BEFORE THE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals	))))	Case No. 10-2376-EL-UNC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Revs. Code, in the Form of an Electric Security Plan.	))))))	Case No. 11-346-EL-SSO Case No. 11-348-EL-SSO
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority	))))	Case No. 11-349-EL-AAM Case No. 11-350-EL-AAM
In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders	))))	Case No. 10-343-EL-ATA
In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders	))))	Case No. 10-344-EL-ATA
In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	))))	Case No. 10-2929-EL-UNC
In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144	)))))	Case No. 11-4920-EL-RDR
In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144	)))))	Case No. 11-4921-EL-RDR

APPLICATION FOR REHEARING OF FIRSTENERGY SOLUTIONS CORP.

Pursuant to R.C. § 4903.10 and Rule 4901-1-35, Ohio Administrative Code, FirstEnergy Solutions Corp. ("FES") hereby applies for rehearing of the Opinion and Order issued in the above-captioned case on December 14, 2011 ("Order"). As explained in more detail in the attached Memorandum in Support, the Order in this case is unreasonable and unlawful on the following grounds:

1. The Order properly includes a modification of the Proposed ESP, but the modification is of insufficient magnitude because the Order unreasonably fails to include estimated Pool Modification Rider ("PMR") costs and AEP Ohio's own forecasted fuel costs in the ESP vs. MRO price analysis.

2. The Order unreasonably determines that the Proposed ESP, in the aggregate, is more favorable than the results that would otherwise apply under R.C. § 4928.142.

3. The Order is unreasonable and unlawful in finding that the Partial Stipulation does not violate any important regulatory principle or practice.

    a. The Partial Stipulation is discriminatory.

    b. The Partial Stipulation is anti-competitive.

    c. The Partial Stipulation includes a non-bypassable Market Transition Rider that is unreasonable and not authorized by any provision of R.C. § 4928.143(B)(2).

    d. The Partial Stipulation includes a Generation Resource Rider ("GRR") as a placeholder that will harm competitive markets and is not authorized by any provision of R.C. § 4928.143(B)(2).

    e. The Partial Stipulation includes the PMR as a placeholder that will harm competitive markets and is not authorized by any provision of R.C. § 4928.143(B)(2).

    f. The Commission unreasonably and unlawfully determined that AEP Ohio may demonstrate in a separate proceeding that the Turning Point project is necessary under R.C. § 4928.143(B)(2)(c) if it is needed by AEP Ohio to comply with the solar benchmarks in R.C. § 4928.64.

g. The Commission unreasonably and unlawfully approved a $255/MW-day capacity price as the state compensation mechanism.

h. The Commission unreasonably failed to modify the Partial Stipulation to impose specific conditions on AEP Ohio's corporate separation and pool termination.

i. The Order unreasonably allows AEP Ohio to maintain competitive barriers until at least June 2015.

j. The Order unreasonably failed to require that AEP Ohio improve its RPM set-aside capacity program in Appendix C of the Partial Stipulation.

k. While the Commission properly modified the Partial Stipulation to accommodate governmental aggregation, the Commission should further modify the Partial Stipulation to ensure that (i) RPM-priced capacity will be provided to governmental aggregation customers and the yearly caps will be adjusted as necessary so that RPM-priced capacity is available for all communities authorizing aggregation; (ii) the reservation of RPM-priced capacity for governmental aggregation customers will be available to all such customers, both mercantile and non-mercantile; and (iii) the contract between a CRES provider and a governmental aggregation community is sufficient to put the community's customers in the queue.

l. The Order unlawfully and unreasonably fails to require AEP Ohio to improve its RPM set-aside program in Appendix C of the Partial Stipulation by modifying the uncertain and confusing process for information sharing and by clarifying the day-to-day mechanics of the Appendix C process.

m. The Order unlawfully and unreasonably allows AEP Ohio to maintain sole control over the allocation of RPM-priced capacity.

4. The Order is unreasonable and unlawful in approving a Stipulation that does not benefit ratepayers and the public interest.

FES submits this Application for Rehearing without waiving any and all rights they may have to contest the Commission's further orders and entries in Case Nos. 11-346-EL-SSO and 11-348-EL-SSO concerning AEP Ohio's compliance tariffs. For the foregoing reasons, as

demonstrated in the Memorandum in Support of this Application, attached hereto, the Commission should grant this Application for Rehearing as requested herein.

Respectfully submitted,

s/ Laura C. McBride

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MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING OF FIRSTENERGY SOLUTIONS CORP.

Table of Contents

I. INTRODUCTION

The Commission erred in approving a modified version of the Stipulation & Recommendation filed on September 7, 2011 (the "Partial Stipulation") by Columbus Southern Power Company ("CSP") and Ohio Power Company ("OPCo") (collectively, "AEP Ohio") and other Intervenors (collectively, the "Signatory Parties") and in finding that the electric security plan proposed for AEP Ohio's standard service offer ("SSO") customers in the Partial Stipulation (the "Proposed ESP"), as modified by the Commission, is more favorable in the aggregate than the expected results under R.C. § 4928.142. Even as modified by the Commission, the Partial Stipulation will impose above-market prices on AEP Ohio's customers while preventing those customers from seeking lower prices in the competitive market. While other utilities' customers currently receive millions of dollars in savings from competitive offers using market pricing, the Partial Stipulation is designed to prevent a majority of AEP Ohio customers from receiving the same benefits until June 1, 2015. The Commission erred in allowing AEP Ohio to protect its own generation at the expense of retail customers and competitive markets.

The Commission also erred in finding that the Partial Stipulation meets the three-part test for approval. The record raised concerns regarding each of the three parts of this test, but most particularly the Partial Stipulation's multiple violations of important regulatory practices and principles. As previously demonstrated, the Partial Stipulation includes provisions which are anticompetitive and discriminatory.[1] It also unreasonably and unlawfully includes a Market Transition Rider ("MTR"), Generation Resource Rider ("GRR") and Pool Modification Rider ("PMR"), which are not authorized by any provision of R.C. § 4928.143(B)(2). In approving the

[1] Post-hearing Brief of FirstEnergy Solutions Corp. ("FES Brief"), pp. 81-116.

GRR, the Commission also mistakenly determined that the Turning Point project may qualify for nonbypassable cost recovery under R.C. § 4928.143(B)(2)(b) and (c). The Commission also erred in its treatment of AEP Ohio's corporate separation and pool termination in three ways: (1) by not imposing specific conditions on corporate separation and pool termination; (2) by allowing AEP Ohio to maintain barriers to competition until June 1, 2015; and (3) by approving a $255/MW-day capacity price as the state compensation mechanism. Lastly, although the Commission properly modified the Partial Stipulation to make some accommodations for governmental aggregation, the Commission left unclear the status of governmental aggregation vis-à-vis the RPM set-aside program. Each of these errors should be remedied on rehearing.

Notably, AEP Ohio has expressly reserved the right to withdraw the Partial Stipulation at some point, perhaps months in the future, while increasing customers' rates – and receiving the benefits of those rate increases.[2] To fully protect customers and ensure they have a remedy should the Partial Stipulation and/or Proposed ESP become null and void as a result of the rehearing and appeal process, the Commission should make clear that AEP Ohio's implementation of the Proposed ESP's rate increases is subject to refund.

[2] *See* Dec. 22, 2011 and Dec. 29, 2011 Letters from S. Nourse to Commission. If AEP Ohio does decide in the future to withdraw the Proposed ESP, the Proposed ESP would be terminated and the Partial Stipulation approved by the Commission would be rendered null and void. R.C. § 4928.143(C)(2)(a); Stip. § V. The Commission would then be required to issue an order continuing the provisions, terms and conditions of AEP Ohio's most recent SSO – namely, AEP Ohio's first ESP as recently modified. *See* R.C. § 4928.143(C)(2)(b); *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788; *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*, Case No. 08-917-EL-SSO et al., Order on Remand at p. 33 (Oct. 3, 2011).

II. ARGUMENT

A. The Order properly includes a modification of the Proposed ESP, but the modification is of insufficient magnitude because the Order unreasonably fails to include estimated PMR costs and AEP Ohio's own forecasted fuel costs in the ESP vs. MRO price analysis.

The Commission correctly found that AEP Ohio witness Thomas made several errors in performing the ESP vs. MRO test, including her failure to account for the projected cost of the GRR.[3] The Commission's reasoning lacks logical consistency, however, in failing to include two other projected costs of the ESP: (1) the cost of the PMR; and (2) AEP Ohio's own fuel costs estimated for years 2012, 2013 and 2014.[4] The Commission's failure is made even more remarkable by its decision to include both the GRR and PMR as place-holder riders in the Proposed ESP. While these riders remain in the Proposed ESP, the Commission must make a reasonable estimate of the cost of both of these riders. The Commission erred in not including PMR costs and fuel costs in the ESP vs. MRO test.

1. The Commission should have included PMR cost estimates in its ESP vs. MRO test.

The Commission incorrectly states in its Order that including PMR costs in the ESP vs. MRO test "would have been speculative because there is no estimate on what the potential PMR costs could be."[5] The record shows otherwise. FES witness Michael Schnitzer estimated the costs of the PMR by applying the same methodology that AEP previously used in 2009 to assess

[3] Order at pp. 30-31.

[4] AEP Ohio declared its fuel forecast to be highly confidential in discovery and through the hearing process. However, in its Reply Brief, AEP Ohio stated that "there is no need to maintain the confidentiality of the fuel cost forecast information contained in FES Ex. 10, and the protective order previously issued to maintain that information under seal may be withdrawn." AEP Ohio Reply Brief, p. 91, fn. 56. Accordingly, FES has not sought protection of that information in this Application.

[5] Order at p. 31.

the impact of pool termination in an earlier regulatory proceeding.[6] He used AEP Ohio's own forecasted pool transfer prices to project that the PMR could result in costs ranging from a low of $262 million to a high of $525 million.[7] These PMR cost estimates are no more speculative than the GRR cost estimate used by the Commission – both rely upon AEP Ohio's own methodology and AEP Ohio's contracts.

AEP Ohio chose not to estimate in this proceeding the potential impact of the PMR.[8] However, AEP Ohio witness Nelson explained that AEP Ohio would estimate the "entire impact" of the PMR in the future by calculating the "lost receipts versus what you may replace that with."[9] The potential "lost receipts" portion of this analysis is extremely significant. AEP Ohio's annual pool capacity revenue is approximately $350-$400 million.[10] Thus, as long as the PMR is an element of the Proposed ESP, it must be included as a cost of the ESP that would not be in an MRO.[11] AEP Ohio negotiated for the PMR, suggesting AEP Ohio believes it has

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[6] *See* Testimony of Michael A. Schnitzer on behalf of FirstEnergy Solutions Corp., FES Exs. 3 and 4 ("Schnitzer Direct"), p. 19 and fn. 40-41.

[7] Schnitzer Direct, p. 19 and fn. 40-41. To create his high estimate, Mr. Schnitzer calculated capacity revenue losses as the difference between the AEP capacity transfer price and the RPM capacity transfer price (as was used by an AEP Ohio affiliate in an Indiana proceeding). *See* Schnitzer Direct, p. 19, fn. 40, 41. Mr. Schnitzer relied on forecasted pool transfer prices for 2012-2014 provided by AEP Ohio in discovery. *See id.*, p. 19, fn. 40. Mr. Schnitzer offset the lost capacity revenues with the associated incremental energy revenues as a result of pool termination. *Id.*, p. 19. As a result of this analysis, Mr. Schnitzer's high estimate of the total impact of pool termination, net of offsetting increases in energy revenue, was more than $525 million, or $8.75/MWh. *Id.* To create his low estimate, Mr. Schnitzer assumed that, rather than sell excess capacity and energy at market, AEP Ohio would be able to negotiate prices with its affiliates that split the difference between market and forecast transfer prices, thereby reducing costs to be recovered in the rider by half, or $262.5 million or $4.375/MWh. *Id.* To the extent that AEP Ohio would seek to recover any other costs associated with pool termination besides lost capacity revenues, the PMR costs would be even higher than projected by Mr. Schnitzer. *Id.*, p. 19, fn. 39.

[8] Hearing Transcript ("Tr."), Volume ("Vol.") V, p. 710.

[9] Tr. Vol. V, p. 713.

[10] Tr. Vol. V, pp. 710-713.

[11] *See* Schnitzer Direct, pp. 16-17, 19-20; Direct Testimony of Robert B. Fortney on behalf of the Staff of the Public Utilities Commission of Ohio, Staff Ex. 4 ("Fortney Direct"), Att. A.

significant value.[12] It is an element of the Proposed ESP. It is not appropriate simply to ignore this element of the Proposed ESP because the final amount to be recovered under this rider is not yet absolutely certain. Mr. Schnitzer's calculations of PMR cost was unrebutted and is reasonable.

The Commission erred by failing to make any provision for the PMR in its ESP vs. MRO test.[13] In the alternative, if the Commission does not want to take the costs of the PMR into account, then it should remove the PMR from the Proposed ESP.

