and will foster competition at the retail level by giving customers a fixed-rate default offer that they can readily compare to retail offers. (*Id.*)

The Stipulation benefits consumers through competitive procurement of both energy and capacity. In its original ESP proposal and in three other proceedings (Commission Case No. 10-2929-EL-UNC and two separate cases pending before FERC, Docket Nos. ER11-2183 and EL11-32), AEP Ohio sought to increase the capacity price charged to Competitive Retail Electric Service (“CRES”) providers to serve retail customers to \$347 per MW-day.<sup>2</sup> This rate, had it been adopted, would have effectively eliminated all retail shopping in AEP Ohio’s service territory. (Exelon Ex. 1 at 5.) This Stipulation definitively resolves these Ohio and FERC cases and eliminates the risk that AEP Ohio might have been allowed to charge such a high above-market price for capacity during the 41 month ESP period. (*Id.*)

The Stipulation provides that *even before* June 2015, RPM-priced capacity will be made available to CRES providers to serve specific, substantial portions of AEP Ohio’s total retail load. Specifically, paragraph IV.2.b.3 of the Stipulation provides that specified, negotiated, and increasing percentages of AEP Ohio’s retail load will be served at RPM-priced capacity in 2012 (21%), 2013 (29% or 31%), 2014 (41%) and June 2015 (100%). As that paragraph recites, the purpose of this RPM set-aside was “to preserve and expand retail shopping in AEP Ohio’s service territory and implement AEP Ohio’s transition to a fully market-based SSO pricing system more quickly than is possible under [a MRO].” The remaining capacity will also be made available at a price far below the \$347 per MW-day that represented AEP Ohio’s litigation position. Notably, beginning June 1, 2015, *all* CRES providers will be charged the RPM market price for all capacity in the AEP Ohio service

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<sup>2</sup> In Case No. 10-2929-EL-UNC AEP Ohio requested \$355 per MW-day. (AEP Ohio Ex. 3 at 3.)

territory, which will enable even greater retail competition, and better prices for consumers.<sup>3</sup> (Exelon Ex. 1 at 5.)

While certain non-settling parties have argued that the transition to competitive procurement of capacity should occur immediately (or at least sooner than mid-2015), the June 1, 2015 date provided in the Stipulation is the most realistic date for full transition to competition. (Exelon Ex. 1 at 3-4.) As a threshold matter, capacity that could have been delivered during the proposed January 1, 2012 to May 31, 2014 ESP term was auctioned months—in some cases years—before AEP Ohio filed its proposed ESP plan in January 2011. (*Id.*) This is because the PJM RPM Base Residual Auctions (the competitive capacity auctions) are held three years in advance of the delivery date for the capacity. (*Id.*)

AEP Ohio did not, and as a matter of law could not, participate in those capacity auctions. In 2007, AEP Ohio opted out of PJM’s RPM auctions and filed a Fixed Resource Requirement (“FRR”) plan to self-supply capacity. Under the terms of the PJM Tariff, AEP Ohio was required to remain in FRR for at least five years and was not permitted to purchase capacity in the RPM auctions until June 1, 2012. Thus, AEP Ohio did not have the legal ability to buy RPM capacity for the first five months of its proposed ESP. Not surprisingly, AEP Ohio contends that it should not be required to sell capacity to retailers at the RPM price when it had no ability to buy that capacity in the first place.

