

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Long-Term Forecast)
Report of Ohio Power Company and)
Related Matters.) Case No. 10-501-EL-FOR

In the Matter of the Long-Term Forecast)
Report of Columbus Southern Power)
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**POST-HEARING BRIEF
OF FIRSTENERGY SOLUTIONS CORP.**

TABLE OF CONTENTS

I.	INTRODUCTION	5
A.	R.C. § 4928.143(B)(2)(c) and R.C. § 4928.64 Address Unrelated Policy Concerns.	5
B.	Turning Point Is Not Needed From a Resource Planning Perspective Under R.C. § 4928.143(B)(2)(c).	6
C.	AEP Ohio Does Not Need Turning Point In Order To Meet Its SER Benchmarks Under R.C. § 4928.64.	8
D.	There Is No Evidence That Turning Point Is Needed For EDUs And CRES Providers To Meet Their SER Benchmarks.....	8
E.	The Commission Can Make Findings Under R.C. § 4928.143(B)(2)(c) Only In An ESP Proceeding.	10
II.	ARGUMENT	11
A.	The Signatory Parties Are Incorrectly Conflating Two Unrelated Statutes.....	11
B.	The Record Does Not Contain Any Evidence Establishing “Need” For Solar Resources Based On “Resource Planning Projections”.....	15
1.	Turning Point is not needed to provide capacity or energy to AEP Ohio customers.....	15
2.	AEP Ohio has presented no evidence of the cost of Turning Point as compared to alternatives.	16
C.	AEP Ohio Has Not Shown Turning Point Is Required To Comply With Its SER Benchmarks Or For Purposes Of Resource Planning.....	17
1.	AEP Ohio’s estimate of the solar generating capacity required to satisfy its SER benchmarks is outdated and inaccurate.	17
2.	Even if solar energy resources required by the entire state of Ohio to satisfy SER benchmarks are considered, AEP Ohio has not shown Turning Point is needed.	20
a.	The Stipulating Parties failed to present a single forecast of solar energy resources.....	20

b.	AEP Ohio’s testimony assumed no solar development in the forecast period and failed to establish a “need” for Turning Point.....	21
c.	Staff’s testimony also failed to establish a “need” for Turning Point.....	24
d.	There Is No “Need” For Turning Point Because The Market Can Provide Sufficient Solar Resources.	27
D.	Imposing A Nonbypassable Surcharge For Turning Point Would Violate Ohio Policy And Discriminate Against Shopping Customers.	30
E.	There Are Severe Procedural Irregularities With This Proceeding.	31
1.	The determination of “need” under R.C. § 4928.143(B)(2)(c) must take place in an ESP proceeding.....	31
2.	AEP Ohio did not comply with the rules associated with nonbypassable recovery under R.C. § 4928.143 and has not provided the Commission with essential information regarding Turning Point.....	32
a.	AEP Ohio admitted that it failed to provide the information required by O.A.C. 4901:5-5-06(B).....	33
b.	As AEP Ohio has failed to provide the minimum information required by O.A.C. 4901:5-5-06, AEP Ohio has failed to establish a “need” for Turning Point.	34
3.	The Commission is prohibited from making a determination of need in this proceeding because AEP Ohio did not file its request for nonbypassable cost recovery in the correct forecast year.	35
4.	The Attorney Examiner erred to the prejudice of FES by striking portions of Dr. Lesser’s testimony.....	35
a.	As the only reason for a finding of need under R.C. § 4928.143(B)(2)(c) is to obtain nonbypassable cost recovery, FES should have been permitted to address whether nonbypassable cost recovery is appropriate.	36
b.	Because the Partial Stipulation specifically references R.C. § 4928.143(B)(2)(c) and R.C. §	

	4928.64, FES should have been permitted to address the differences in these statutes in order to refute the Signatory Parties’ definition of “need.”	36
c.	Because the Stipulating Parties were permitted to testify regarding cost recovery for Turning Point, it was prejudicial to prevent FES from rebutting this testimony.....	37
d.	The Attorney Examiner inappropriately denied FES’ Motion To Strike testimony beyond the scope of this proceeding, then failed to allow FES to address the inappropriate points raised by the Signatory Parties.	38
5.	AEP Ohio should not be able to use this proceeding as a way to avoid Commission review of Turning Point.	39
III.	CONCLUSION.....	39

I. INTRODUCTION

The Commission should reject Paragraph 2 of the Partial Stipulation & Recommendation filed on November 21, 2011 (the “Partial Stipulation”) by Columbus Southern Power Company (“CSP”), Ohio Power Company (“OPCo”) (collectively, “AEP Ohio”) and Staff (collectively, the “Signatory Parties”). Paragraph 2 of the Partial Stipulation recommends as follows:

Based on resource planning projections submitted by AEP Ohio pursuant to R.C. 4928.143(B)(2)(c), and the provisions of 4928.64(B)(2) that require AEP Ohio to obtain alternative energy resources including solar resources located in Ohio, the Commission should find that there is a need for the 49.9 MW solar facility known as the Turning Point Solar Project (“Turning Point”) during the LTFR planning period as described herein.

The Signatory Parties misunderstand the relevant statutes and have failed to present any evidence necessary to establish that there is a “need” for AEP Ohio to construct Turning Point in anything other than the normal course of market development. As a result, Paragraph 2 of the Partial Stipulation should be rejected by the Commission.

A. R.C. § 4928.143(B)(2)(c) and R.C. § 4928.64 Address Unrelated Policy Concerns.

The Signatory Parties are inappropriately conflating R.C. § 4928.143(B)(2)(c) and R.C. § 4928.64. The Signatory Parties mistakenly believe that if the state of Ohio requires more solar energy resources so that electric distribution utilities (“EDUs”) and competitive retail electric service (“CRES”) providers may comply with the solar energy resource (“SER”) benchmarks in R.C. § 4928.64, then this necessarily satisfies the “need” that must be shown under R.C. § 4928.143(B)(2)(c) in order to obtain nonbypassable cost recovery for a new generating facility. However, although both statutes were enacted by the General Assembly as part of S.B. 221, they have markedly different purposes. R.C. § 4928.143(B)(2)(c) creates a market safety valve that allows the Commission to authorize an EDU to impose a nonbypassable surcharge to recover the

costs of a new generating facility for the life of the facility if, and only if, the facility was sourced through a competitive bid process and there is a need for the facility based on resource planning projections.¹ The Commission has recognized that such a need would be established only as a “lifeline” if the competitive market is failing to provide the needed capacity.² R.C. § 4928.143(B)(2)(c) is focused solely on ensuring that Ohio has sufficient generation capacity and, thus, it serves as a backstop to PJM’s obligation to ensure the adequacy and reliability of generation in Ohio and elsewhere. In contrast, R.C. § 4928.64 is designed to incent market development of renewable resources by creating a demand for those resources through statutory benchmarks. Because R.C. § 4928.143(B)(2)(c) addresses a core reliability need, an EDU that satisfies that need, and satisfies the other statutory requirements, receives nonbypassable cost recovery. Because R.C. § 4928.64 supports a policy objective, both EDUs and CRES providers receive bypassable recovery of their costs incurred in meeting their SER benchmarks. Paragraph 2 of the Partial Stipulation evidences an obvious lack of understanding of the General Assembly’s objectives in enacting these statutes. Even if Turning Point were “needed” to satisfy SER benchmarks under R.C. § 4928.64, this would not be evidence that Turning Point was “needed” under R.C. § 4928.143(B)(2)(c).