2. The Commission should have included AEP Ohio's own fuel cost estimates in its ESP vs. MRO test.

Mr. Fortney's ESP vs. MRO test, which the Commission used as the foundation for its own test, held fuel costs constant while increasing the energy costs in the Competitive Benchmark Price on the MRO side of the comparison. This created a systemic bias that unreasonably favors the Proposed ESP.[14] Mr. Fortney's use of AEP Ohio's 2011 fuel costs as a proxy for 2012-14 fuel costs – instead of using AEP Ohio's fuel cost estimates for each of these years – significantly underestimates the Proposed ESP price.[15] Conversely, using market prices in the blended MRO price that include estimated fuel costs while ignoring those same cost increases on the Proposed ESP side of the equation significantly overestimates the blended MRO price. Once increasing fuel costs are taken into account and even after the Commission's downward adjustments to the base generation rates are included, the Proposed ESP proves to be more costly than an MRO by approximately $166 million using Mr. Fortney's thirty-six month

[12] Tr. Vol. VII, pp. 1419-1420.

[13] *See* Direct Testimony of Laura J. Thomas on behalf of Columbus Southern Power Company and Ohio Power Company, AEP Ex. 5 ("Thomas Direct"), Ex. LJT-3.

[14] Schnitzer Direct, p. 15.

[15] Schnitzer Direct, p. 15; FES Ex. 5.

analysis and by approximately $140 million if Mr. Fortney's analysis is extended through May 31, 2015.[16]

AEP Ohio forecasts fuel costs through its complete financial forecasting model at least once a year.[17] As part of this forecasting process, AEP developed a fuel forecast for the years 2012-2014 and produced them in discovery to FES.[18] This forecast shows that AEP Ohio's own estimates predict fuel costs for this period to be much higher than the 2011 value used by Mr. Fortney.[19] Although Mr. Fortney ignored AEP Ohio's actual estimates in favor of the static values used by Ms. Thomas, he acknowledged that he "would not expect the fuel cost to remain constant for three years."[20] Mr. Fortney also acknowledged that AEP Ohio had produced a forecast that was higher than the static number he used, and "all other things being equal, if the fuel cost goes up, the value of the ESP would go down."[21] It should be no surprise then that AEP Ohio's own FAC filing for the first quarter of 2012 shows a substantial increase in fuel costs from the $33.10 relied upon by Mr. Fortney to $35.84.[22]

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[16] This does not include the cost of the PMR, which further increases the cost of the Proposed ESP over an MRO by between $262 million and $525 million. Mr. Fortney's thirty-six month analysis set out in Attachment A to this testimony is corrected to include Staff witness Johnson's market prices for January 1, 2013 - May 31, 2014 and June 1, 2014 - May 31, 2015. *See* Tr. Vol. X, pp. 1685-86; Direct Testimony of Daniel R. Johnson on behalf of the Staff of the Public Utilities Commission of Ohio, Staff Ex. 3 ("Johnson Direct"), p. 32 and Att. DRJ-4. Mr. Fortney mistakenly used the higher June 1, 2014 – May 31, 2015 price for all of 2014. Tr. Vol. X, p. 1710; Fortney Direct, Att. A. AEP Ohio's fuel cost forecasts are as provided by AEP Ohio in discovery. *See* Tr. Vol. I, pp. 144-45 and FES Exh. 5. Corrections to Mr. Fortney's Attachment A are shown on Exhibit A attached to this Application for Rehearing.

[17] Tr. Vol. III, p. 365.

[18] Tr. Vol. III, p. 366.

[19] *See* FES Ex. 5; Schnitzer Direct, p. 16 and Ex. MMS-2.

[20] Tr. Vol. X, p. 1700-01.

[21] Tr. Vol. X, p. 1701.

[22] *See* Dec. 1, 2011 quarterly report and Dec. 22, 2011 revised tariff pages filed in Case No. 11-281-EL-FAC. The fuel cost of $35.84 is calculated by inserting the appropriate meter level estimates for secondary, primary and sub/trans as filed by AEP Ohio in Case No. 11-281-EL-FAC into AEP Ohio witness Roush's Exh. DMR-1. *See generally* Tr. Vol. I, pp. 63-65.

The Commission provided two bases in its Order for not using AEP Ohio's actual fuel forecasts: "Section 4928.143(D) [sic], Revised Code, as well as Commission precedent in the ESP 1 case and Duke Energy SSO Case."[23] Neither is a valid basis for substituting a static placeholder for actual cost estimates. R.C. § 4928.142(D) provides that the Commission may adjust the generation service price upward or downward as reasonable to reflect an EDU's prudently-incurred fuel costs when determining the percentage of the SSO price that is not competitively bid. This statute does not prohibit, or even speak to, the use of fuel forecasts, when available, as an input to the ESP vs. MRO test. Indeed, AEP Ohio witness Thomas admitted that R.C. § 4928.142(D) does not prohibit the use of forecasted data in an MRO.[24] The ESP vs. MRO price test is governed by R.C. § 4928.143(C), which mandates that the Commission compare the Proposed ESP to the expected results of an MRO. It is unreasonable for the Commission to find that AEP Ohio's projected fuel costs for 2012, 2013 and 2014 will not be part of the Proposed ESP (through the FAC) and would not be an expected component of an MRO.

Indeed, even if an argument based on R.C. § 4928.142(D) had merit, it would impact only the MRO side of the equation. Assuming the Commission would exercise discretion under R.C. § 4928.142(D) to deny fuel cost increases to AEP Ohio as a component of the generation service price (*i.e.*, the 90%, 80% and 70% of the MRO price), this has no impact on the ESP side of the equation. The Proposed ESP includes a FAC, and AEP Ohio has projected that the FAC will increase steadily during the first three years of the ESP period. For the Commission to satisfy its statutory duty under R.C. § 4928.143(C), the Commission must compare the "electric security plan so approved, including its pricing and all other terms and conditions," to the

[23] Order, p. 31. The Commission is presumed to be referencing R.C. § 4928.142(D).

[24] Tr. Vol. XIII, p. 2344.

expected results of an MRO. Even if the Commission believes that fuel cost increases are not expected for an MRO, it is obvious from AEP Ohio's own forecasts that fuel cost increases are part of the Proposed ESP. Under the Commission's interpretation of R.C. § 4928.142(D), increasing fuel costs only on the ESP side of the equation would result in the Proposed ESP costing in excess of $600 million more than an MRO.[25] By ignoring these ESP fuel costs, the Commission is violating R.C. § 4928.143(C).

The Commission also errs by citing "Commission precedent in the ESP 1 case and Duke Energy SSO Case." There is no such precedent preventing the Commission from fulfilling its statutory duty under R.C. § 4928.143(C) and, if there were, it would be unlawful. The Commission's Opinion and Order issued in Case No. 08-920-EL-SSO does not address any specific issues relating to fuel forecasts and simply concludes that the stipulated ESP in that proceeding passed the test.[26] In the Commission's March 18, 2009 order in Case No. 08-917-EL-SSO, the Commission embraced Staff witness Hess's ESP vs. MRO test, which included several projections, including estimated purchased power costs and an annual non-FAC increase, as well as forecasted market prices.[27] Thus, Commission precedent supports use of forecasts when available. The Commission erred in finding that its own precedent prevents it from conducting the ESP vs. MRO test using AEP Ohio's actual fuel forecasts for the specific years at issue.

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[25] Calculations both for Mr. Fortney's thirty-six month period and for the ESP period through May 31, 2015 are shown on Exhibit A to this Application for Rehearing.

[26] The Order repeats the misleading citation offered in AEP Ohio's Initial Brief at p. 148: "In Re Duke Energy Ohio, Case No. 08-920-EL-SSO, Opinion and Order, at 11-13 and Attachment 2." Pages 11-13 of the Commission's Opinion and Order, dated December 17, 2008, merely describe the PTC-BG and PTC-FPP riders in Duke Energy's Stipulation. There is no "Attachment 2" to the Opinion and Order. "Attachment 2" to the Stipulation filed October 27, 2008 shows a calculation of the PTG-BG rider and is unrelated to the ESP vs. MRO test.

[27] March 18, 2009 Order in Case No. 08-917-EL-SSO, at pp. 70, 72 and Staff Exh. 1A.

B. The Order unreasonably determines that the Proposed ESP, in the aggregate, is more favorable than the results that would otherwise apply under R.C. § 4928.142.

Once the Commission properly takes into account the cost of increasing fuel costs and of the PMR, its determination that the Proposed ESP is more favorable than an MRO by approximately $42 million[28] lacks record support. Even after incorporating the Commission's adjustments to the base generation rates, the Proposed ESP is less favorable than an MRO by at least $402 million.[29]

Thus, compared to market pricing, the Order unreasonably and unlawfully asks AEP Ohio's customers to pay hundreds of millions more. And customers will pay more in exchange for unquantifiable "qualitative" benefits that Staff witness Fortney admitted may not ever happen.[30] As an example, claims that the Proposed ESP will benefit customers by providing "certainty" contradicts the terms of the Partial Stipulation.[31] Many of the alleged benefits are not certain to occur at all – including the incorporation of wholesale competition, corporate separation and unnecessary generation investments. All that is certain is that AEP Ohio

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[28] Order, p. 32.

[29] $140 million to account for fuel cost increases on both sides of the ESP vs. MRO equation, plus $262 million as the low estimate of the cost of the PMR. The Commission's decision to eliminate AEP Ohio's contingency on the Partnership with Ohio and Ohio Growth Fund contributions, while commendable, contributes only a $27 million net present value benefit to the Proposed ESP. Direct Testimony of William A. Allen on behalf of Columbus Southern Power Company and Ohio Power Company, AEP Ex. 4 ("Allen Direct"), Exhibit WAA-6.

[30] Tr. Vol. X, pp. 1762-1763.

[31] For example, there is no certainty that promised generation investments will be made. *See* Tr. Vol. X, pp. 1762-63 (Staff witness Fortney admitting there is no certainty that MR6 unit will be built); Tr. Vol. V, pp. 857-859 (AEP Ohio witness Hamrock agreeing that AEP Ohio is not obligated to construct MR6 unit). The claimed "certainty" of a $255/MW-day capacity price for shopping customers is no benefit given that RPM pricing through May 31, 2015 already has been fixed at approximately one quarter of this "certain" price. *See* FES Reply Brief, pp. 39-40. Customers do not receive price certainty given that approximately half of the SSO rate is variable and that AEP Ohio was unable to forecast costs associated with the GRR and the PMR during the proposed ESP period. *See* Tr. Vol. V, p. 853-55 (AEP Ohio witness Hamrock agreeing that AEP Ohio does not know what the SSO charge for generation service will be at any time during the first forty-one months of the Proposed ESP). Among other things, there also is no certainty that the $10 switching fee will ever be reduced. *See* Tr. Vol. I, p. 104 (AEP Ohio witness Roush agreeing that Partial Stipulation does not require a reduction in the fee).

customers would pay much less for generation service under an MRO than they will under the ESP approved by the Commission on December 14, 2011. Therefore, either the Proposed ESP needs to be rejected as it does not pass the statutory test, or it must be further modified to ensure that it does meet the test.

The Order cites as a non-quantifiable benefit of the Proposed ESP that it will result in an earlier transition to competitive markets than is otherwise possible.[32] But this is by no means a certainty. The Proposed ESP contains at least two contingencies before a Competitive Bid Process ("CBP") may occur: (1) corporate separation; and (2) pool modification or termination.[33] Of course, there is no testimony or evidence that establishes that either of these are necessary preconditions to a CBP, *i.e.*, that it is not possible to have a CBP before corporate separation and changes to the pool occur. The Commission need look no further than the Stipulation submitted by Duke Energy Ohio and all of the intervenors in Case No. 11-3549-EL-SSO to see that a CBP can be incorporated into an ESP prior to the completion of corporate separation.[34] Nevertheless, the Order here accepts higher-than-market pricing for customers on the gamble that AEP Ohio's "transition to market" will not turn out to be illusory. AEP Ohio has previously shown that simply because the Commission orders the Company to corporately separate, such separation doesn't have to happen.[35] Yet, incredibly, the Order imposes no

[32] Order, p. 32.

[33] Stip., § IV.1(t); FES Brief, pp. 93-94.

[34] *See* Stipulation, Case No. 11-3549-EL-SSO (filed October 24, 2011).

[35] The Commission approved corporate separation in AEP Ohio's Electric Transition Plan proceeding. *See* Tr. Vol. XII, p. 2180-2181. *See also In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of a Post-Market Development Period Rate Stabilization Plan*, Case No. 04-169-EL-UNC, Opinion and Order at p. 35 (Jan. 26, 2005) (noting AEP Ohio's inability to structurally separate).

penalty or consequence on AEP Ohio for failing to complete the two contingencies to a "transition to market".[36]

Under an MRO, customers could receive the benefits of competitive markets earlier than under the ESP approved by the Commission. Under R.C. § 4928.142(E), the Commission has discretion to accelerate the MRO blending period beginning in the second year.[37] As a result, AEP Ohio's customers could enjoy the benefit of wholesale competition from a CBP through an MRO after two years, while also preserving the Commission's discretion to transition from current ESP pricing at a different pace. The Proposed ESP prevents SSO customers from accessing the benefits of wholesale competition for at least another three and a half years (and they may not access these benefits at all). AEP Ohio can either structure its rates to meet (and beat) an MRO, or it can recognize what the FirstEnergy Ohio utilities recognized in 2008 and Duke Energy Ohio recognized in 2011 – the best way to structure an ESP to beat an MRO is to have a CBP. There is no need to delay allowing all of AEP Ohio's customers the real, undisputed benefit of competitive markets. The Commission erred in finding that the Proposed ESP's contingent, three-and-a-half-year transition is a "benefit."