Many Ohio stakeholders acquiesced in AEP Ohio’s decision in 2007 to self-supply capacity using FRR because they believed that FRR and non-market rates would prove less

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<sup>3</sup> RPM pricing for CRES providers inures to the ultimate benefit of Ohio consumers. RPM pricing results in a transparent, competitively established rate as opposed to the subjective, fully-embedded capacity rate proposed in AEP Ohio’s initial ESP application. In past cases, the Commission has found that RPM is the appropriate rate for capacity used to serve shopping customers. See *In re Com’n Review of Capacity Charges of Ohio Power Co., et al.*, No. 10-2929-EL-UNC.

costly for consumers during the five-year FRR commitment period. (Tr. Vol. VI at 1064-65.) For a period of time, they were correct. As evidenced by a lack of shopping in the AEP Ohio service territory, customers preferred the AEP Ohio rates to competitive rates. (*Id.*) But this changed when natural gas prices—the fuel that sets the marginal price of electricity for many hours of the year—collapsed with the discovery of abundant shale gas. (*Id.*) Competitive market prices suddenly were far lower than non-market rates, triggering a wave of shopping. Exelon Generation witness Joseph Dominguez testified to this at the hearing:

AEP is in this situation that I really described in my early testimony where at one point their rates were favorable to market, and that's evidenced by the fact that nobody was shopping.

Then the market changed, it changed because we had some fundamental drivers in the energy market, the discovery of shale gas that changed the world for all of us competing in this space.

(Tr. Vol. VI at 1064-65.) Now, some of the very same entities that criticized competitive markets just a few years ago and urged this Commission and AEP Ohio to continue monopoly generation ratemaking, want to penalize AEP Ohio for not turning to competition—and in particular RPM capacity—sooner, in complete disregard of the legal and practical history of this regulatory compact. (Tr. Vol. VI at 1065.)

Under all of these circumstances, June 1, 2015 is the earliest realistic date for AEP Ohio's full transition to market. Exelon Generation sympathizes with the desire of some parties for an even faster pathway to full competition, but the question here is not whether a more favorable outcome could be achieved through litigation before this Commission and at FERC, or whether some hypothetical settlement is more favorable than this Stipulation. The question here is whether this Stipulation represents a reasonable compromise. It does.

b. *The Stipulation Provides Regulatory Certainty*

Opponents of the Stipulation also understate the value of regulatory certainty. Embracing the three-pronged test used by the Commission to consider settlements, the Ohio Supreme Court recognized that resolving legal uncertainties economically through settlement saves resources and provides an inherent benefit to ratepayers and utilities. *Office of Consumers' Counsel*, 592 N.E.2d at 1373 (“We endorse the commission’s effort utilizing these criteria to resolve its cases in a method economical to ratepayers and public utilities.”). As the Commission is well aware, AEP Ohio is presently litigating two cases at FERC that substantially overlap with the issues in this proceeding. In those cases, AEP Ohio has taken the position that its sales of capacity to retailers are wholesale transactions lying within the jurisdiction of FERC. *See* Complaint of American Electric Power Service Corporation, FERC Docket No. EL11-32 (filed April 4, 2011). Therefore, according to AEP Ohio, FERC has the exclusive authority to set AEP Ohio’s rates for those wholesale transactions. If AEP Ohio were to win either case at FERC (*i.e.* if FERC were to agree with AEP Ohio on this jurisdictional issue and approve AEP Ohio’s requested \$347 per MW-day rate) the Commission would be legally bound to recognize the justness and reasonableness of the FERC-approved wholesale rate for capacity.

The continuation of multiple proceedings before this Commission (the ESP and 10-2929 matters) as well as the proceedings at FERC cast a dark cloud of regulatory uncertainty over retail competition that would continue for months and, more likely, years as decisions wind their way through federal and state appeals. (Tr. Vol. VI at 1013-14; *see also id.* at 1065-66.) As a practical matter, this uncertainty has stopped some companies, including Exelon Energy Company, from fully investing and competing in the Ohio retail

market. (*Id.* at 1013.) Stated simply and as a practical matter, it is difficult to quote retail prices to potential customers with the caveat that the actual rate is subject to the final resolution of FERC proceedings. (*Id.*)

The Stipulation ultimately recognizes that removing the cloud of uncertainty cast by these ongoing, multi-forum proceedings has enormous value for both customers and suppliers alike, value that cannot be quantitatively measured. (Tr. Vol. VI at 1066.) Even if one believes, as Exelon Generation does, that AEP Ohio's arguments at FERC lack merit (*id.* at 1044), the reality is that the years squandered on the complete resolution of these issues could prevent customers from exploring the fullest range of competitive solutions, as suppliers stand on the sidelines awaiting that resolution. (*Id.* at 1065-66.) The Stipulation prevents that outcome by providing an economic resolution of all of these cases coupled with a prompt and practical pathway for full competition at both the wholesale and retail levels.