B. Turning Point Is Not Needed From a Resource Planning Perspective Under R.C. § 4928.143(B)(2)(c).

It is undisputed that AEP Ohio does not require additional capacity to meet its peak load obligations, and there is no evidence that Turning Point’s high-cost capacity would be what Ohio consumers needed to keep prices down if there were a shortage. As a result, there is no “need”

¹ December 14, 2011 Opinion and Order, Case No. 11-346-EL-SSO, pp. 39-40.

² *Id.*; EDUs are otherwise prohibited from owning generation resources, except for an interim period for good cause shown, or providing competitive retail electric services. R.C. § 4928.17. Thus, the EDU is the default option both with regard to the provision of a Standard Service Offer and with regard to providing adequate and reliable generation resources. *See* R.C. § 4928.14-.143.

for Turning Point from the resource planning perspective of R.C. § 4928.143(B)(2)(c). The Signatory Parties and FES all agree that “resource planning” as defined in R.C. § 4928.143(B)(2)(c) requires a forecast of future energy and peak load and then a review to determine how this load can be met with the lowest expected cost.³ For example, Staff witness Bellamy testified that “[t]he determination of need for a proposed facility would be based upon the reasonableness of the cost of acquiring or constructing a new generating facility, or retrofitting an existing generating facility that would otherwise be retired, as compared with alternatives.”⁴ Similarly, AEP Ohio witness Castle’s Exhibit WKC-2 states that “[t]he goal of resource planning for a largely regulated utility such as AEP is to cost-effectively match its energy supply needs with projected customer demand.”⁵

Even if AEP Ohio did “need” this capacity from a resource planning perspective, none of the Signatory Parties have presented any evidence that Turning Point is the least expected cost method of providing this capacity. Indeed, AEP Ohio has presented no evidence of any kind regarding the expected costs of Turning Point or any other resource option.⁶ Therefore, the Signatory Parties have failed to establish a “need” for Turning Point under R.C. § 4928.143(B)(2)(c).

³ Direct Testimony of FES witness Jonathan A. Lesser, pp. 7-8 (“Lesser Direct”); Direct Testimony of Staff witness Mark C. Bellamy, pp. 2-3 (“Bellamy Direct”); Direct Testimony of AEP Ohio Witness William K. Castle, Exhibit WKC-2, Supplemental Appendix 2, AEP East 2010 Integrated Resource Plan, Executive Summary, p. 1.

⁴ Bellamy Direct, pp. 2-3.

⁵ Castle Direct, Exhibit WKC-2, Supplemental Appendix 2, AEP East 2010 Integrated Resource Plan, Executive Summary, p. 1.

⁶ See O.A.C. 4901:5-5-06(B)(3) (resource plan must address, among other things, cost-effectiveness, customer rate impacts, and mix of resource options, including demand-side management programs).

C. AEP Ohio Does Not Need Turning Point In Order To Meet Its SER Benchmarks Under R.C. § 4928.64.

Moreover, the Signatory Parties have failed to establish that AEP Ohio needs to construct Turning Point to meet its SER benchmarks. There is nothing in the record demonstrating that AEP Ohio needs additional solar energy resources – in addition to what the market already has provided and will provide – to meet its SER benchmarks. The Signatory Parties’ only evidence presented at hearing related to the current level of solar energy resources in the state of Ohio. They provided no current forecasts of the solar energy resources AEP Ohio may need to acquire to satisfy its SER benchmarks during the LTFR period.⁷ There appears to be good reason for this failure on their part, as shopping during AEP Ohio’s upcoming ESP period has increased significantly from AEP Ohio’s LTFR projections.⁸ Therefore, the record does not support the Stipulating Parties’ recommendation that Turning Point is needed by AEP Ohio to meet its SER benchmarks in R.C. § 4928.64.

D. There Is No Evidence That Turning Point Is Needed For EDUs And CRES Providers To Meet Their SER Benchmarks.

Even if all Ohio solar energy resources are examined to determine whether Turning Point is “needed” (in whatever definition the Signatory Parties think they can support, but not in the sense of need under R.C. § 4928.143 or R.C. § 4928.64), the record is still barren of evidence. The Stipulating Parties did not present a single forecast showing that Turning Point will be required in order for EDUs and CRES providers to meet their SER benchmarks during the LTFR period. Rather than presenting forecasts, the Stipulating Parties stated a truism: “if no additional

⁷ The Supplement to the 2010 LTFR includes a grossly outdated calculation that erroneously assumes shopping in AEP Ohio’s service territory will be slightly over 9% in 2012 and then rise slowly to less than 12% in 2020. *See* Tr. 48:8-21; Lesser Direct, pp. 11-12. The actual percentage of shopping load on March 1, 2012, as calculated by AEP Ohio, was 26.1% with an additional 10.6% of customers having indicated their intent to shop. Tr. 57:2 to 58:1; Lesser Direct, p. 12.

⁸ *See* Section II(C)(1), below.

solar energy resources are constructed in Ohio but the SER benchmarks continue to increase, Ohio will need more solar energy resources in 2015 and following years.” This is the equivalent of saying, “if the sun does not rise in the morning, we will need to buy more flash lights.” Both statements are true, and both fail to prove anything.

More than 20 MW of in-state solar energy resources have been constructed and certified in Ohio in each of the past two years, and there is no reason to believe this trend will stop. All parties agree that, if current trends continue, Ohio will have more than enough solar energy resources to meet the SER benchmarks for the next ten years.⁹ Indeed, no witness provided any testimony suggesting that the competitive market would not provide sufficient solar energy resources to meet the SER benchmarks. The un rebutted testimony of FES witness Dr. Lesser shows that the market is more than willing to provide in-state solar resources in response to adequate price signals.¹⁰ AEP Ohio has done no market test to determine if the market is able to provide these resources, or to compare the cost of Turning Point with the cost of procuring these resources in the market.

Moreover, the Stipulating Parties’ analysis simply makes no sense. The statutory benchmarks in R.C. § 4928.64 rise over time in order to incent the construction of solar capacity over time. Rather than allowing the market to build solar capacity in response to price signals, the Stipulating Parties suggest that sufficient solar capacity must exist in Ohio today to meet the solar benchmarks through the year 2025. There is no authority for or logic to this position.