The Order also cites as an unquantifiable benefit of the Proposed ESP that "the MR6 and Turning Point projects contribute the diversity of supply as is consistent with Section 4928.02, Revised Code."[38] This reasoning, however, is not consistent with R.C. § 4928.02(C), which provides that it is state policy to "ensure diversity of electricity supplies and suppliers, *by giving consumers effective choices* over the selection of those supplies and suppliers . . . ." (emphasis

[36] *See* Order, pp. 49-50, 59-61.

[37] Tr. Vol. X, p. 1709; R.C. § 4928.142(E); *In the Matter of the Application of Duke Energy Ohio for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service.*, Case No. 10-2586, 2011 WL 1827190, ¶ 15 (May 04, 2011).

[38] Order, p. 32.

added). AEP Ohio's plan is to fund the MR6 unit and Turning Point project through a nonbypassable surcharge imposed on all AEP Ohio customers, including shopping customers. The Commission's blessing of that plan, even through the first step of approving a placeholder for that nonbypassable surcharge, violates R.C. § 4928.02(C) by depriving consumers of effective choice of electricity supplies and suppliers. Centralized mandates that skew proper market functioning cannot be disguised as "choice" for consumers.

Generation investments provided outside of the competitive market can have significant negative consequences for AEP Ohio's customers and Ohio's economy.[39] The competitive market is an important guide in ensuring that generation investments are appropriate and cost-effective, while properly keeping the risk of such investments on the investors, rather than customers.[40] FES witness Lesser explained that recovery of generation costs through a nonbypassable rider "would further foreclose competition, contrary to state policy."[41] FES witness Schnitzer explained how approval of the GRR would transfer risks associated with technological choices, excess supply problems, and cost overruns from investors to customers.[42] FES witness Schnitzer also estimated that the above-market costs associated with such uneconomic investments totaled $60 million in the first year alone, and the costs could continue for years.[43] Unnecessary and uneconomic investments that would represent additional cost burdens to Ohio businesses struggling to compete cannot be described as a "benefit."

[39] *See* FES Brief, pp. 134-35.

[40] *See* Schnitzer Direct, pp. 37-39.

[41] Testimony of Jonathan A. Lesser on behalf of FirstEnergy Solutions Corp., FES Ex. 2 ("Lesser Direct"), p. 48.

[42] Schnitzer Direct, pp. 37-38.

[43] Schnitzer Direct, pp. 38-39.

The record in this proceeding is clear and uncontroverted: there is no need for additional generation in Ohio. AEP Ohio must establish in this proceeding that there is a "need" for the Turning Point solar project and the MR6 project so that they may be included in the GRR.[44] AEP Ohio has not established that need in this proceeding as required by R.C. § 4928.143(B)(2)(c), and, thus, they cannot be approved as an element of the Proposed ESP or considered as a benefit of the Proposed ESP. AEP Ohio provided no evidence that either facility was needed[45] and, in fact, the evidence resoundingly confirms that there is no need for any new generation in AEP Ohio's territory, specifically, and Ohio, generally.[46] Rather, AEP Ohio and PJM are both capacity long for the foreseeable future.[47] Thus, the Commission erred in finding that the MR6 and Turning Point Projects are a benefit of the Proposed ESP.

The Commission correctly found that the removal of POLR charges and the provision of a "discounted" capacity rate are not benefits of the Proposed ESP.[48] Other provisions of the Proposed ESP that the Commission believes might be beneficial may be illusory or, in fact, harmful to competitive markets and consumers. In any case, any such unquantifiable benefits cannot overcome the cost to consumers of the above-market pricing of the Proposed ESP. The Commission erred in finding that the Proposed ESP in the aggregate is more favorable than the expected results of an MRO.

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[44] *See* R.C. § 4928.143(B)(2)(c).

[45] *See* AEP Ohio Brief, pp. 49-52 (discussing the GRR, but omitting any support for the material requirements of such a rider).

[46] Although the Commission suggests that the Turning Point project may be needed by AEP Ohio in order for it to satisfy its in-state solar benchmark under R.C. § 4928.64 (*see* Order, p. 40), that's a different issue entirely from whether new generation is so lacking in Ohio that it must be funded through a nonbypassable surcharge imposed on all customers for the life of the facility under R.C. § 4928.143(B)(2)(c). *See* Section II.C.6., *infra*.

[47] *See, e.g.,* Schnitzer Direct, pp. 41-43 (also concluding that "AEP Ohio has significant reserve margins and does not need new generation dedicated to serve its AEP Ohio load."); Tr. Vol. VI, p. 968; Tr. Vol. VI, p. 1037; Tr. Vol. IV, pp. 555-556.

[48] Order, p. 32.

C. The Order is unreasonable and unlawful in finding that the Partial Stipulation does not violate any important regulatory principle or practice.

The Order is deficient for failing to address FES' detailed arguments that the Partial Stipulation violates important regulatory principles because it is anticompetitive and discriminatory.[49] The Order also unreasonably and unlawfully approves the MTR, GRR and PMR. The Commission also erred in suggesting that AEP Ohio's investment in the Turning Point project may qualify for nonbypassable cost recovery under R.C. § 4928.143(B)(2)(c) so that AEP Ohio may satisfy its in-state solar resource benchmarks. The Commission further erred by failing to impose specific conditions on AEP Ohio's corporate separation and pool termination and by allowing AEP Ohio to maintain barriers to competition until June 1, 2015. The Commission also erred by approving a $255/MW-day capacity price as the state compensation mechanism without any record support. Lastly, although the Commission properly modified the Partial Stipulation to make some accommodations for governmental aggregation, the Commission should further modify the Partial Stipulation and its Appendix C to eliminate remaining burdens imposed on governmental aggregation.

1. The Partial Stipulation is discriminatory.

The Partial Stipulation violates the state's policy against discriminatory pricing. It is this state's policy to "ensure the availability to consumers of . . . nondiscriminatory, and reasonably priced retail electric service."[50] As Staff witness Fortney testified, the "[s]ame service for similarly situated customers should be priced equally."[51] However, in violation of this significant and fundamental state policy, the Proposed ESP establishes two different prices for

[49] FES Brief, pp. 81-116.

[50] R.C. § 4928.02(A).

[51] Tr. Vol. X, pp. 1691-1692.

the same capacity service for similarly situated shopping customers. Shopping customers who fall under the RPM set-aside caps will pay RPM market-based prices for AEP's capacity, at an average of $63/MW-day over the term of the Proposed ESP.[52] Shopping customers who do not fall under the caps will pay $255/MW-day for AEP's capacity, a price which is approximately four times higher than the price to be paid by shopping customers under the cap.[53] There is no difference in the capacity service provided through the Partial Stipulation at two different prices.[54] The wide disparity in capacity prices between similarly-situated customers has no economic justification, is discriminatory, and violates fundamental ratemaking principles of fairness, cost-causation, and efficiency. There is no economic, legal, or public policy basis for setting similarly-situated customers' capacity prices at different levels for the same retail electric service. The Commission erred by approving different rates for the exact same service charged to similarly-situated customers based on a first-come, first-served queue system.

The Order approving the Partial Stipulation also results in capacity prices that discriminate between shopping and non-shopping customers. SSO customers pay a wholly separate, unknown price for the same AEP Ohio capacity. AEP Ohio witness Hamrock acknowledged that there will be three different capacity prices: (1) the arbitrary $255/MW-day price; (2) the RPM price; and, (3) the SSO price.[55] AEP Ohio has been unable to identify the capacity price paid by SSO customers – and, in fact, could not identify the price for capacity

[52] Stip. § IV.2(b); Direct Testimony of Tony C. Banks on behalf of FirstEnergy Solutions Corp., FES Ex. 1 ("Banks Direct"), p. 20.

[53] *See* Stip. § IV.2(b); Banks Direct, pp. 19-20.

[54] *See* Tr. Vol. X, p. 1692 (Staff witness Fortney); Tr. Vol. III, pp. 236-237 (OEG witness Baron); Tr. Vol. VI, p. 972 (Constellation witness Fein).

[55] Tr. Vol. V, p. 844.

being charged today through the SSO or at any time during the term of the Proposed ESP.[56] AEP Ohio witness Pearce, the Companies' witness on capacity cost, did not know what capacity cost would be included in the SSO's base generation rate.[57] Mr. Hamrock did not even know how the SSO capacity price compares to the other two prices.[58] The Commission's approval of three different capacity prices for the same service violates regulatory principles and practices.

The $10/MWh shopping credit for all GS1 and GS2 schools and certain GS-2 customers is another discriminatory component of the Partial Stipulation.[59] The Order magnified this discrimination by expanding the $10/MWh shopping credit from a 1,000,000 MWh annual limit to a 2,000,000 MWh annual limit.[60] As with the shopping caps, the Partial Stipulation also incorporates an arbitrary date limit that prevents some schools from receiving the credit (those that shop after September 7, 2011) and grants the credit to other schools (those that were shopping as of September 7, 2011).[61] GS-2 customers are also limited based on an arbitrary and different date, September 6, 2011.[62]

Retail electric service must be offered on a nondiscriminatory basis, but the Order approves SSO terms that are plainly and openly discriminatory. The only basis offered for the discrimination is that the parties to the Partial Stipulation want it that way. However, the Commission lacks authority to approve a stipulation that is plainly discriminatory.

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[56] *See* Tr. Vol. I, pp. 85-86 (AEP Ohio witness Roush); Tr. Vol. V, pp. 730-731 (AEP Ohio witness Nelson).

[57] Tr. Vol. II, p. 179.

[58] Tr. Vol. V, p. 844.

[59] *See* Banks Direct, p. 19.

[60] Order, p. 38.

[61] *See* Stip., § IV.1(c).

[62] See Stip., § IV.1(c).

2. The Partial Stipulation is anti-competitive.

Although more than 1.6 million Ohio customers have taken advantage of the competitive market for retail electric service, only approximately 1% of those customers were located in AEP Ohio's service territory as of June 30, 2011.[63] Customers in AEP Ohio's service territory should have the same access to the competitive market as customers in other EDUs' territories have. Yet the Commission's blessing of the Partial Stipulation will preclude AEP Ohio's customers from enjoying the benefits of a fully competitive market for another forty-one months.

Competition can occur in two ways: (1) on the wholesale level to serve SSO load; or (2) on the retail level where customers may shop for generation service. At the wholesale level, there is no record evidence that AEP Ohio could not compete in a wholesale CBP for service starting in 2012 – nor do any of the Signatory Parties present any argument that AEP Ohio cannot.[64] At the retail level, by the admission of parties supporting the Partial Stipulation, the RPM market-based capacity price caps limit shopping.[65] There is no basis in Ohio law, in state policy, or in the record to establish any basis on which to allow AEP Ohio to continue to block wholesale competition (by not including a CBP) and at the same time restrict its customers' ability to shop effectively on the retail level (through the many restrictions on shopping, especially above-market capacity pricing). The shopping caps approved by the Commission will

[63] *See* Banks Direct, pp. 4, 16; Tr. Vol. VII, p. 1219.

[64] Indeed, AEP Ohio's own actions show AEP Ohio could conduct a wholesale CBP immediately. In Case No. 08-917-EL-SSO, AEP Ohio proposed to purchase incremental power on a "slice of system" basis for between 5% and 15% of its load. *See* Case No. 08-917-EL-SSO, Opinion and Order, March 18, 2009, p. 15. The fact that AEP Ohio requested a CBP in 2008 conclusively establishes that nothing prevents AEP Ohio from conducting a CBP for its load today.

[65] Banks Direct, p. 36, Ex. TCB-8 (AEP Ohio Senior VP Munczinski stating that caps will constrain retail shopping); Tr. Vol. IV, p. 544 (RESA witness Ringenbach); Tr. Vol. VI, pp. 970-971 (Constellation witness Fein); Tr. Vol. X, pp. 1693-1694 (Staff witness Fortney).

burden retail competition for the next forty-one months and, as such, violate important regulatory principles and practices.

3. The Partial Stipulation includes a non-bypassable Market Transition Rider that is unreasonable and not authorized by any provision of R.C. § 4928.143(B)(2).