*c. The Stipulation Contains Safeguards to Assure that Its Benefits Are Achieved*

Furthering the ultimate objectives of competition, the Stipulation also commits AEP Ohio to adhere to a comprehensive list of milestones to obtain approval of its planned corporate separation and termination/modification of the AEP Pool agreement. Paragraph IV.1.t and Appendix B of the Stipulation set forth specific obligations and milestone dates for AEP Ohio to help ensure timely FERC approval of corporate separation and Pool dissolution or amendment. Paragraph IV.1.t also specifies the limited contingencies under which AEP Ohio may be relieved of its competitive procurement commitment, and prescribes the circumstances under which SSO auctions may be held notwithstanding AEP Ohio's inability to obtain corporate separation or Pool modification or termination. These

provisions strike a reasonable balance between AEP Ohio's legitimate concerns over matters that fall ultimately under federal (rather than Ohio's) jurisdiction and the interests of other parties and Ohio consumers in the timely transition to a competitive market process for establishing the SSO price. (Exelon Ex. 1 at 6-7.)

The Stipulation also contains safeguards to ensure full and fair competition for the ultimate benefit of consumers. For example, paragraph IV.1.r of the Stipulation sets forth both the nature of the competitive procurement process and the related auctions implementing that process. That paragraph specifies that the bidding process and any contingency process shall be conducted by an independent third party bid manager. It specifies that the necessary components of a competitive bid process shall be developed by the bid manager in conjunction with the parties to the Stipulation. It defines the circumstances under which the Commission may not accept the results of the auction and how any subsequent auctions will be conducted. It prescribes what bidders must provide and what risks they will assume. Many of the attributes of this competitive procurement process have already been approved by the Commission and are currently being used by FES to conduct auctions for load in its service territory. (Exelon Ex. 1 at 6.) Inclusion of these prescriptive procurement provisions in the Stipulation helps ensure that Ohio consumers realize the full promise of competitive markets. (*Id.*)

### **3. The Stipulated ESP Does Not Violate Any Important Regulatory Principle or Practice**

Not only does the Stipulation not violate any regulatory principle or practice, it advances Ohio's goal to enable robust competition and give customers the right to choose competitive suppliers. Section 4928.02 of the Revised Code provides in part that:

“It is the policy of this state to

- (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;
- (B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with supplier, price, terms, conditions and quality options they elect to meet their respective needs;
- (C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers...;

\* \* \* \*

- (G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment; [and]
- (H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies....”

Section 4928.02(A), (B), (C), (G) and (H), Revised Code.<sup>4</sup>

By transitioning AEP Ohio to a fully competitive market, the Stipulation provides consumers viable choices from a diverse set of electric products and suppliers, consistent with Ohio Rev. Code §§ 4928.02(B) (it is the policy of Ohio to “[e]nsure the availability of unbundled and comparable retail electric service that provides consumers with supplier, price, terms, conditions and quality options they elect to meet their respective needs”) and (C) (it is the policy of Ohio to “[e]nsure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers”). It also ensures effective retail electric competition by eliminating the proposed ESP’s significant anti-competitive, non-bypassable generation-related surcharges. *See* Ohio Rev.

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<sup>4</sup> The statute also makes explicit that it is the Commission’s duty to see that these policies are carried out. Ohio Rev. Code § 4928.06(A) (“Beginning on the starting date of competitive retail electric service, the public utilities commission shall ensure that the policy specified in section 4928.02 of the Revised Code is effectuated.”).