⁹ See Bellamy Direct, pp. 6-7; Tr. p. 115, Staff witness Bellamy (“Q. And in your analysis if the 20 megawatts trend continues, there will be more than enough in-state solar to satisfy Ohio’s statewide benchmarks? A. Yes.”); Castle Direct, pp. 9-11 (establishing amount of solar generation needed to comply with SER benchmarks though 2025).

¹⁰ Lesser Direct, pp. 19-21.

Notably, if the Stipulating Parties’ argument is accepted, then there would be a R.C. 4928.143(B)(2)(c) “need” for any and every new solar project proposed by an EDU. This would be contrary to the intent of the legislature, and would incentivize every EDU in Ohio to build unnecessary and costly new solar capacity with the assurance of nonbypassable cost recovery for those facilities. The result would be self-fulfilling prophecy, where private investment avoids the Ohio solar resource market because every EDU in Ohio can show “need” for a solar resource, and obtain guaranteed non-bypassable cost recovery, merely by pointing to the increasing SER benchmarks.

E. The Commission Can Make Findings Under R.C. § 4928.143(B)(2)(c) Only In An ESP Proceeding.

The Partial Stipulation is also procedurally deficient. Under R.C. § 4928.143(B)(2)(c), “need” may only be determined if the Commission “first determines in the proceeding that there is a need for the facility based on resource planning projections” (emphasis added). Nothing in R.C. § 4928.143(B)(2)(c) suggests that AEP Ohio is entitled to have the “need” for Turning Point determined in an LTFR proceeding. Even if the Commission could make the determination of “need” in this proceeding, AEP Ohio has failed to comply with the Commission’s rules and has not provided any of the essential information regarding the Turning Point project, including without limitation any information regarding the cost of this project.

AEP Ohio is attempting to avoid any significant Commission review of the costs and benefits of Turning Point. AEP Ohio seeks to obtain a “need” determination in this proceeding. AEP Ohio then seeks a “placeholder” GRR rider in its modified ESP II proceeding. Once AEP Ohio receives these two findings, AEP Ohio intends to make a separate EL-RDR filing proposing the rate level for the nonbypassable charge for the life of the facility.¹¹ At the EL-

¹¹ AEP Ohio Modified Electric Security Plan Application filed March 30, 2012, p. 8.

RDR stage, AEP Ohio will argue that the “need” for Turning Point has already been established, and therefore the only remaining issue is whether the costs are prudent and whether the rate level accurately recovers those costs. At no point during this process would the Commission weigh the costs of constructing Turning Point against its benefits and compare it to other lower-cost resource alternatives. This was not the intent of the General Assembly and is contrary to O.A.C. 4901:5-5-06(B). AEP Ohio’s attempt to avoid serious Commission review of Turning Point should be rejected, along with Paragraph 2 of the Partial Stipulation.

II. ARGUMENT

A. The Signatory Parties Are Incorrectly Conflating Two Unrelated Statutes.

Paragraph 2 of the Partial Stipulation attempts to conflate the “need” for Turning Point under two completely unrelated statutory standards. The Stipulating Parties claim that the “resource planning projections” referenced in R.C. § 4928.143(B)(2)(c)¹² also include AEP Ohio’s plan to obtain alternative energy resources for its customers under R.C. § 4928.64.¹³ The Stipulation Parties’ reading of these statutes is incorrect because R.C. § 4928.143(B)(2)(c) and R.C. § 4928.64(B) are not related. These statutes address completely different policy concerns¹⁴ and provide for different methods of cost recovery in furtherance of those policies.

¹² R.C. § 4928.143(B)(2) provides that an ESP may include: “(c) The establishment of a nonbypassable surcharge for the life of an electric generating facility that is owned or operated by the electric distribution utility, was sourced through a competitive bid process subject to any such rules as the commission adopts under division (B)(2)(b) of this section, and is newly used and useful on or after January 1, 2009, which surcharge shall cover all costs of the utility specified in the application, excluding costs recovered through a surcharge under division (B)(2)(b) of this section. **However, no surcharge 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.**”

R.C. § 4928.143(B)(2)(c) (emphasis added).

¹³ Tr. p. 23.

¹⁴ See Tr. p. 27, where AEP Ohio witness Castle explained his understanding of the differences between R.C. § 4928.143(B)(2)(c) and R.C. § 4928.64: “My understanding is that 4928.64 is the benchmark requirements for renewable resources in the state, and 4928.143 is the resource planning requirements associated with the addition of capacity.”

As there is no reason to read these statutes together, Paragraph 2 of the Partial Stipulation should be rejected.

R.C. § 4928.143(B)(2)(c) authorizes nonbypassable cost recovery only if an EDU first establishes “in the proceeding”¹⁵ that “there is a need for the facility based on resource planning projections submitted by the electric distribution utility.” Nothing in R.C. § 4928.143(B)(2)(c) suggests that the required determination of “need” can be based on renewable resource policy objectives established in R.C. § 4928.64. A policy objective, no matter how laudatory, does not rise to the level of an absolute need for generation capacity in a resource planning sense. R.C. § 4928.143(B)(2)(c) is narrowly focused on providing a safety valve for Ohio customers in the event an EDU has to build additional capacity to ensure customers are served by adequate and reliable electric resources.¹⁶ R.C. § 4928.143(B)(2)(c) applies only to new generating facilities that are needed based on resource planning projections submitted by the EDU.

R.C. § 4928.143(B)(2)(c) does not authorize recovery for facilities which would assist EDUs and CRES providers in meeting the SER benchmarks in R.C. § 4928.64. Indeed, the General Assembly expressly excluded from the allowable scope of an ESP any nonbypassable recovery of the costs incurred by an EDU in complying with the renewable energy benchmarks in R.C. § 4928.64. The preamble to division (B) of R.C. § 4928.143 provides that an ESP may contain terms that conflict with “any other provision of Title XLIX of the Revised Code . . .

¹⁵ As discussed below, because the Commission is required to make its finding “in the proceeding”, meaning in an ESP proceeding, the Commission is prohibited by statute from making that finding in this LTFR docket. Moreover, the Commission’s rules require that an EDU submit its evidence in support of a need determination under R.C. § 4928.143(B)(2)(c) in its LTFR docket for the forecast year prior to filing its ESP application. O.A.C. 4901:5-5-06(B). Thus, the Commission is prohibited by its own rules from issuing a ruling in this LTFR docket because the evidence filed in this docket in late 2010 for AEP Ohio’s ESP application filed in early 2012 is now outdated and has been mooted by intervening events.

¹⁶ Lesser Direct, pp. 7, 9.

except . . . division (E) of section 4928.64, . . . of the Revised Code.”¹⁷ R.C. § 4928.64 obligates EDUs and CRES providers to meet renewable energy resource benchmarks.¹⁸ R.C. § 4928.64(E) provides: “All costs incurred by an electric distribution utility in complying with the requirements of this section shall be bypassable by any consumer that has exercised choice of supplier.” Thus, an EDU is affirmatively denied nonbypassable cost recovery under R.C. § 4928.143(B)(2)(c) for renewable energy project costs incurred to comply with R.C. § 4928.64.