The Commission erred in approving the MTR, with minor modifications. Even if the MTR provides "rate certainty and stability to AEP-Ohio customers while AEP-Ohio transitions its rate structure,"[66] this does not justify approval of the MTR as a nonbypassable rider. There is no reason why shopping customers who are already paying market prices should pay the charge (or receive a credit). Indeed, RESA witness Ringenbach acknowledged that Rider MTR was simply a way for AEP Ohio to make shopping customers pay for a transition to rates that would otherwise be too high.[67] By imposing the MTR on shopping customers, AEP Ohio distorts market price comparisons and damages the "transition" to market that AEP Ohio professes to be encouraging.[68]

Similarly, there is no statutory basis for authorizing AEP Ohio to receive an additional $24 million in MTR charges in 2012. As the Ohio Supreme Court observed:

> By its terms, R.C. 4928.143(B)(2) allows plans to include only 'any of the following' provisions. It does not allow plans to include 'any provision.' So if a given provision does not fit within one of the categories listed 'following' (B)(2), it is not authorized by statute."[69]

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[66] Order, pp. 37-38.

[67] Tr. Vol. IV, p. 553.

[68] Lesser Direct, p. 43; *see also* Tr. Vol. IV, pp. 552-553 (RESA witness Ringenbach also acknowledged that the MTR has the effect of distorting price signals sent to retail customers).

[69] *In re Application of Columbus Southern Power Co.*, 128 Ohio St.3d 512 at ¶ 32.

This "free" money for AEP Ohio is not authorized by any provision of R.C. § 4928.143(B)(2) and, thus, is unlawful. The Commission should grant rehearing to eliminate the $24 million revenue provision of the MTR and to convert it to a bypassable rider.

4. The Partial Stipulation includes a Generation Resource Rider as a placeholder that will harm competitive markets and is not authorized by any provision of R.C. § 4928.143(B)(2).

In its discussion of its approval of the GRR, the Order explains that the GRR is only a placeholder for a nonbypassable surcharge to recover the cost of two new generating facilities under R.C. § 4928.143(B)(2)(b) or (c), and that no costs have been approved for recovery.[70] However, that the GRR is a "placeholder" is insufficient to save it or to remedy its deleterious effects. R.C. § 4928.143(B)(2)(b) and (c) explicitly require that evidence of the cost of this rider and the "need" for additional generation must be established in this ESP proceeding: no allowance under (B)(2)(b) or surcharge under (B)(2)(c) "shall be authorized unless the commission first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility." A cardinal rule of statutory interpretation is that a statute must be construed to give some operative effect to every word used.[71] The phrase "in the proceeding" plainly refers to a proceeding, such as this case, in which the Commission is considering the electric distribution utility's application for an ESP. Indeed, the same phrase is used in R.C. § 4928.143(C)(1) when referring to the company's burden of proof. The "proceeding" in that paragraph is the same "proceeding" referred to in R.C. § 4928.143(B)(2)(b) and (c) – the ESP application review. The words "in the proceeding" cannot be read out of the statute as has been done here. Given this language, the statute thus requires

[70] Order, p. 39.

[71] *State v. Arnold*, 61 Ohio St.3d 175, 178, 573 N.E.2d 1079 (1991); *Taber v. Ohio Dept. of Human Serv.*, 125 Ohio App.3d 742, 747, 709 N.E.2d 574 (Franklin App. 1998); R.C. § 1.47(B).

that the need and cost of the facilities that would be the subject of riders approved under those paragraphs be known at the time an ESP is approved because the costs of the facilities necessarily are an essential input to the Commission's determination under R.C. § 4928.143(C) that an ESP is more favorable than an MRO. Because AEP Ohio intentionally chose to defer any such demonstration of costs or need to a separate proceeding, despite the statutory mandate to do so in this proceeding, the Commission lacks a statutory basis to approve the GRR, even as a placeholder.

Not only is the Commission's approval of the GRR bad law, it also is bad policy. The Commission expresses concern in the Order that market-based solutions may not emerge for the state's generation needs.[72] But the Commission's approval of the GRR increases the risk and cost of market-based solutions. The Commission's approval of the GRR creates uncertainty for potential suppliers in assessing the competitive market in Ohio.[73] Moreover, the GRR could harm Ohio's economy by encouraging unnecessary and costly generation investments, which Ohio consumers would be obligated to pay for over the life of the generation facility:

> The electricity supply business is inherently risky, because the future is uncertain with respect to those things that will determine the future market price of electricity: load growth, fuel prices, environmental costs, new technology, and so forth. The proposed GRR would improperly allocate risk (including the risk associated with technological choices, excess supply problems, and cost overruns) to consumers rather than to investors. Not surprisingly, the regulatory process significantly underestimates these risks when making long-term resource commitments because customers, and not investors, largely bear these risks. In these risky electricity markets, unfavorable and unforeseen investment outcomes are common. Unfortunately, in regulated markets, retail customers bear the responsibility of paying for those mistakes.[74]

[72] Order, p. 39.

[73] Lesser Direct, p. 63.

[74] Schnitzer Direct, pp. 37-38.

Customers would be responsible for the above-market costs associated with such uneconomic investments – estimated at $60 million in the first year alone – which could extend well beyond the term of the Proposed ESP and saddle "Ohio businesses that are struggling to compete with out-of-state competitors."[75] The fact that the GRR is a "placeholder" does not alleviate the adverse effects of this rider. "Approving the GRR as a place-holder . . . would cast a cloud of uncertainty over competitive markets."[76] Accordingly, the Commission should grant rehearing and remove the GRR from the Partial Stipulation.

5. The Partial Stipulation includes the PMR as a placeholder that is unreasonable and unlawful and, if not bypassable, would harm competitive markets and would not be authorized by any provision of R.C. § 4928.143(B)(2).

The PMR is unreasonable if one assumes, as the Commission has in its Order, that AEP Ohio will complete its corporate separation in the next few years. Cost recovery under the PMR is triggered "if the impact of the Pool termination/modification on AEP Ohio during the ESP term is greater than $50 million prior to May 31, 2015."[77] Yet AEP Ohio's schedule for completing corporate separation, if carried out, will result in all of AEP Ohio's generation-related assets *and liabilities* being transferred to a newly-created affiliate sometime in 2013.[78] Thus, after corporate separation, AEP Ohio will no longer have any generation-related costs to recover "via a separate RDR application" as described in the Partial Stipulation.[79] After corporate separation, on what legal basis will AEP Ohio – as a distribution and transmission entity – recover generation costs? Does the Commission envision that the new generation

[75] Schnitzer Direct, pp. 38-39. *See* Lesser Direct, p. 55.

[76] Lesser Direct, p. 63.

[77] Stip. § IV.5.

[78] Stip. § IV.1(q) and Appx. B.

[79] *See* Stip. § IV.5.

affiliate will seek cost recovery? If so, what is the legal basis under which the Commission may authorize a CRES provider to recover costs incurred by a previously vertically-integrated EDU? The entire concept of the PMR is both unlawful and unreasonable. Thus, the Commission should grant rehearing to remove the PMR from the Partial Stipulation.

In the alternative, because the Partial Stipulation and the Order are unclear on the bypassability of the PMR, the Commission should make clear on rehearing that the rider is bypassable. If approved as a generation-related nonbypassable rider, the PMR would give AEP Ohio an additional anticompetitive revenue source. At a general level, nonbypassable generation-related riders obligate shopping customers to pay for generation services of AEP Ohio. As Signatory Party witness Fein acknowledged, such riders "would subject customers to kind of an anticompetitive subsidy, if you will, or paying more than they need to for generation service" and, as a result, customers are less likely to shop.[80] The Order states that it is approving the PMR pursuant to R.C. § 4928.143(B),[81] by which the Commission presumably means R.C. § 4928.143(B)(1) and not R.C. § 4928.143(B)(2).[82] If so, the PMR must be bypassable as it would be a provision "relating to the supply and pricing of electric generation service."[83] The Commission explains elsewhere in its Order that costs authorized for recovery through R.C. § 4928.143(B)(1) must be "recovered solely from SSO customers."[84] The Commission on rehearing should make clear that the PMR is a bypassable rider and that any costs authorized for recovery in the future through the PMR will be recovered solely from SSO customers.

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[80] Tr. Vol. VI, pp. 966-967.

[81] Order, p. 50.

[82] The Commission's Order further confuses the issue by stating that AEP Ohio "will maintain the burden set forth in Section 4928.143, Revised Code." Is this a reference to one of the provisions of R.C. § 4928.143(B)(2), although the PMR is being approved under R.C. § 4928.143(B)(1)? The Order does not say.

[83] R.C. § 4928.143(B)(1).

[84] Order, p. 56.

If the Commission intended to approve the PMR as a non-bypassable rider under one of the provisions of R.C. § 4928.143(B)(2), this would be unlawful.[85] The PMR could allow AEP Ohio to recover hundreds of millions of dollars in generation-related "impact" imposed by its Pool Agreement.[86] Only three subsections of R.C. § 4928.143(B)(2) could possibly authorize the PMR: (1) subsection (B)(2)(b), which authorizes the nonbypassable recovery of costs associated with certain construction work in progress on electric generating facilities; (2) subsection (B)(2)(c), which authorizes the recovery of a nonbypassable surcharge for the life of certain new electric generating facilities; or (3) subsection (B)(2)(d), which provides for "[t]erms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals . . . as would have the effect of stabilizing or providing certainty regarding retail electric service." The PMR has nothing to do with construction work in progress costs or a surcharge on a new generating facility. There also is no record evidence to suggest that the PMR is necessary for "stabilizing or providing certainty" regarding AEP Ohio's ability to provide retail electric service. As such, there is no record evidence to establish – and the Order notably fails to include a finding – that the PMR falls within any provision of R.C. § 4928.143(B)(2).

6. The Commission unreasonably and unlawfully determined that AEP Ohio may demonstrate that the Turning Point project is necessary under R.C. § 4928.143(B)(2)(c) if it is needed by AEP Ohio to comply with the solar benchmarks in R.C. § 4928.64.

The Order states that AEP Ohio may include the cost of the Turning Point project in the GRR if the project "is necessary to comply with the solar renewable energy resource provisions

[85] *See In re Application of Columbus Southern Power Co.*, 128 Ohio St.3d 512 at ¶ 32.

[86] *See* Stip. § IV.5.

contained in Section 4928.64, Revised Code, and that sufficient solar energy resources are not available through competitive markets."[87] This misreads Ohio law.

The GRR is intended as a placeholder to recover costs approved in the future under R.C. § 4928.143(B)(2)(c). Electric generating facilities receive cost recovery through a non-bypassable surcharge under R.C. § 4928.143(B)(2)(c) if the Commission finds in an ESP proceeding that certain criteria are satisfied. In contrast, an EDU's cost recovery associated with solar renewable energy resources must be bypassable: "All costs incurred by an electric distribution utility in complying with the requirements of [R.C. § 4928.64] shall be bypassable by any consumer that has exercised choice of supplier under section 4928.03 of the Revised Code."[88] If AEP Ohio invests in the Turning Point project in order to satisfy its R.C. § 4928.64 benchmarks, then R.C. § 4928.64(E) mandates that cost recovery must be from SSO customers only.

The Commission appears to have confused the "need" for a new electric generating facility under R.C. § 4928.143(B)(2)(c) with the entirely different "need" for renewable energy resources under R.C. § 4928.64. The former is "based on resource planning projections", which means that AEP Ohio must demonstrate under R.C. § 4928.143(B)(2)(c) that a resource is "a least-cost alternative to meeting the projected demand for electricity."[89] In contrast, renewable energy resource benchmarks in R.C. § 4928.64 are designed to promote renewable energy resources and have nothing to do with "the projected demand for electricity." Indeed, it is assumed that renewable energy resources are not the least-cost alternative, which is the sole

[87] Order, pp. 39-40.

[88] R.C. § 4928.64(E).

[89] Lesser Direct, p. 46. As the Commission correctly notes in the Order, the "need" analysis also requires a finding that generation resources are not available through competitive markets, *i.e.*, that PJM is not functioning.

reason why R.C. § 4928.64 imposes benchmarks on EDUs and electric service providers. To the extent AEP Ohio has a "need" to satisfy its in-state renewable energy resource benchmark, it is a "need" created by Ohio policy, not a resource planning need. If this "need" is not satisfied, then consumers do not suffer as would be the case under R.C. § 4928.143(B)(2)(c) (indeed, consumers' overall cost for electric service would be incrementally lower). Moreover, if AEP Ohio cannot satisfy this "need" through market-generated resources, it may seek relief from the in-state renewable energy resource benchmark by asking the Commission to make a *force majeure* determination.[90] In short, a resource planning "need" may receive cost recovery through a non-bypassable surcharge under R.C. § 4928.143(B)(2)(c) while a solar energy resource "need" receives bypassable cost recovery or a waiver under R.C. § 4928.64. The Order erred by confusing these two statutory provisions.