Code § 4928.02(H) (it is the policy of Ohio to “[e]nsure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies”).<sup>5</sup> In short, the type of robust wholesale competition and retail choice embodied in the Stipulated ESP promotes the long-term interests of Ohio consumers. (Exelon Ex. 1 at 10.)

**B. THE STIPULATED ESP PROVIDES QUALITATIVE BENEFITS THAT ARE NOT AVAILABLE UNDER A MRO AND THAT WEIGH IN FAVOR OF APPROVAL**

The Stipulated ESP will produce important qualitative benefits not achievable under a MRO. In a MRO, the transition to a competitive market occurs through a graduated blending process that achieves full competition over a *minimum* of five years.<sup>6</sup> Therefore, even under a MRO, rates would be higher than a fully competitive market-based solution and the full benefits of competition would not be realized until year six of the transition. (Exelon Ex. 1 at 10.) The Stipulated ESP achieves a full transition in about half of that time. Because a fully competitive market is preferred by state policy, a transition in half of the time is plainly superior to a six year transition and represents a significant benefit of the Stipulation. (*Id.*)

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<sup>5</sup> These regulatory policies are also reflected in the Commission’s Mission Statement: “Our mission is to assure all residential and business consumers access to adequate, safe and reliable utility services at fair prices, *while facilitating an environment that provides competitive choices.*” (emphasis added). The compromise reflected in the Stipulation is entirely in keeping with the Commission’s regulatory mission.

<sup>6</sup> The MRO statute, Section 4928.142 of the Revised Code, provides in relevant part:

The first application filed under this section by an electric distribution utility that, as of July 31, 2008, directly owns, in whole or in part, operating electric generating facilities that had been used and useful in this state *shall require that a portion of that utility’s standard service offer load for the first five years of the market rate offer be competitively bid under division (A) of this section as follows: ten per cent of the load in year one, not more than twenty per cent in year two, thirty per cent in year three, forty per cent in year four, and fifty per cent in year five. Consistent with those percentages, the commission shall determine the actual percentages for each year of years one through five.* (emphasis added).

## CONCLUSION

The Stipulation should be approved: it meets each of the three criteria for Commission approval endorsed by the Ohio Supreme Court in *Office of Consumers' Counsel*, 592 N.E.2d at 1373. Moreover, it provides significant pro-competitive benefits that are not available under a MRO.

At the hearing, Joseph Dominguez, testifying on behalf of Exelon Generation, summarized the benefits of the Stipulation this way:

We eliminated a cloud of uncertainty for 21 percent of the retail market next year, 31 percent, 41 percent, and then the entire market. We got a competitive solution faster than we think we could get to it in an MRO.

*And we think in the long term that's going to provide enormous value to Ohio consumers, more value than can be quantified in any specific year of this ESP. And so we thought it was a win for consumers.*

While it didn't happen immediately . . . the fact of the matter is we had to get real about a settlement that got us to competition. We fully expect [AEP Ohio] to comply with the provisions that it signed up for, and as a result by 2015 this market is going to be completely open in a way that we didn't think could be achieved through litigation.

(Tr. Vol. VI at 1066-67 (emphasis added).)

Of the three largest electric utilities in Ohio, FES has already embraced the competitive model for its service territory (*see* Case No. 10-388-EL-SSO), and both AEP Ohio and Duke Energy Ohio have signed stipulations providing for a transition to full competition in their service territories as well. Assuming the Commission approves the two stipulated ESPs that are currently pending before it, substantially all of Ohio will be operating under a competitive model for the foreseeable future to the ultimate benefit of consumers throughout the State.

For all of the foregoing reasons, Exelon Generation respectfully requests that the Commission enter an order approving the Stipulated ESP on the terms set forth in the Stipulation.

Dated: November 10, 2011

Respectfully Submitted,

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 10th day of November, 2011 by electronic mail, upon the persons listed below.

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Summary: Brief Exelon Generation Company, LLC's Initial 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 Exelon Generation Company, LLC