There are obvious reasons for the General Assembly specifically prohibiting nonbypassable recovery of renewable energy resource costs. These costs can be well above typical generating costs.¹⁹ Yet the General Assembly sought to establish a market for these higher-cost resources by mandating that EDUs and CRES providers provide a portion of their retail supply from these resources, although an EDU or CRES need not comply with a benchmark to the extent that its reasonably expected cost of compliance exceeds its reasonably expected cost of otherwise producing or acquiring the requisite electricity by 3% or more.²⁰ In addition to the cost test, the General Assembly also exempted EDUs and CRES providers from compliance with the benchmarks if renewable energy resources were not reasonably available in the marketplace.²¹ Thus, to the extent EDUs and CRES providers have a “need” under R.C. § 4928.64, it is a need to comply with the benchmarks unless an exception applies. Because this policy objective is directed toward both EDUs and CRES providers, both have an equal opportunity to recover the cost of compliance through their retail rates. As such, an EDU

¹⁷ R.C. § 4928.143(B) (emphasis added). The other provisions that cannot be ignored in an ESP relate to governmental aggregation under R.C. § 4928.20 and charges to municipal electric utility customers under R.C. § 4928.69.

¹⁸ Tr. pp. 22-23.

¹⁹ See Lesser Direct, p. 18.

²⁰ R.C. § 4928.64(B), (C)(3). Tr. pp. 23-24.

²¹ R.C. § 4928.64(C)(4); Tr. p. 23.

receiving nonbypassable cost recovery – thereby imposing its costs on shopping customers who also are paying a CRES provider’s compliance costs – would run afoul of the policy objectives of R.C. § 4928.64 and be anti-competitive.

The proper interpretation of these statutes is clear. Pursuant to R.C. § 4928.64, any costs incurred by AEP Ohio in connection with satisfying its SER benchmarks shall be bypassable. This language is not ambiguous, and the Commission has no discretion regarding whether these costs should be bypassable or not. The language in R.C. § 4928.143(B)(2)(c) is equally clear. If a facility is needed based on resource planning projections – i.e., to ensure customer access to adequate and reliable electric resources, then the Commission has the authority to grant nonbypassable cost recovery if the statutory requirements are met. However, the preamble language in R.C. § 4928.143(B) excludes from the scope of that authority any renewable energy project, such as Turning Point, that is intended to allow AEP Ohio to meet its renewable energy resource benchmarks. Because cost recovery it is not authorized under R.C. § 4928.143(B)(2), the Commission has no discretion to authorize it.²²

Because the statutes address separate and unrelated issues, the Stipulating Parties have erred by conflating them. Indeed, if Turning Point is needed for AEP Ohio to meet its SER benchmarks, the Commission is prohibited by statute from finding that Turning Point is needed for purposes of R.C. § 4928.143(B)(2)(c). As discussed below, however, Turning Point is not needed in a resource planning sense for purposes of R.C. § 4928.143(B)(2)(c) or for AEP Ohio to meet its SER benchmarks under R.C. § 4928.64.

²² *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 947 N.E.2d 655, 2011-Ohio-1788, ¶¶ 31-34.

B. The Record Does Not Contain Any Evidence Establishing “Need” For Solar Resources Based On “Resource Planning Projections”.

Paragraph 2 of the Partial Stipulation recommends that the Commission find a need for Turning Point “based on resource planning projections”, thereby mimicking the language in R.C. § 4928.143(B)(2)(c). The Stipulating Parties clearly seek a determination with regard to Turning Point and not as to renewable energy or solar resources more generally.²³ Notably, every witness who testified in this proceeding, including the witnesses from AEP Ohio, Staff, and FES, agreed that resource planning involves: (1) forecasting future energy and peak loads; (2) showing, based on those forecasts, that additional resources will need to be acquired; and (3) ensuring that those loads can be met with the lowest expected cost resource.²⁴ As explained by FES witness Lesser, there is no record evidence meeting any prong of this test.²⁵

1. Turning Point is not needed to provide capacity or energy to AEP Ohio customers.

It is undisputed that AEP Ohio has more than enough capacity to meet its peak load obligations now and into the foreseeable future.²⁶ Staff²⁷ and AEP Ohio²⁸ both freely admit that AEP Ohio does not need Turning Point to meet its overall need for generation. Instead, the

²³ Tr. p. 20.

²⁴ Lesser Direct, p. 7 (“Utility resource planning involves first forecasting future energy and peak loads as accurately as possible, then ensuring those loads can be met at the lowest expected cost with a portfolio of resources.”); *id.*, pp. 10-11; Bellamy Direct, pp. 2-3 (“The determination of need for a proposed facility would be based upon the reasonableness of the cost of acquiring or constructing a new generating facility, or retrofitting an existing generating facility that would otherwise be retired, as compared with alternatives.”); Castle Direct, Exhibit WKC-2, Supplemental Appendix 2, AEP East 2010 Integrated Resource Plan, Executive Summary, p. 1 (“The goal of resource planning for a largely regulated utility such as AEP is to cost-effectively match its energy supply needs with projected customer demand.”).

²⁵ Lesser Direct, pp. 10-23.

²⁶ Lesser Direct, pp. 13-17; Tr. p. 31 (AEP Ohio witness Castle admitting that the available capacity for AEP Ohio is more than sufficient to meet the peak load over the next 10 years).

²⁷ Tr. p. 108.

²⁸ Tr. p. 53; Lesser Direct, pp. 13-17.

Signatory Parties have attempted to determine “need” by looking at solar energy resources only. This is incorrect and contrary to law. As discussed above, R.C. § 4928.143(B)(2)(c) does not apply to the alternative energy requirements of R.C. § 4928.64. Plus, R.C. § 4928.143(B)(2)(c) was intended only to be a safety valve for those circumstances where additional generation was needed to meet customer demand.²⁹ More importantly, as discussed below, even if solar energy resources are (incorrectly) considered as part of the resource planning analysis, there is no record evidence or even a single forecast suggesting that Turning Point is needed for resource planning purposes. As Turning Point is not needed for resource planning purposes, there is no “need” for Turning Point under R.C. § 4928.143(B)(2)(c).

2. AEP Ohio has presented no evidence of the cost of Turning Point as compared to alternatives.

In light of the complete agreement of every witness as to the relevant standard for resource planning under R.C. § 4928.143(B)(2)(c), one would assume that the Stipulating Parties would include at least some evidence of Turning Point’s estimated costs in the evidentiary record. That assumption would be wrong. Instead, the Signatory Parties have presented no evidence of Turning Point’s projected costs or of the revenue requirement for this facility.³⁰ This is particularly troubling, as Staff witness Bellamy acknowledged that the cost of the proposed facility “was not the only thing considered, but that would be a consideration when you get into, you know, whether a facility will actually be built or not.”³¹ The Signatory Parties have also not presented any evidence of the cost of constructing Turning Point as compared to the market cost of solar RECs or other alternatives.³²

²⁹ Lesser Direct, pp. 7, 9.