7. The Commission unreasonably and unlawfully approved a $255/MW-day capacity price as the state compensation mechanism.

The Order approves a state compensation mechanism for AEP Ohio's sale of capacity to CRES providers that uses a $255/MW-day price that is wholly unrelated to AEP Ohio's costs or to market prices, which are approximately four times lower.[91] The evidence before the Commission, however, demonstrated that there is only one right price for capacity: the RPM market-based price.[92] And even if a cost-based price were appropriate (and it is not), there is no credible record support for a price of $255/MW-day. Thus, AEP Ohio is achieving through the Partial Stipulation and the Order what it would never have been able to achieve through litigation before the Commission or the Federal Energy Regulatory Commission ("FERC"). The result

[90] R.C. § 4928.64(C)(4)(a).

[91] *See* Order, pp. 51-55.

[92] *See* FES Brief, pp. 51-61.

violates state policy because it will deny customers the opportunity to access competitive market-based pricing. The Commission erred in authorizing a $255/MW-day capacity charge as the state compensation mechanism.

a. Fixing the state compensation mechanism through May 31, 2015 at any price other than the RPM market-based price is anticompetitive and unreasonable.

Under the Partial Stipulation, customers representing only 21% of AEP Ohio's load would be entitled to receive capacity at the RPM market-based price during 2012.[93] This cap on RPM-priced capacity would increase slightly over the term of the Proposed ESP, to 29% (or 31% based on approval of securitization) in 2013, and 41% in 2014 until June 2015.[94] "[A]ny and all shopping in excess of the RPM-priced set aside limits will be priced at the $255/MW-Day capacity rate."[95] Which of AEP Ohio's over one million customers will be lucky enough to receive the RPM-priced capacity would be established under complex and arbitrary procedures set forth in the Partial Stipulation's Appendix C.

The Partial Stipulation's $255/MW-day price is a substantial deviation from what AEP Ohio has always charged for capacity and what CRES providers have anticipated would be charged through May 31, 2015. The only capacity price which has ever been in effect for CRES providers purchasing capacity from AEP Ohio has been RPM pricing.[96] AEP Ohio used RPM pricing in its 2009-2011 ESP.[97] AEP Ohio attempted to persuade FERC to adopt cost-based

[93] Stip., § IV.2(b)(3).

[94] Stip., § IV.2(b)(3).

[95] Stip., § IV.2(b)(3).

[96] Tr. Vol. V, p. 735.

[97] *See* Schnitzer Direct, pp. 22-23.

pricing – and failed.[98] In Case No. 10-2929-EL-UNC, the Commission specifically adopted RPM pricing as Ohio's state compensation mechanism on December 8, 2010.[99] In that proceeding, AEP Ohio proposed to change Ohio's state compensation mechanism to a cost-based system, which was universally opposed by all parties, including Staff. Staff found that AEP Ohio's approach was "not reasonable" and recommended the use of RPM prices.[100] At no point has Ohio ever adopted AEP Ohio's proposed cost-based mechanism.

PJM's Reliability Assurance Agreement ("RAA") does not permit a CRES provider to make its own election into AEP Ohio's Fixed Resource Requirement ("FRR") territory during the period from the present through May 31, 2015. AEP Ohio has priced capacity at RPM ever since it made an FRR election.[101] Due to AEP Ohio's FRR election, CRES providers are obligated through May 31, 2015, to purchase capacity from AEP Ohio for any load in AEP Ohio's FRR area.[102] Because AEP Ohio has historically charged CRES suppliers the RPM price for capacity, CRES providers had no reason to make their own FRR election during this period because capacity would be priced at RPM whether bid into the auction or not.[103] The Order changes the rules of the game by quadrupling capacity charges to $255/MW-day.[104] This means that CRES providers, who relied on AEP Ohio's express position regarding RPM capacity

[98] FERC Entry dated January 20, 2011, Case No. ER11-2183-000; Direct Testimony of Roy J. Shanker on behalf of FirstEnergy Solutions Corp., FES Ex. 14 ("Shanker Direct"), p. 13.

[99] *See In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Entry at p. 2 (Dec. 8, 2010).

[100] *See* Direct Testimony of Hisham M. Choueiki on behalf of the Staff of the Public Utilities Commission of Ohio, Staff Ex. 2 ("Choueiki Direct") at pp. 4, 7-8.

[101] AEP Ohio Brief, p. 90.

[102] FES Brief, p. 52.

[103] AEP Ohio Brief, p. 90. CRES providers only would have been motivated to self-supply had they anticipated such inappropriate and anti-competitive behavior by AEP Ohio.

[104] Banks Direct, p. 12.

pricing in Case No. 08-917-EL-SSO *et al*., will now be forced to pay above-market rates until May 31, 2015 without the ability to provide their own capacity.[105] This is anti-competitive and improper.

Moreover, several Stipulating Parties agreed that setting the capacity price at anything other than RPM was unreasonable. RESA witness Ringenbach testified that capacity charges to CRES providers should be RPM based.[106] Ms. Ringenbach also agreed that, absent the Partial Stipulation, AEP Ohio was not entitled to charge CRES providers a capacity price of $355/MW-day.[107] OEG, Constellation, and Exelon offered similar testimony.[108] Staff witness Choueiki testified that AEP Ohio's proposal to use cost-based rates was "not reasonable."[109] Staff also found that "to the extent there is a transparent forward capacity price available in the market, such a price should be used . . ."[110] Staff witness Fortney agreed with this analysis, and agreed that Staff supported pricing at RPM.[111] The Order approving a $255/MW-day capacity price at anything other than RPM market-based pricing is unreasonable.

b. The Commission's Order denies shopping customers access to market-based pricing.

The evidence before the Commission clearly demonstrated that giving AEP Ohio a windfall through above-market capacity pricing will limit shopping above the minimal cap percentages. AEP Ohio admitted as much to investors on the very day it signed the Partial

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[105] FES Brief, p. 52.

[106] Tr. Vol. IV, pp. 539-540.

[107] Tr. Vol. IV, p. 540.

[108] *See* Tr. Vol. III, p. 236 (OEG); Tr. Vol. VI, pp. 970-971, 982-983 (Constellation); Tr. Vol. VI, pp. 1043-1044 (Exelon).

[109] Choueiki Direct, p. 4.

[110] Choueiki Direct, pp. 4, 7-8.

[111] Tr. Vol. X, p. 1707.

Stipulation. AEP Ohio's Senior VP for Regulatory Services, Richard Munczinski, explained that the Proposed ESP's caps would allow AEP Ohio to continue to limit shopping: "Over those [shopping cap] percentages, if you want to shop, you pay the full cost of $255 per megawatt day. So the thought and the theory is that the shopping will be constrained to the discounted RPM price."[112] AEP Ohio's executive further clarified that AEP Ohio "should see no more shopping than the 20%, 30%, 40% levels that are included in the stipulation."[113] RESA witness Ringenbach agreed that increases in capacity costs charged to CRES providers would have the effect of reducing the amount of headroom for CRES providers, which would take savings away and deter CRES providers from offering service.[114] She further admitted that the $255/MW-day price arbitrarily set in the Partial Stipulation, which is four times higher than market, would limit or constrain shopping.[115] Similarly, Constellation witness Fein testified that a 200% increase in capacity prices over RPM prices "would adversely affect shopping."[116] Thus, all parties agree that the Commission's approval of a $255/MW-day capacity price will constrain shopping in AEP Ohio's territory through May 31, 2015.[117]

FES witness Banks summarized the resulting impact of the RPM capacity price caps:

> While certain Signatory Parties describe the discriminatory capacity price caps proposed for the first year of the [Proposed] ESP as providing the opportunity for shopping for AEP Ohio customers in a level equal to the load of Toledo Edison, the disturbing flip side is that in its first year, the [Proposed] ESP would effectively prohibit AEP Ohio customers in a level

[112] Banks Direct, p. 36, Ex. TCB-8 (emphasis added).

[113] Banks Direct, p. 36, Exh. TCB-9 (emphasis added).

[114] Tr. Vol. IV, p. 543, 544.

[115] Tr. Vol. IV, p. 544.

[116] Tr. Vol. VI, pp. 970-971.

[117] *See* FES Brief, pp. 96-98 for the "headroom" analysis performed by FES witness Schnitzer; Schnitzer Direct, pp. 35-36.

> encompassing double the load of The Cleveland Electric Illuminating Company from shopping – approximately three times the load of Toledo Edison and the vast majority of AEP Ohio's customers.[118]

Indeed, by 2015 – when the cap is at its highest – shopping in AEP Ohio's territory would still be less than the lowest rate of any other Ohio electric utility in 2011.[119] As FES witness Schnitzer demonstrated, the above-market capacity price of $255 per MW-day will result in customers having to remain on AEP Ohio's SSO service and having to pay above-market Proposed ESP prices.[120]

c. The record does not support a capacity cost of $255/MW-day.

The Commission erroneously states in its Order that the record in this proceeding provides a range of capacity costs from $57.35/MW-day to $355/MW-day. The Order emphasizes that a "key aspect[] of the record" was FES witness Schnitzer's maximum above-market capacity rate of $162/MW-day, which the Commission improperly adjusted upward in an attempt to justify the Partial Stipulation's $255/MW-day price.[121] The Commission's finding misses the point, discussed above, that anything other than an RPM market-based price through May 31, 2015, is unreasonable and anticompetitive. However, even if a cost-based price were appropriate (and it is not), all credible record evidence demonstrated that the $255/MW-day price is not cost based and is not, as claimed by the Commission, "within the range of reasonableness."[122]

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[118] Banks Direct, p. 5.

[119] *See* Banks Direct, p. 23.

[120] Schnitzer Direct, p. 37.

[121] Order, p. 55.

[122] *See* Order, p. 55.

FES provided extensive expert testimony demonstrating that AEP Ohio had invented its capacity costs simply to have a negotiating position from which it could retreat to a "middle ground."[123] Simply because a party adopts a negotiating position as its starting point for discussions does not mean that its position is reasonable, credible or worthy of consideration. Indeed, the record evidence demonstrated that AEP Ohio's position was anything but credible. AEP Ohio's calculation of its purported capacity costs was significantly overstated and incorrect for several reasons: (1) S.B. 3 requires that all generation plant investment after January 1, 2001, be recovered solely in the market, and AEP Ohio inappropriately seeks to recover post-2000 costs through its capacity price;[124] (2) AEP witness Pearce inappropriately included pre-2001 stranded costs in his capacity cost calculation;[125] and (3) AEP Ohio's formula rate failed to include an offset for energy revenue.[126] When the appropriate adjustments are made, AEP Ohio's actual capacity cost is $57.35/MW-day.[127]

The Commission's reliance upon FES witness Schnitzer's maximum above-market price, which it adjusted upward for deferred fuel, is doubly in error. First, Mr. Schnitzer's calculation of a maximum above-market rate was done solely to show a maximum level that could be economically justified, not to show what a cost-based rate would be.[128] It is not record evidence of a cost-based rate. Mr. Schnitzer made clear that "there is no valid economic basis for supporting either the Stipulation capacity price of $255 per MW-day or the $347.97 per MW-day

[123] FES Brief, pp. 61-74.

[124] FES Brief, pp. 61-64, 67-68.

[125] FES Brief, pp. 66-67.

[126] FES Brief, pp. 68-70.

[127] FES Brief, pp. 69-73.

[128] Schnitzer Direct, p. 31.

capacity price that AEP Ohio proposed in Case No. 10-2929-EL-UNC."[129] He also explained that he was not recommending that the Commission adopt his maximum above-market rate as the capacity price.[130] His recommendation was that the Commission adopt the RPM price.[131] Thus, Mr. Schnitzer's $162/MW-day maximum above-market capacity price for 2010[132] establishes a theoretical upper limit of the "range of reasonableness" and is evidence that a $255/MW-day capacity price is not within the "range of reasonableness."

Second, the Order mistakenly states that Mr. Schnitzer accepted that an adjustment to his calculation for fuel costs was appropriate.[133] To be sure, in response to a hypothetical question posed by AEP Ohio's counsel, Mr. Schnitzer stated that such an adjustment would increase his maximum above-market capacity price to approximately $204 – still well below the Partial Stipulation's $255/MW-day price.[134] However, Mr. Schnitzer never agreed that such an adjustment was necessary or proper. He did not agree because the fuel deferral costs claimed by AEP Ohio would be recovered elsewhere. Thus, inclusion of those fuel costs in the capacity calculation would result in double recovery.[135] In fact, AEP Ohio witness Nelson admitted that the fuel deferrals on which AEP Ohio based its proposed adjustments to the maximum above-market price were already going to be recovered on a nonbyassable basis through the PIRR.[136] Accordingly, no adjustment to Mr. Schnitzer's calculation is necessary or appropriate. The

[129] Schnitzer Direct, p. 30.

[130] Schnitzer Direct, p. 31.

[131] Schnitzer Direct, p. 31.

[132] The Commission mistakenly states in the Order that the maximum above-market capacity price was based on 2009 data. *See* Order, p. 53. It was based on 2010 data. *See* Schnitzer Direct, Exh. MMS-5, pp. 1, 3.

[133] Order, p. 55.

[134] Tr. Vol. VII, pp. 1457-59.

[135] *See* FES Brief, p. 72.

[136] Tr. Vol. XII, p. 2205.