³⁰ Tr. p. 102.

³¹ Tr. p. 102.

³² Tr. pp. 102-106. *See* Lesser Direct, pp. 18-23.

As the Signatory Parties have not presented any evidence of the cost of Turning Point as compared to other alternatives, there is no “need” for Turning Point under their own definition of “resource planning projections.” AEP Ohio has therefore failed to establish a “need” for Turning Point under R.C. § 4928.143(B)(2)(c).

C. AEP Ohio Has Not Shown Turning Point Is Required To Comply With Its SER Benchmarks Or For Purposes Of Resource Planning.

The hearing testimony of the Stipulating Parties addressed solar resources in Ohio generally, as opposed to whether Turning Point is needed by AEP Ohio to comply with the SER benchmarks in R.C. § 4928.64 or for resource planning purposes. Indeed, absolutely no resource planning was done that was specific to Turning Point.³³ With regard to meeting the SER benchmarks, Staff did not analyze the number of solar RECs that AEP Ohio may need in the forecast period.³⁴ AEP Ohio testified “so really what we’re relying on is the need within the state.”³⁵ However, even if AEP Ohio’s projected SER benchmarks are examined, the Stipulating Parties have failed to demonstrate that Turning Point is needed by AEP Ohio to satisfy its SER benchmarks through 2020.

1. AEP Ohio’s estimate of the solar generating capacity required to satisfy its SER benchmarks is outdated and inaccurate.

The 2010 LTFR Supplement sponsored by AEP Ohio witness Castle estimates that AEP Ohio will require additional solar RECs in the future, but this estimate is deeply flawed. Most importantly, AEP Ohio used what are now extremely outdated data to significantly overstate the load it will serve during the planning period. In the 2010 LTFR Supplement, AEP Ohio projected retail shopping loads to be between 9% and 12% of total retail loads at the meter

³³ See Tr. pp. 31-34.

³⁴ Tr. p. 110.

³⁵ Tr. p. 49.

through 2020.³⁶ Currently, however, AEP Ohio's own data, included in an Affidavit of William Allen, shows that 36.7% of AEP Ohio's load has either switched to a CRES provider or indicated the intent to switch to a CRES provider.³⁷ As shown by this more recent data from AEP Ohio, shopping as of March 1, 2012 is already more than three times higher than the highest shopping levels included in AEP Ohio's assumptions through 2020. AEP Ohio also has estimated that, if RPM pricing was continued by the Commission, "65% of load for residential customers, 80% of load for commercial customers and 90% of load for industrial customers (excluding a single large customer)" would switch by the end of 2012.³⁸ AEP Ohio witness Castle volunteered that Mr. Allen's affidavit was a more accurate description of shopping for AEP Ohio than was included in his testimony, and that Mr. Allen's affidavit was accurate.³⁹ As shopping increases, AEP Ohio's in-state solar REC requirement will decrease commensurately, while CRES providers' in-state solar REC requirements will increase commensurately.⁴⁰

As a result of the overstated energy load assumptions, AEP Ohio has significantly overstated the number of solar RECS that it must obtain over the planning period to comply with the SER benchmarks. For example, AEP Ohio estimates that it must purchase 65,500 in-state solar RECs in the year 2020.⁴¹ However, due to the load overstatements as discussed above, AEP Ohio has significantly overstated this requirement. Even if one assumes no additional retail

³⁶ 2010 LTFR Supplement, Exhibit 1; Tr. pp. 46-47; Lesser Direct, pp. 11-12.

³⁷ Case No. 10-2929-EL-UNC, Affidavit of William Allen, March 5, 2012, ("Allen Affidavit"), par. 5; Lesser Direct, p. 12.

³⁸ Allen Affidavit, par. 9. AEP Ohio currently is endeavoring to delay the benefits of competitive markets and full shopping to its customers until 2015. But even if AEP Ohio is successful, this market interference will end in 2015. AEP Ohio's quixotic hope that it could constrain shopping at levels close to 10% through 2020 will never be realized.

³⁹ Tr. pp. 49-51.

⁴⁰ Lesser Direct, p. 13.

⁴¹ Supplemental Appendix 1, Exhibit 2; Lesser Direct, pp. 31-32.

switching from March 1, 2012 through the year 2020 and the percentage of shopping load remains at 36.7%, then AEP Ohio's in-state solar requirement would fall to about 44,700 solar RECs.⁴² If one assumes that AEP Ohio's own estimate of shopping load using market-based pricing is accurate and 79% of load will shop,⁴³ then AEP Ohio will require less than 10,000 solar RECs in 2020.⁴⁴ Using these assumptions (which were provided by AEP Ohio in an affidavit which AEP Ohio witness Castle relied upon), AEP Ohio already has more than enough solar RECs through the year 2020 due to its 20-year power purchase agreement with the Wyandot solar facility, which is providing it with over 15,000 in-state solar RECs per year.⁴⁵

As shown by the foregoing, AEP Ohio has offered no credible evidence that it needs any additional solar RECs to meet the SER benchmarks in R.C. § 4928.64. Instead, AEP Ohio has invented a need by grossly overstating the load it will serve in the forecast period. Based on current assumptions (which benefit from not being created for purposes of this proceeding), AEP Ohio already has more than enough solar RECs to satisfy its SER benchmarks through the entire forecast period. Therefore, the Commission cannot find that Turning Point is needed by AEP Ohio to satisfy its SER benchmarks under R.C. § 4928.64.

⁴² Lesser Direct, p. 32; Lesser Direct, Exhibit JAL-4.

⁴³ Although AEP Ohio currently is fighting the use of market-based capacity pricing in Case No. 10-2929-EL-UNC, it has agreed that all capacity will be priced using the PJM RPM market starting June 1, 2015. Thus, Mr. Allen's shopping estimates should be realized by 2016 even if AEP Ohio is successful in the short-term in denying its retail customers access to market-based pricing.

⁴⁴ Lesser Direct, p. 33; Lesser Direct, Exhibit JAL-5.

⁴⁵ Lesser Direct, p. 33; Tr. p. 28.

2. Even if solar energy resources required by the entire state of Ohio to satisfy SER benchmarks are considered, AEP Ohio has not shown Turning Point is needed.

An LTFR must include a year-by-year forecast of energy demand, peak load and reserves, plus a description of the resource plan to meet demand.⁴⁶ Similarly, O.A.C. 4901:5-5-06(B), which lists all information that must be filed as part of an LTFR in any filing for an allowance under R.C. § 4928.143(B)(2)(c), requires that an EDU describe the need for additional electricity resource options and provide a resource plan to “meet the base case projection of peak demand and total energy requirements.”⁴⁷ It is clear from a review of the requirements of R.C. § 4935.04 and O.A.C. 4901:5-5-06(B), that they govern resource planning to provide consumers with adequate, reliable and cost-effective electricity resources.⁴⁸ They do not apply, and cannot be used, to determine whether a particular solar energy resource would assist an EDU in meeting its SER benchmarks. Yet even if we were to accept the Stipulating Parties’ position that Turning Point is needed in a resource planning sense, the Stipulating Parties have failed to produce any evidence to support that position.

a. The Stipulating Parties failed to present a single forecast of solar energy resources.

Given that the General Assembly adopted R.C. § 4928.64 specifically to incent competitive market development of solar energy resources, the ability of that market to satisfy the need for solar energy resources would be a significant factor to consider when forecasting solar energy resource requirements. Yet, even when looking at the entire state of Ohio as a whole, the Stipulating Parties’ testimony failed to present a single forecast of solar energy resources over the planning period. This omission is noteworthy, given that the scope of the

⁴⁶ R.C. § 4935.04(C)(1).

⁴⁷ O.A.C. 4901:5-5-06(C)(2), (C)(3)(a).

⁴⁸ See, e.g., O.A.C. 4901:505006(C)(3)(e).

hearing in this proceeding is limited to issues related to forecasting.⁴⁹ Because the Stipulating Parties failed to present any forecasts of future market development of solar energy resources, they failed to establish that Turning Point is needed from a resource planning perspective.

b. AEP Ohio's testimony assumed no solar development in the forecast period and failed to establish a "need" for Turning Point.

AEP Ohio's testimony and accompanying 2010 LTFR Supplement assume a completely static universe, except for increasing SER benchmarks. The 2010 LTFR Supplement was filed on December 20, 2010, and includes data as of December 8, 2010.⁵⁰ It includes only solar facilities which were "certified and pending" as of that date.⁵¹ The 2010 LTFR Supplement fails to include a forecast of the amount of solar resources that will be constructed in Ohio or deliverable into Ohio for any year of the LTFR period.⁵² To the contrary, the 2010 LTFR Supplement assumes the construction of no new solar capacity by the market in the forecast period.⁵³ Using that dubious assumption, the 2010 LTFR Supplement found that Ohio would be short on solar capacity starting in 2012.⁵⁴ As the Stipulating Parties now recognize, an additional 22 MW of in-state solar resources were constructed in 2011 after the 2010 LTFR Supplement was filed and there is no shortage of solar energy resources in 2012.⁵⁵ By the time

⁴⁹ R.C. § 4935.04(E)(1).

⁵⁰ Tr. p. 35.

⁵¹ Tr. p. 35. Notably, the 2010 LTFR Supplement overstates statewide consumption by 28,000 GWh by improperly including consumption by municipal utilities and cooperatives. Tr. pp. 36-37. AEP Ohio witness Castle admitted that the 2010 LTFR supplement was significantly flawed and overstated the forecast benchmarks, and he agreed that the figure on page 8 of his testimony was inaccurate as compared to Staff's calculations. Tr. pp. 37-38.

⁵² Tr. p. 39.

⁵³ Castle Direct, p. 6; Tr. p. 39.

⁵⁴ Castle Direct, p. 6.

⁵⁵ Castle Direct, p. 9.

testimony was filed in this case, it was obvious that the 2010 LTFR Supplement was inaccurate and out-of-date.

AEP Ohio witness Castle's testimony was filed on March 9, 2012. He recognized that the 2010 LTFR Supplement was inaccurate and that it failed to account for the amount of solar capacity which would be provided by the market in 2011 or future years.⁵⁶ He also recognized that the solar energy resources constructed and certified in 2011 and the first few months of 2012 were sufficient for all EDUs and CRES providers in Ohio to meet their SER benchmarks through 2015, even if no additional resources were built.⁵⁷

Incredibly, Mr. Castle's "updated" testimony repeated the same errors contained in the 2010 LTFR Supplement.⁵⁸ He again failed to account for any solar energy resources which would be provided by the market in the remainder of 2012 or any future year.⁵⁹ He then assumed that the conclusions reached in the 2010 LTFR Supplement were "valid" because, if one assumes no new solar resources, eventually Ohio will not have sufficient solar resources.⁶⁰

As explained by FES witness Dr. Lesser, AEP Ohio's argument suffers from a severe logical flaw because it applies a static argument to a dynamic condition.⁶¹ AEP Ohio assumes that nothing else will be built between today and 2015, and then argues that Turning Point is "needed" in order to meet the state's SER benchmarks. This is similar to arguing that "because the decommissioning fund for a new nuclear power plant is not fully funded on its first full day of service, the fund is 'deficient' and the entire decommissioning fund must be collected up

⁵⁶ Castle Direct, p. 9.

⁵⁷ Castle Direct, p. 10.

⁵⁸ Castle Direct, pp. 9-10.

⁵⁹ Castle Direct, p. 9.

⁶⁰ Castle Direct, p. 10.

⁶¹ Lesser Direct, p. 25.

front.”⁶² As pointed out by FES witness Dr. Lesser, claiming that Ohio must have sufficient solar resources in 2012 to meet the benchmarks through 2025 simply does not make logical sense and would require Ohio to spend significant funds today to meet a future requirement.⁶³ This does not make sense from a cost perspective, because it would force construction of significant and costly solar resources today which are not needed to satisfy statutory benchmarks for several years. Staff witness Bellamy agreed with FES witness Dr. Lesser that AEP Ohio’s analysis was improper, testifying that any determination of “need” for Turning Point which assumed zero growth of solar capacity would be incorrect.⁶⁴

The factual flaw in AEP Ohio’s analysis is that it assumes that Turning Point is the only game in town and that no new solar facilities will be constructed by the market. However, PUCO data shows a rapid increase in the number of in-state solar PV applications that have been approved by the PUCO since 2009:

Year	Ohio MW	Applications Approved
2009	13.41	14
2010	6.71	152
2011	22.20	342
2012 1/	3.46	109
TOTAL	45.79	617

1/ Through 2/27/2012. Source: PUCO Ohio Website, "Approved Facilities Report," March 10, 2012.

⁶² Lesser Direct, p. 36.

⁶³ Lesser Direct, p. 36.

⁶⁴ Tr. p. 113.

As this table shows, the number of approved in-state solar PV applications has grown steadily, from 14 in 2009 to 342 in 2011.⁶⁵ In just the first two months of 2012, the PUCO approved 109 applications. If that rate holds constant, the Commission will approve more than 600 applications in 2012.⁶⁶ Similarly, the PJM generation queue includes 215 MW of new, in-state solar PV facilities in addition to the facilities that have been approved by the PUCO.⁶⁷

Despite this rapid increase in solar PV activity within Ohio, AEP Ohio witness Castle assumes there will be no further solar PV applications made. Yet the market is developing solar energy resources, and the rate of this market-based development is increasing. Indeed, AEP Ohio relies on this market based development in its AEP-East 2010 Integrated Resource Plan (“IRP”), which assumes that 227 MW of solar PV will be developed between the years of 2012 and 2020 to meet AEP Ohio’s goals.⁶⁸ It is inappropriate for AEP Ohio to ignore market forces in its testimony in this proceeding, while recognizing those same market forces in its IRP.