Commission erred in making this adjustment and in determining that a $255/MW-day capacity price is reasonable.

8. The Commission unreasonably failed to modify the Partial Stipulation to impose specific conditions on AEP Ohio's corporate separation and pool termination.

The Commission properly determined that further review is required of the terms of AEP Ohio's corporate separation and stated that this review will be continued in Case No. 11-5333-EL-UNC.[137] However, the Commission should grant rehearing to provide more details regarding what it expects from AEP Ohio in future proceedings involving corporate separation and pool termination.

The Commission's Rules require that an electric utility file an application for approval of any sale or transfer of generating assets owned in full or in part by the utility.[138] The application "shall, at a minimum:

> (1) Clearly set forth the object and purpose of the sale or transfer, and the terms and conditions of the same.
>
> (2) Demonstrate how the sale or transfer will affect the current and future standard service offer established pursuant to section 4928.141 of the Revised Code.
>
> (3) Demonstrate how the proposed sale or transfer will affect the public interest.
>
> (4) State the fair market value and book value of all property to be transferred from the electric utility, and state how the fair market value was determined."[139]

Under the circumstances presented here, a hearing is required.[140] The Order states that the Commission will expeditiously review the terms of AEP Ohio's corporate separation in Case No.

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[137] Order, pp. 59-61.

[138] O.A.C. 4901:1-37-09(A), (B).

[139] O.A.C. 4901:1-37-09(C) (emphasis added).

11-5333-EL-UNC (the "Corporate Separation Case").[141] The Order notes that AEP Ohio has requested a waiver of Rule 4901:1-37-09(C)(4), and also notes that parties should be afforded due process.[142] However, to ensure that AEP Ohio complies with the Commission's rules, the Commission should issue an entry on rehearing that requires AEP Ohio, as a condition of approval of the Partial Stipulation, to provide all necessary details in the Corporate Separation Case regarding its corporate separation plan, including the fair market value and book value of all property to be transferred to AEP Generation, with an explanation of how the fair market value was determined.[143] Given that AEP Ohio witness Nelson admitted that AEP Ohio is developing fair market valuations for these assets for its own internal use as part of its regular business practice,[144] this requirement would not place any additional burden on AEP Ohio. The Commission also should make clear that, once these details are provided and after a reasonable discovery period is afforded to all parties, the Commission will conduct an evidentiary hearing as required by Rule 4901:1-37-09(D).

AEP Ohio also has left open the option of not supplying its SSO load through a CBP starting June 1, 2015, if it has not completed its corporate separation and pool termination by that time.[145] Yet, the Partial Stipulation obligates AEP Ohio to auction all 100 tranches between

(continued…)

[140] O.A.C. 4901:1-37-09(D).

[141] Order, pp. 59-61.

[142] Order, pp. 60-61.

[143] Among other things, AEP Ohio should be directed to explain why a transfer at book value would be in the public interest, as opposed to a transfer at fair market value, or a transfer at the higher of book value or fair market value, to better ensure that AEP Ohio is not providing a subsidy to AEP Generation through a discounted price for the transfer of the assets.

[144] Tr. Vol. V, pp. 705-06.

[145] *See* Tr. Vol. V, pp. 728-30.

December of 2013 and April of 2015 even if corporate separation and/or pool termination are not completed.[146] To eliminate any uncertainty, the Commission should make clear on rehearing that AEP Ohio will conduct each CBP auction on the schedule set out in the Partial Stipulation and will begin supplying its SSO load from the CBP results starting June 1, 2015, regardless of whether AEP Ohio completes corporate separation and/or pool termination by that time.[147]

As previously noted by FES, the Partial Stipulation does not impose any penalty on AEP Ohio for failure to achieve corporate separation and pool termination.[148] For that matter, it lacks any incentives to encourage AEP Ohio to achieve corporate separation and pool termination. Only "diligent efforts" are required.[149] Yet the Commission states, and all parties agree, that "corporate separation will benefit the public interest by contributing to the creation of a competitive marketplace in Ohio."[150] On rehearing, the Commission should encourage AEP Ohio to be more than diligent in completing corporate separation and pool termination.

9. The Partial Stipulation unreasonably allows AEP Ohio to maintain competitive barriers until at least June 2015.

The Proposed ESP approved by the Commission provides that certain existing barriers to competition in AEP Ohio's service territory will continue: (1) above-market capacity charges and the "queue" for capacity; (2) switching fees; and (3) burdensome minimum stay requirements related to switching.[151] Constellation witness Fein agreed that "[t]here are a number of items that have been on the books in [AEP Ohio's] tariffs since the opening on [sic]

[146] Stip. IV.1(t).

[147] Contingent, of course, on the Commission approving the CBP results as set forth at page 47 of the Order.

[148] FES Brief, p. 79; FES Reply Brief, p. 19.

[149] Stip. IV.1(t).

[150] Order, p. 60.

[151] Banks Direct, pp. 53-56.

the marketplace" that are barriers to shopping – including the lack of certain information sharing.[152] These existing barriers to competition "contradict the state's policies of ensuring the availability of nondiscriminatory electric service, encouraging cost-effective and efficient access to information regarding the operation of distribution systems to promote effective customer choice of retail electric service, and ensuring retail electric service consumers protection against unreasonable sales practices, market deficiencies and market power."[153]

Under the Order, none of these barriers will be lifted until at least June 2015. The 12-month minimum stay will remain until 2015 although it is a barrier to shopping.[154] "By implementing these minimum stays [including the 12-month minimum stay and the summer-stay requirements], AEP Ohio makes it more difficult for customers to switch, and thereby hinders effective competition and favors its own generation service."[155] AEP Ohio witness Roush could offer no explanation as to why the 12-month minimum stay requirement even exists and, thus, it lacks any evidentiary support and should be eliminated by the Commission on rehearing.[156]

RESA witness Ringenbach also identified the $10 switching fee as a barrier to competition.[157] FES witness Banks further explained that AEP Ohio's current switching fee is higher than all other Ohio EDUs.[158] It also is charged directly to customers, which precludes suppliers from paying the fee as other Ohio EDUs allow.[159] Ms. Ringenbach acknowledged that

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[152] Tr. Vol. VI, pp. 978-980.

[153] Banks Direct, p. 53.

[154] Tr. Vol. IV, pp. 556-557 (RESA witness Ringenbach); *see also* Tr. Vol. VI, pp. 980 (Constellation witness Fein).

[155] Banks Direct, pp. 53-54.

[156] *See* Tr. Vol. I, pp. 103-104.

[157] Tr. Vol. IV, p. 557.

[158] Banks Direct, p. 54.

[159] Banks Direct, p. 54.

the Partial Stipulation may not reduce the switching fee at all.[160] AEP Ohio confirmed that under the Partial Stipulation, AEP Ohio would only "discuss if a reduction in the switching fee is appropriate" and that "the outcome of those discussions is not known."[161] AEP Ohio witness Roush confirmed that AEP Ohio had agreed only to talk about the fee and that the Partial Stipulation "does not require a reduction in the fee."[162]

The Order approves these barriers to competition because they are "not excessive" and resulted from good faith negotiations.[163] However, the Stipulation was signed by CRES providers who are not currently active in the state and, thus, they could agree to barriers that don't currently affect them. Simply put, it's not truly a "good faith" negotiation when AEP Ohio proposes barriers to competition and no other party to the Partial Stipulation, who all will not be affected by those barriers, opposes them in the short term.

Moreover, whether a stipulation includes provisions that violate state policy (and by definition has provisions that are supported by the stipulating parties) is itself the test of whether the Commission should approve a stipulation. In a contested stipulation, the Commission must determine from the evidence (not simply from the parties' partial agreement) that the terms of the stipulation are just and reasonable.[164] Because the Partial Stipulation includes provisions that violate state policy, the Commission is obligated to reject those provisions. The Commission erred in not modifying the Partial Stipulation to remove the existing barriers to competition.

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[160] Tr. Vol. IV, p. 557.

[161] FES Ex. 16(a); *see also* Stip., § IV.1(s).

[162] Tr. Vol. I, p. 104.

[163] Order, pp. 48-49.

[164] *In re Application of Columbus S. Power Co.*, 129 Ohio St.3d 46, 2011-Ohio-2383, ¶ 19.

10. Even with the Order's improvements, the Proposed ESP would unlawfully burden governmental aggregation.

Ohio law specifically favors and seeks to promote governmental aggregation,[165] which provides significant benefits for residential and smaller commercial customers. For example, two communities in AEP Ohio's service territory currently are enjoying significant savings off of AEP Ohio's price-to-compare, including a 5-6% discount for residential customers and a 15% discount for small commercial customers.[166] As the Commission noted in the Order, governmental aggregation has "proven to be the most likely means to get substantial numbers of residential customers" to shop and to receive the benefits of shopping.[167] The Proposed ESP, as originally proposed by the Stipulating Parties, would have effectively foreclosed governmental aggregation in AEP Ohio's service territory for three years.[168] In response, the Commission imposed modifications that, while serving as a step in the right direction, do not go far enough to remedy the harmful (and unlawful) effects of the Proposed ESP on governmental aggregation and necessitate clarification of the Order.

a. The RPM-priced capacity provided to governmental aggregation customers should exist separate and apart from the yearly Caps and should be available for all communities authorizing aggregation.

In the Order, the Commission ordered that "the RPM set-aside level shall be adjusted to accommodate such governmental aggregation programs for each subsequent year of the

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[165] *See* R.C. § 4928.20; O.A.C. 4901:1-35-03(C)(6); *see also* 4901:1-35-03(C)(7) (requiring a "description of the effect on large-scale governmental aggregation of any unavoidable generation charge proposed to be established in the ESP").

[166] Banks Direct, p. 32; *see also* AEP Ex. 10 (City of Reynoldsburg ordinance).

[167] Order, p. 54.

[168] *See* FES' Initial Brief, pp. 116-23.

Stipulated ESP, to the extent, and only, if necessary."[169] This language suggests that all governmental aggregation customers would be entitled to RPM-priced capacity in each year of the Proposed ESP. FES supports this modification, which is necessary to ensure that the Proposed ESP promotes governmental aggregation. However, FES requests further clarification on two issues.

First, FES seeks clarification that the allotment of RPM-priced capacity reserved for governmental aggregation customers exists on top of the applicable Cap percentage allotment reserved for each customer class. AEP Ohio has interpreted the Order to include the governmental aggregation reservation within the Cap percentages.[170] This conflicts with the Commission's modification of the Partial Stipulation "*to adjust* the RPM set-aside levels" to accommodate governmental aggregation load – AEP Ohio continues to insist that no adjustment upward is necessary.[171] A separate reservation of RPM-priced capacity for governmental aggregation customers is necessary to promote such programs, in accordance with Ohio law, and to facilitate shopping for residential and business customers seeking to benefit from governmental aggregation. As the Order states, modification may be necessary in years 2013 and/or 2014 depending upon how many non-governmental aggregation customers are shopping.[172] For example, if non-governmental aggregation customers use 30% of the 2013 cap,[173] then the cap will need to be increased to accommodate governmental aggregation customers. But an adjustment may not be necessary if the same level of shopping exists in 2014

[169] Order, p. 54.

[170] Revised Detailed Implementation Plan, filed Dec. 29, 2011, at Section 4(a).

[171] Order, p. 54. *See* Revised Detailed Implementation Plan, filed Dec. 29, 2011, at Section 4(a).

[172] *See* Order, p. 54.

[173] This assumes AEP Ohio securitizes its deferred fuel costs and the cap for 2013 is 31%.

with a 41% cap. AEP Ohio's interpretation of the Commission's Order ignores the Commission's language requiring adjustment of the set-aside levels in subsequent years to the extent necessary. AEP Ohio would put governmental aggregation into the queue first and, thus, would never require adjustment of set-aside levels in future years. AEP Ohio's interpretation accommodates governmental aggregation load by inappropriately squeezing out non-governmental aggregation shopping. Indeed, under AEP Ohio's interpretation, adjustments in 2013 and 2014 would never be needed, thus ignoring the clear language in the Order saying otherwise. Such a result is not consistent with the language of the Order.

A further example of the issues with AEP Ohio's interpretation is that it would otherwise preclude small commercial customers from accessing RPM-priced capacity due to the already-existing oversubscription of commercial customers above the RPM set-aside levels. The Commission should clarify on rehearing that all governmental aggregation customers shall receive RPM capacity regardless of whether their load exceeds the applicable Cap percentage for 2011. The Commission should further clarify that if new customers move into the eligible governmental aggregation communities, those new customers also shall be entitled to receive RPM capacity.

Second, FES requests clarification that the Order reserves RPM-priced capacity for all governmental aggregation programs. While the Order stated that "the RPM set-aside level shall be adjusted to accommodate such governmental aggregation programs for each subsequent year of the Stipulated ESP, to the extent, and only, if necessary,"[174] the Order also stated that "we find it necessary to . . . adjust the RPM set-aside levels to accommodate the load of any community that approved a governmental aggregation program in the November 8, 2011, election . . . so

[174] Order, p. 54.

long as the community or its CRES provider completes the necessary process to take service in the AEP-Ohio service territory by December 31, 2012."[175] This language appears inconsistent and could be construed – as indeed AEP Ohio has[176] – to arbitrarily limit the reservation of RPM-priced capacity to only those communities that authorized governmental aggregation on the November 2011 ballot. Such a limit would be arbitrary and discriminatory to those communities in AEP Ohio's territory that may approve aggregation in 2012, 2013, or 2014. Even more egregious, AEP Ohio's interpretation would arbitrarily discriminate against communities that authorized aggregation before November 2011.

The Commission should clarify that, by referencing communities that approved governmental aggregation on the November 2011 ballot, it did not intend to exclude communities that approved governmental aggregation prior to November 2011. AEP Ohio lacks any valid reason for denying RPM-priced capacity to these early movers.[177] Moreover, the evidence at hearing suggests that 14 communities, representing 65,000 households and 3,000 small commercial establishments, are considering governmental aggregation for the May 2012 ballot.[178] As described by FES witness Banks and acknowledged by other Signatory CRES parties, it takes months to enroll governmental aggregation customers after authorizing legislation is passed.[179] Any communities who authorize governmental aggregation in the upcoming May ballot, or any ballot thereafter until 2015, will be disadvantaged because of the

[175] Order, p. 54.

[176] Revised Detailed Implementation Plan, filed Dec. 29, 2011, at Section 4(g).

[177] This concern exists for those communities that approved governmental aggregation by ballot initiative prior to November 2011, but did not actively aggregate customers prior to September 7, 2011. AEP Ohio has even denied RPM-priced capacity to commercial class customers in those communities that not only passed ballots prior to November 2011, but have signed contracts with a supplier and have been enrolled in the program.

[178] Banks Direct, p. 32.

[179] Banks Direct, p. 33; Tr. Vol. VII, p. 1265; Tr. Vol. VI, pp. 994-995 (Constellation witness Fein estimating that it would be a 2-4 month process to enroll customers after passage of the enabling legislation).

time required to certify the aggregation program and enroll customers. It is, thus, less likely that there will be RPM-priced capacity available under the applicable Cap over time. Therefore, these communities' customers risk being precluded from receiving RPM-priced capacity and the ability to shop. The Commission should clarify two points on rehearing: (1) that customers in communities that approved aggregation prior to the November 2011 ballot also will be accommodated if they complete the process to take service by December 31, 2012; and (2) that the Caps will be adjusted upward, if necessary, to accommodate governmental aggregation programs authorized in 2013 and 2014.

b. The reservation of RPM-priced capacity for governmental aggregation customers should be available to all such customers, mercantile and non-mercantile.

Ohio law does not make any distinction between mercantile and non-mercantile governmental aggregation customers once a governmental aggregation program is established.[180] Governmental aggregation, indeed, benefits all customer groups. The Order similarly did not make any distinction between mercantile and non-mercantile governmental aggregation customers. Instead, the Order provides that "the RPM set-aside level shall be adjusted to accommodate such governmental aggregation programs for each subsequent year of the Stipulated ESP . . . ."[181] However, AEP Ohio's proposed compliance filing suggests that AEP Ohio has misinterpreted the Order to limit the reservation of RPM-priced capacity for governmental aggregation programs to only non-mercantile customers.[182] Because there is no basis on which to distinguish amongst governmental aggregation customers, such a provision would be discriminatory. Therefore, FES requests clarification that the Order in this regard

[180] *See* R.C. § 4928.20.

[181] Order, p. 54 (emphasis added).

[182] *See* Revised Detailed Implementation Plan, filed Dec. 29, 2011, at Section 4(g).

applies equally to the load of mercantile and non-mercantile governmental aggregation customers.

c. If all governmental aggregation customers are not guaranteed RPM-priced capacity, the contract between a CRES provider and a governmental aggregation community should be sufficient to put the community's customers in the queue.

Ohio law and policy can be fulfilled only if all governmental aggregation customers receive RPM-priced capacity. To the extent that certain subsets of governmental aggregation customers are left to the Appendix C queue process, the process must be modified so as to limit the harmful effects on governmental aggregation. As set forth in FES' Post-hearing Brief, the Appendix C agreed to by the Stipulating Parties does not explain how a governmental aggregation customer will enter the queue.[183] However, AEP Ohio has stated that it will preclude governmental aggregation customers from entering the queue until each customer opts-in to the aggregation or fails to opt-out of the aggregation.[184] This interpretation contradicts the communities' role as a contracting body on behalf of its residents and small commercial businesses; it will further decrease the chances that governmental aggregation will function under the terms of the Proposed ESP to benefit these customers. Aggregation contracts between communities and CRES providers provide the necessary indication of impending CRES service and the necessary contractual obligations that should entitle the customers' position in the queue.[185] AEP Ohio acknowledged that contingent contracts are sufficient for other

[183] *See* FES Brief, p. 119.

[184] Tr. Vol. III, p. 399-402.

[185] *See* AEP Ex. 10, §§ 1.1.1, 2.1.1 (the aggregation contract between the City of Reynoldsburg and FES confirms that Reynoldsburg "has the authority to designate . . . FES as its Full Requirements Retail Electric Supply provider for the Eligible Customers for the Term of this Agreement"); *see also* Tr. Vol. IV, p. 560 (RESA witness Ringenbach acknowledged that a contract between a CRES provider and an aggregation community is a contract on behalf of the customer to establish a price).

customers.[186] Therefore, any contingencies in the community-CRES contracts should be sufficient, too as there is no legitimate basis to discriminate against governmental aggregation contracts. Indeed, state policy requires that governmental aggregation be supported. Because the acceptance of a community-CRES contract is also necessary to promote governmental aggregation, as required by Ohio law and policy, the Order should be modified to provide that such a contract is otherwise sufficient to secure a customer's place in the queue.

11. The Order should be clarified to confirm that the pro rata distribution of RPM-priced capacity should not be decreased.

The Order provides that "currently shopping customers will not be adversely affected by the capacity set-aside provisions"[187] and that the Commission is "modifying the Stipulation such that RPM-priced capacity allocation determined for each customer class is only available for customers in the particular customer class, no RPM-priced capacity can be allocated to a customer in another class."[188] These statements would require AEP Ohio to recognize the load of currently shopping customers and provide for a pro rata allocation of RPM-priced capacity to each customer class. Based on AEP Ohio's initial figures, the load of currently shopping commercial customers was 29% of the commercial load.[189] Therefore, rather than allocate residential or industrial classes' share of the Cap to commercial customers, residential and industrial classes must receive their own 21% pro rata share, while the commercial class remains (full) at 29% in order to protect currently shopping customers (with, as addressed above, any upward adjustment required to accommodate commercial governmental aggregation customers). However, AEP Ohio's recent compliance filing reflects that AEP Ohio has interpreted the Order

[186] Tr. Vol. III, pp. 417-418.

[187] Order, p. 54.

[188] Order, p. 55.

[189] FES Exh. 18; Tr. Vol. XII, pp. 2071-78.

to allow an initial transfer of cap space from the residential and industrial classes to the commercial class, but then thereafter remove the January 1, 2012 elimination of pro rata class distributions.[190] AEP Ohio's proposed reduction of the allotments provided to residential and industrial customers is inconsistent with the Order. FES requests that the Commission clarify this portion of the Order and confirm that the Appendix C process does not discriminate against or unlawfully burden residential and industrial customers.

12. The Order unlawfully and unreasonably fails to require AEP Ohio to improve its RPM set-aside capacity program in Appendix C of the Partial Stipulation.

Appendix C to the Partial Stipulation sets forth the arbitrary and confusing process through which AEP Ohio will distribute the available allotments of RPM-priced capacity.[191] As set forth in FES' Post-Hearing Briefs, that process is inappropriate and would harm competition – an effect not unsurprising given that it is based on a system used in Michigan to implement a law (not found in Ohio) that expressly limits shopping.[192] It will achieve similar results here. But state law and policy, and the Commission's mission, seek to foster and encourage competition.[193] Thus, the Appendix C process, if not eliminated, must at a minimum be modified to reduce its anti-competitive effects.

[190] *See* Detailed Implementation Plan, filed Dec. 29, 2011, at Section 4(a).

[191] *See* Stip., Appx. C.

[192] Tr. Vol. III, pp. 390-391; Tr. Vol. VI, p. 973-974; Tr. Vol. IV, p. 545.

[193] R.C. § 4928.02, 4928.06. *See* Banks Direct, p. 5; Tr. Vol. X, p. 1691.

a. The process for information sharing between AEP Ohio, on the one hand, and CRES providers and customers, on the other, must be improved.

The Appendix C process is inherently uncertain and confusing, which will have a chilling effect on competition.[194] This uncertainty and confusion exists in two ways. First, there is uncertainty for customers: they can join the queue only after they have signed a contract with a CRES provider, but before they know if they fall under the cap and will receive RPM market capacity prices or the four-times higher $255/MW-day price. Second, there is uncertainty for CRES providers: they have no clear or reliable way to get daily information updates regarding the status of the queue, which is constantly changing, before the Cap Tracking System ("CTS") is expected to be operational in February.[195] CRES providers need this information to try to compete and prepare offers for potential customers. The lack of timely and accurate information puts competitive suppliers on an uneven playing field with AEP Ohio, and creates further confusion for customers and CRES providers in the already anti-competitive caps and queue procedure. "The convoluted nature of the RPM set-aside procedures will undoubtedly result in some shopping customers avoiding shopping or paying more for generation service simply because they were unable to successfully navigate the RPM set-aside maze or were shut-out from receiving market-based capacity."[196]

At a minimum, to facilitate the transition to the Appendix C process during this initial (and most confusing) period before the CTS is operational – and to the extent the Commission declines to eliminate the minimum stay provision altogether – the Commission should order AEP

[194] Banks Direct, p. 27.

[195] Stip., Appx. C at pp. 4-5. *See* Detailed Implementation Plan, filed Dec. 29, 2011, at Section 5(f) (fixing date for having CTS operational as Feb. 12, 2012).

[196] Banks Direct, p. 18.

Ohio to exempt customers from the 12-month minimum stay if they gave notice of intent to shop on or after September 7, 2011, but returned to or remained on SSO service within thirty days of being informed by AEP Ohio of their queue status. These customers should be allowed to return to SSO service without penalty due to the confusion and uncertainty that exists with the Appendix C process and allotments of RPM-priced capacity.

b. The Order does not remedy the holes in the Appendix C process, which create further uncertainty in the competitive market and which violate state policy.

Clarity is key to competition because "if customers don't know [what price they would receive], they are less likely to shop."[197] However, Appendix C provides no clarity regarding how many of the day-to-day mechanics of the Appendix C process will work – and the Order fails to require such clarity. For example, Appendix C does not explain: (1) how a customer will justify or validate an expansion that would transition the customer to Group 3; (2) how customers in Groups 1 and 2 will request an increased allotment of capacity for any expansion; or (3) how AEP Ohio will order the queue if a CRES provider submits multiple affidavits for customers at the same time.[198] These details are significant because, for example, customers other than those in Group 1 could be shifted to Group 3 if they seek to expand their service by more than 10% and, therefore, perhaps lose RPM pricing if no additional cap space is available.[199] This potential to shift groups also could be an avenue for customers or suppliers to game the system by moving from Group 4 or 5 up to Group 3 based on the announcement of a

[197] Banks Direct, p. 29.

[198] *See* Stip., Appx. C.

[199] *See* Stip., Appx. C at p. 2; Tr. Vol. III, p. 406 (on cross-examination, AEP Ohio witness Allen testified that "for that increased load [the customer] would have to wait until January of the subsequent year to gain an allotment").

planned expansion.[200] These uncertainties as to the process, including the possibility of losing RPM pricing for capacity, will have a chilling effect on customers' interest in shopping and, in turn, the competitive market.[201] The Commission should order AEP Ohio to confirm these important variables to minimize the negative impact of the Appendix C procedure on competition.

13. The Order unlawfully and unreasonably allows AEP Ohio to maintain sole control over the allocation of RPM-priced capacity.

The Order allows AEP Ohio unilateral control over the distribution of RPM-priced capacity under the caps.[202] Most notably, AEP Ohio's calculation of the initial cap "is not subject to challenge."[203] As described in FES' Post-Hearing Briefs, AEP Ohio has a public and well-recognized antipathy to competition in its service territory.[204] However, Appendix C provides for no oversight[205] and the Order is silent on this issue. AEP Ohio's unfettered control over the allotment of RPM-priced capacity that is essential to a CRES provider's ability to make competitive offers conflicts with the Commission's mandate to promote competition. Given AEP Ohio's antipathy to competition, its affiliated competitive interest through AEP Retail, its continuing "functional" separation in lieu of structural separation, and the state policy that requires the Commission to promote competition, Commission oversight over the set-aside process is warranted. The Order should be modified accordingly.

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[200] *See* Banks Direct, p. 28; Tr. Vol. IV, p. 552 (RESA witness Ringenbach).

[201] *See* Banks Direct, pp. 28-29.