AEP Ohio’s testimony lacks any logic. AEP Ohio first claimed in 2010 that Ohio would run out of solar resources in 2012 because the market would produce nothing. When that claim was shown to be false, AEP Ohio admitted that it was false but then updated its testimony using the exact same flawed methodology. AEP Ohio’s testimony should be accorded no weight whatsoever.

c. Staff’s testimony also failed to establish a “need” for Turning Point.

Staff’s testimony also failed to show that Turning Point must be constructed by AEP Ohio so that EDUs and CRES providers can meet their SER benchmarks. Staff witness Bellamy

⁶⁵ Lesser Direct, p. 37. Development of resources started slowly, which was not surprising given that financial markets had frozen up in late 2008 and access to capital investment was nearly foreclosed. This market crisis occurred within months of the effective date of R.C. § 4928.64. With the return to near normalcy of the financial markets, development has accelerated as anticipated by the General Assembly at the time it enacted R.C. § 4928.64 in 2008.

⁶⁶ Lesser Direct, p. 37.

⁶⁷ Lesser Direct, p. 38; Ex. JAL-7.

⁶⁸ Lesser Direct, p. 37; Ex. JAL-6.

recognized that the market in Ohio has produced more than 20 MW/year in 2010 and 2011.⁶⁹ Based on this trend, he assumed there would be some level of future growth in the amount of in-state solar resources. Yet he made no effort to estimate what that level of growth would be. Instead, he merely presented four alternative scenarios with additions of between 8 MW and 20 MW of solar PV annually through the year 2025, both with and without the addition of the TPS project in 2015. He determined that, if the market included a new 10-12 MW facility annually (as the market had produced during the previous two years), Ohio **would significantly over-comply with the SER benchmarks**.⁷⁰ To be clear, Mr. Bellamy's scenarios show that large capacity installations are not needed in each year in order for EDUs and CRES providers to meet the SER benchmarks.⁷¹

Although Mr. Bellamy identifies nothing which would imply that the future market for solar resources would retract or degrade, he also determined that Ohio would not comply in future years with the SER benchmarks if only 8 MW per year of solar energy resources were developed by the market. The 8 MW per year data point "represents the amount added in 2010 and 2011 without the large 12 MW, 9.792 MW, and 2 MW facilities."⁷² Using that 8 MW per year assumption, Mr. Bellamy concluded there may be too few in-state solar resources developed.⁷³ There is no evidence to suggest, however, that Mr. Bellamy's 8 MW per year assumption is a valid or reasonable assumption. There is no evidence that this assumption is a

⁶⁹ Tr. p. 114; Bellamy Direct, p. 4..

⁷⁰ Bellamy Direct, pp. 6-7; Tr. p. 115.

⁷¹ Bellamy Direct, p. 6, Figure 2 (showing substantial over-compliance through 2025 if 20 MW are added each year), Figure 1 (showing compliance through 2015 if only 8 MW are added each year).

⁷² *Id.*, p. 5.

⁷³ *Id.*, p. 9.

significant risk or even a remote possibility. As such, the Commission lacks a basis to find a “need” for Turning Point based on this assumption.

Mr. Bellamy’s testimony is flawed because he does not present a “forecast” showing his estimate of the amount of solar energy resources that will be constructed and certified during the planning period.⁷⁴ Indeed, he acknowledged there was no evidence suggesting that sufficient solar resources would not be available through the competitive market.⁷⁵ As noted above, AEP Ohio also failed to provide such a forecast in support of Turning Point.

Mr. Bellamy’s testimony also is flawed because it lacked any evidentiary support for the assumed addition of only 8 MW per year of solar energy resources. He offered no justification for assuming that Ohio’s solar market would decrease by 60% per year in every year through 2025, as shown on his Figure 1 and Figure 3. A bar chart isn’t evidence this Commission can rely upon if the height of the bars simply represent a witness’s guess as to what might or might not happen. In this case, Figures 1 and 3 don’t even represent Mr. Bellamy’s best guess, since he’s confident that he has no idea what will happen. Indeed, Mr. Bellamy’s lack of knowledge of the developing solar market in Ohio is the sole factor he relies upon to conclude that Turning Point is needed for AEP Ohio to comply with R.C. § 4928.64.⁷⁶

Yet Mr. Bellamy acknowledged during cross-examination that, holding all things constant, larger facilities are more cost-effective than smaller facilities due to economies of

⁷⁴ There is no evidence that Mr. Bellamy is qualified to develop an actual forecast.

⁷⁵ Tr. p. 105 (“Q. What evidence exists in the record that sufficient solar resources are not available through the competitive market? A: Nobody knows what resources are going to be available. We know what resources are available now, we know what facilities have been built and certified by the Commission; other than that we don’t know what’s going to get built so no one can say, you know, a certain amount is going to be built or not going to be built.”)

⁷⁶ Bellamy Direct, p. 9.

scale.⁷⁷ He also failed to include in his 8 MW per year assumption a projection of any of the large-scale resources approved by the Commission.⁷⁸ He also failed to include the resources in the PJM generation queue, many of which are in excess of 2 MW. Instead, he testified that “PUCO Staff is not aware of any other solar PV being developed in the state at this time.”⁷⁹ He used the word “developed” to differentiate between projects which are in operation and projects which are in the construction/development stage, but this fine point is not persuasive. There are significant resources pending in the market, and those resources show that the market is both willing and able to continue to provide sufficient solar energy resources for EDUs and CRES providers to meet Ohio’s SER benchmarks.

As Staff has failed to provide a forecast, or to identify any reason why an assumption of no more than 8 MW per year is valid, there is no reason to find that there is a “need” for Turning Point under any statutory provision.

d. There Is No “Need” For Turning Point Because The Market Can Provide Sufficient Solar Resources.

The Commission stated in its December 14, 2011 Opinion and Order in 11-346-EL-SSO that AEP Ohio must “demonstrate that the Turning Point project is necessary to comply with the solar renewable energy resource provisions contained in Section 4928.64, Revised Code, and that sufficient solar energy resources are not available through competitive markets.” Rather than attempting to show that solar energy resources would not be available through competitive markets, as the Commission’s Order suggested, the Stipulating Parties have simply assumed that

⁷⁷ Tr. p. 119.

⁷⁸ Mr. Bellamy admitted that, even if only 8 MW per year were added, Ohio would still have sufficient solar energy resources to meet the statutory benchmarks through 2015. Bellamy Direct, p. 5.

⁷⁹ Bellamy Direct, p. 3.

sufficient in-state solar RECs cannot be obtained in the competitive market. This assumption is contrary to fact.