[202] Stip., Appx. C at pp. 2-3.

[203] Stip., Appx. C at p. 3.

[204] FES Brief, pp. 89-91; FES Reply Brief, pp. 59-70.

[205] Tr. Vol. IV, p. 545 (RESA witness Ringenbach acknowledging same); Tr. Vol. VI, p. 976 (Constellation witness Fein acknowledging same); FES Ex. 16(c).

D. The Order is unreasonable and unlawful in approving a Stipulation that does not benefit ratepayers and the public interest.

The Partial Stipulation and the Proposed ESP limit wholesale and retail competition, with all the benefits that all parties recognize, until June 2015. Wholesale competition is blocked through the delayed implementation until June 2015 of a CBP to procure SSO supply, without any good reason for the delay. Retail competition is constrained through the caps on RPM-priced capacity and the above-market capacity price for all customers in excess of the caps. During the first forty-one months of the Proposed ESP, consumers will pay more for retail electric service and will be constrained from obtaining the benefits of market-based pricing. Thus, the Commission erred in approving a Partial Stipulation that does not begin to benefit ratepayers and the public interest until the last year of the Proposed ESP.

The claimed "glide-path" to market will burden ratepayers for the next forty-one months. There is no record evidence that AEP Ohio could not join Duke Energy in conducting a wholesale CBP for service starting in 2012 – nor did any of the Signatory Parties present any argument that AEP Ohio cannot.[206] If, in fact, AEP Ohio is unable to situate itself for wholesale competition prior to June 2015 – and that is not a fact, as set forth in the record evidence[207] – then, at a bare minimum, AEP Ohio's customers should be allowed access to retail competition. Indeed, recent events show the potential benefits to customers associated with wholesale competition. After the most recent FirstEnergy utilities' auction results were released, Chairman

[206] Indeed, AEP Ohio's own actions show AEP Ohio could conduct a wholesale CBP immediately. In Case No. 08-917-EL-SSO, AEP Ohio proposed to purchase incremental power on a "slice of system" basis for between 5% and 15% of its load. *See* Case No. 08-917-EL-SSO, Opinion and Order, March 18, 2009, p. 15. The fact that AEP Ohio requested a CBP in 2008 conclusively establishes that nothing prevents AEP Ohio from conducting a CBP for its load today.

[207] *See*, *e.g.*, Tr. Vol. V, pp. 720-21 (AEP Ohio witness Nelson admitting that the Pool Agreement does not explicitly preclude a wholesale power procurement auction).

Snitchler said, "The wholesale generation auction process continues to yield positive results."[208] He went on to say, "Competition and market forces have clearly been shown to help keep electric generation costs low for FirstEnergy customers."[209] AEP Ohio claims the FirstEnergy utilities' auction results are substantially similar to the Competitive Benchmark prices it developed through Ms. Thomas.[210] The most recent FirstEnergy auction results are therefore particularly revealing, because AEP was an active participant in these auctions, winning five tranches at a tranche weighted average price of $52.80/MWh.[211] Notably, these auction results are well below the $57.47/MWh price from the January 2011 auction for the FirstEnergy utilities – and also well below the price that AEP Ohio customers will be required to pay for the first 41 months of the Proposed ESP.[212]

Chairman Snitchler was correct that competition keeps generation costs low to the benefit of Ohio customers. By approving the Partial Stipulation, the Commission deprived AEP Ohio's consumers of those benefits for another forty-one months. The Commission should grant rehearing to modify the Partial Stipulation to direct AEP Ohio to conduct a CBP as soon as possible in 2012.

III. CONCLUSION

For the reasons set forth above, FES respectfully requests that the Commission grant rehearing and issue an Order consistent with this filing.

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[208] PUCO press release dated October 26, 2011. Available at: http://www.puco.ohio.gov/puco/index.cfm/media-room/media-releases/puco-accepts-results-of-firstenergy-auction1/ (last accessed Nov. 17, 2011).

[209] *Id*.

[210] AEP Ohio Brief, p. 156.

[211] Case No. 10-1284, Auction Manager Report dated November 16, 2011, p. 5 (Table 2).

[212] AEP Ohio Brief, p. 152.

Respectfully submitted,

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Exhibit A

Fortney Attachment A - Reduced "g", AEP Ohio's Fuel Forecasts Added Through 2014

Category	2012	2013	Jan.-May, 2014	June-Dec. 2014	36 Months
Market Pricing					
Subtotal - Market Pricing	**58.85**	**61.38**	**61.38**	**73.59**	
Current ESP Pricing					
Standard Offer Generation Service	21.02	21.02	21.02	21.02	
Transmission Adjustment	2.14	2.14	2.14	2.14	
Environmental Investment (EICCR)	0.90	0.90	0.90	0.90	
Provider of Last Resort (POLR)	0.00	0.00	0.00	0.00	
Fuel Adjustment Clause (FAC)	36.00	37.80	39.80	39.80	
Generation Resource (GRR)	0.00	0.00	0.00	0.00	
Subtotal - Current ESP Pricing	**60.06**	**61.86**	**63.86**	**63.86**	
MRO Blended Pricing					
Market Pricing %	10.0%	20.0%	30.0%	30.0%	
Current ESP Pricing %	90.0%	80.0%	70.0%	70.0%	
Market Pricing	58.85	61.38	61.38	73.59	
Current ESP Pricing	60.06	61.86	63.86	63.86	
MRO Blended Pricing	**59.94**	**61.76**	**63.12**	**66.78**	
Proposed ESP Pricing					
Standard Offer Generation Service	22.70	23.30	24.10	24.10	
Transmission Adjustment	2.14	2.14	2.14	2.14	
Environmental Investment (EICCR)	0.00	0.00	0.00	0.00	
Provider of Last Resort (POLR)	0.00	0.00	0.00	0.00	
Fuel Adjustment Clause (FAC)	36.00	37.80	39.80	39.80	
Generation Resource (GRR)	0.18	0.22	0.26	0.26	
Subtotal - ESP Pricing	**61.02**	**63.46**	**66.30**	**66.30**	
ESP Pricing vs. Blended MRO Pricing	**1.08**	**1.70**	**3.18**	**(0.48)**	**1.27**
ESP Pricing vs. Blended MRO Pricing ($)	$47,027,284	$73,781,936	$57,714,643	($12,155,603)	**$166,368,260**

Exhibit A

Fortney Attachment A - Reduced "g", AEP Ohio's Fuel Forecasts Added Through May 2015

Category	2012	2013	Jan.-May, 2014	June 2014 - May 2015	41 Months
Market Pricing					
Subtotal - Market Pricing	**58.85**	**61.38**	**61.38**	**73.59**	
Current ESP Pricing					
Standard Offer Generation Service	21.02	21.02	21.02	21.02	
Transmission Adjustment	2.14	2.14	2.14	2.14	
Environmental Investment (EICCR)	0.90	0.90	0.90	0.90	
Provider of Last Resort (POLR)	0.00	0.00	0.00	0.00	
Fuel Adjustment Clause (FAC)	36.00	37.80	39.80	39.80	
Generation Resource (GRR)	0.00	0.00	0.00	0.00	
Subtotal - Current ESP Pricing	**60.06**	**61.86**	**63.86**	**63.86**	
MRO Blended Pricing					
Market Pricing %	10.0%	20.0%	30.0%	34.0%	
Current ESP Pricing %	90.0%	80.0%	70.0%	66.0%	
Market Pricing	58.85	61.38	61.38	73.59	
Current ESP Pricing	60.06	61.86	63.86	63.86	
MRO Blended Pricing	**59.94**	**61.76**	**63.12**	**67.17**	
Proposed ESP Pricing					
Standard Offer Generation Service	22.70	23.30	24.10	24.10	
Transmission Adjustment	2.14	2.14	2.14	2.14	
Environmental Investment (EICCR)	0.00	0.00	0.00	0.00	
Provider of Last Resort (POLR)	0.00	0.00	0.00	0.00	
Fuel Adjustment Clause (FAC)	36.00	37.80	39.80	39.80	
Generation Resource (GRR)	0.18	0.22	0.26	0.26	
Subtotal - ESP Pricing	**61.02**	**63.46**	**66.30**	**66.30**	
ESP Pricing vs. Blended MRO Pricing	**1.08**	**1.70**	**3.18**	**(0.87)**	**0.95**
ESP Pricing vs. Blended MRO Pricing ($)	$47,027,284	$73,781,936	$57,714,643	($37,761,038)	**$140,762,825**

Exhibit A

Fortney Attachment A - Reduced "g", AEP Ohio's Fuel Forecasts Added Through 2014 for ESP only

Category	2012	2013	Jan.-May, 2014	June-Dec. 2014	36 Months
Market Pricing					
Subtotal - Market Pricing	**58.85**	**61.38**	**61.38**	**73.59**	
Current ESP Pricing					
Standard Offer Generation Service	21.02	21.02	21.02	21.02	
Transmission Adjustment	2.14	2.14	2.14	2.14	
Environmental Investment (EICCR)	0.90	0.90	0.90	0.90	
Provider of Last Resort (POLR)	0.00	0.00	0.00	0.00	
Fuel Adjustment Clause (FAC)	33.10	33.10	33.10	33.10	
Generation Resource (GRR)	0.00	0.00	0.00	0.00	
Subtotal - Current ESP Pricing	**57.16**	**57.16**	**57.16**	**57.16**	
MRO Blended Pricing					
Market Pricing %	10.0%	20.0%	30.0%	30.0%	
Current ESP Pricing %	90.0%	80.0%	70.0%	70.0%	
Market Pricing	58.85	61.38	61.38	73.59	
Current ESP Pricing	57.16	57.16	57.16	57.16	
MRO Blended Pricing	**57.33**	**58.00**	**58.43**	**62.09**	
Proposed ESP Pricing					
Standard Offer Generation Service	22.70	23.30	24.10	24.10	
Transmission Adjustment	2.14	2.14	2.14	2.14	
Environmental Investment (EICCR)	0.00	0.00	0.00	0.00	
Provider of Last Resort (POLR)	0.00	0.00	0.00	0.00	
Fuel Adjustment Clause (FAC)	36.00	37.80	39.80	39.80	
Generation Resource (GRR)	0.18	0.22	0.26	0.26	
Subtotal - ESP Pricing	**61.02**	**63.46**	**66.30**	**66.30**	
ESP Pricing vs. Blended MRO Pricing	**3.69**	**5.46**	**7.87**	**4.21**	**4.96**
ESP Pricing vs. Blended MRO Pricing ($)	$160,571,419	$237,355,096	$142,727,733	$106,862,722	**$647,516,970**

Exhibit A

Fortney Attachment A - Reduced "g", AEP Ohio's Fuel Forecasts Added Through May 2015 for ESP only

Category	2012	2013	Jan.-May, 2014	June 2014 - May 2015	41 Months
Market Pricing					
Subtotal - Market Pricing	**58.85**	**61.38**	**61.38**	**73.59**	
Current ESP Pricing					
Standard Offer Generation Service	21.02	21.02	21.02	21.02	
Transmission Adjustment	2.14	2.14	2.14	2.14	
Environmental Investment (EICCR)	0.90	0.90	0.90	0.90	
Provider of Last Resort (POLR)	0.00	0.00	0.00	0.00	
Fuel Adjustment Clause (FAC)	33.10	33.10	33.10	33.10	
Generation Resource (GRR)	0.00	0.00	0.00	0.00	
Subtotal - Current ESP Pricing	**57.16**	**57.16**	**57.16**	**57.16**	
MRO Blended Pricing					
Market Pricing %	10.0%	20.0%	30.0%	34.0%	
Current ESP Pricing %	90.0%	80.0%	70.0%	66.0%	
Market Pricing	58.85	61.38	61.38	73.59	
Current ESP Pricing	57.16	57.16	57.16	57.16	
MRO Blended Pricing	**57.33**	**58.00**	**58.43**	**62.75**	
Proposed ESP Pricing					
Standard Offer Generation Service	22.70	23.30	24.10	24.10	
Transmission Adjustment	2.14	2.14	2.14	2.14	
Environmental Investment (EICCR)	0.00	0.00	0.00	0.00	
Provider of Last Resort (POLR)	0.00	0.00	0.00	0.00	
Fuel Adjustment Clause (FAC)	36.00	37.80	39.80	39.80	
Generation Resource (GRR)	0.18	0.22	0.26	0.26	
Subtotal - ESP Pricing	**61.02**	**63.46**	**66.30**	**66.30**	
ESP Pricing vs. Blended MRO Pricing	**3.69**	**5.46**	**7.87**	**3.55**	**4.68**
ESP Pricing vs. Blended MRO Pricing ($)	$160,571,419	$237,355,096	$142,727,733	$154,611,439	**$695,265,687**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Application for Rehearing of FirstEnergy Solutions Corp.* was served this 13th day of January, 2012, via e-mail upon the parties below.

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Summary: Application for Rehearing of FirstEnergy Solutions Corp. electronically filed by Ms. Laura C. McBride on behalf of FirstEnergy Solutions Corp.