The Stipulating Parties have admitted that the market has provided more than 20 MW per year in the last two years. The number of approved in-state solar PV applications has grown steadily, from 14 in 2009 to 342 in 2011.⁸⁰ The Commission is on pace to exceed 600 approved applications in 2012. The PJM generation queue includes 215 MW of new, in-state solar PV facilities in addition to the facilities that have been approved by the Commission.⁸¹ All of this development occurred without the Commission meddling in the market by granting nonbypassable cost recovery for a project under R.C. § 4928.143(B)(2)(c).⁸²

Because the solar market is currently functioning, one would expect that the Stipulating Parties would have addressed whether the market would, or even could, provide these resources. However, the Stipulating Parties have offered no evidence that in-state solar RECs cannot be otherwise obtained through the competitive market. Indeed, AEP Ohio admits that its testimony does not forecast the amount of solar resources that the competitive markets will construct in or deliver into Ohio for any year of the LTFR planning period.⁸³ Staff also acknowledges that there is no record evidence of a market test or an RFP to see if the competitive market would meet the solar load which it claims should be filled by Turning Point.⁸⁴ The Stipulating Parties also admit that there is no record evidence comparing the cost associated with Turning Point with the cost associated with buying solar RECs in the competitive market.⁸⁵

⁸⁰ Lesser Direct, p. 37.

⁸¹ Lesser Direct, p. 38; Ex. JAL-7.

⁸² Lesser Direct, p. 22.

⁸³ Tr. p. 45.

⁸⁴ Tr. p. 105.

⁸⁵ Tr. pp. 106-107.

The Stipulating Parties could have established “that sufficient solar energy resources are not available through competitive markets” in several ways. The Stipulating Parties could have shown that AEP Ohio attempted to obtain in-state solar RECs using competitive market tools and that these attempts failed. The Stipulating Parties could have demonstrated that the competitive market was not capable of bringing forth sufficient in-state solar RECs in the future. The Stipulating Parties did neither of these, and did nothing to establish that the market would not provide these resources.

FES presented evidence that the market can and would provide solar resources. For example, in 2011 the FirstEnergy EDUs conducted a solicitation for in-state solar RECs over a 10-year period.⁸⁶ The FirstEnergy EDUs requested 5,000 solar RECs and received 28 qualified bids offering more than twice the requested amount of solar RECs.⁸⁷ Similarly, AEP Ohio admitted that the primary source of its current 15.1 GWh of solar energy capacity comes from the Wyandot solar project.⁸⁸ This 10 MW solar farm is currently operating under a 20-year purchase agreement with AEP Ohio.⁸⁹ The purchase agreement for Wyandot was a direct result of an RFP for renewable resources issued by AEP Ohio in 2009.⁹⁰ Despite the proven success of the competitive market, AEP Ohio did not even attempt to obtain the necessary solar RECs in the market.

As shown by the foregoing, the market is currently providing solar resources, and has provided 100% of the resources currently in place today. The Stipulating Parties have offered no evidence explaining why the market will not provide sufficient future resources, and therefore

⁸⁶ Lesser Direct, p. 20.

⁸⁷ Lesser Direct, p. 20; Ex. JAL-3.

⁸⁸ Tr. p. 28.

⁸⁹ Tr. p. 28.

⁹⁰ Tr. pp. 28-29.

the Stipulating Parties have failed to establish that AEP Ohio needs to construct Turning Point in order to satisfy its SER benchmarks.

D. Imposing A Nonbypassable Surcharge For Turning Point Would Violate Ohio Policy And Discriminate Against Shopping Customers.

Ohio law prohibits discriminatory acts against shopping customers. It is this state's policy to "ensure the availability to consumers of . . . nondiscriminatory, and reasonably priced retail electric service."⁹¹ Ohio law also encourages competitive choice, encouraging "the availability of unbundled and comparable retail electric service that provides customers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs."⁹² Ohio law also encourages the diversity of electric suppliers,⁹³ market access,⁹⁴ and effective competition.⁹⁵ The Partial Stipulation violates these policies and could result in a pricing structure that discriminates against shopping customers.

Imposing a nonbypassable surcharge for Turning Point under R.C. § 4928.143(B)(2)(c) would discriminate against shopping customers by forcing them to pay twice for solar RECs. Under the statutory framework imposed by R.C. § 4928.64, there is no reason to permit nonbypassable cost recovery for renewable energy costs associated with shopping load. If a customer shops, the EDU is no longer obtaining solar RECs for the departed load.⁹⁶ The CRES provider is now responsible for obtaining those RECs, and the cost of obtaining those RECs will

⁹¹ R.C. § 4928.02(A).

⁹² R.C. § 4928.02(B).

⁹³ R.C. § 4928.02(C).

⁹⁴ R.C. § 4928.02(D).

⁹⁵ R.C. § 4928.02(H).

⁹⁶ R.C. § 4928.64(A).

be reflected in the contract between the shopping customer and the CRES provider. Accordingly, there is no reason for nonbypassable cost recovery for alternative energy costs.

Under AEP Ohio's proposal, shopping customers would be forced to pay a nonbypassable charge for Turning Point under R.C. § 4928.143(B)(2)(c), while at the same time paying for the solar RECs for their load from CRES providers. Shopping customers will be the only customers paying twice for solar RECs. Not only is this discrimination prohibited by Ohio law, but it also would violate Ohio policy by delaying the development of a fully competitive retail electric market in AEP Ohio's service territory.

As discussed above, R.C. § 4928.64(E) authorizes bypassable cost recovery for renewable energy resources. If Turning Point is a worthwhile project, there is nothing stopping AEP Ohio from pursuing bypassable cost recovery in order to recover its costs. The fact that AEP Ohio is not following the same method which has been used throughout Ohio to date suggests that: (1) AEP Ohio is intentionally attempting to discriminate against shopping customers and stop retail competition; and/or (2) the Turning Point project is not needed or worthwhile unless customers who do not benefit from this project are forced to pay for it. In either case, the Commission should reject this end-run around Ohio law.

E. There Are Severe Procedural Irregularities With This Proceeding.

1. The determination of "need" under R.C. § 4928.143(B)(2)(c) must take place in an ESP proceeding.

R.C. § 4928.143(B)(2)(c) only permits non-bypassable cost recovery if the Commission determines that there is a need for the new facility "in the [ESP] proceeding."⁹⁷ Despite this clear statutory mandate, the Stipulating Parties are seeking to obtain a determination of "need"

⁹⁷ R.C. § 4928.143(B)(2)(c).

for Turning Point in this LTFR proceeding and not in AEP Ohio's ESP proceeding.⁹⁸ There is no authority under Ohio law to make this determination outside of an ESP proceeding.

Rather than permitting a determination of "need" in this proceeding, R.C. § 4935.04 limits forecasting proceedings to forecasting issues only. R.C. § 4935.04(E)(1) states that "[t]he scope of the hearing held under division (D)(3) of this section shall be limited to issues relating to forecasting." There is no exception in the statute allowing a determination of "need" under R.C. § 4928.143(B)(2). Similarly, R.C. § 4935.04(H) provides the permitted scope for which the LTFR proceedings may be used. Pursuant to R.C. § 4935.04(H), the Commission's determinations may be used in specified statutory proceedings conducted pursuant to R.C. §§ 4905.40, 4905.401, 4905.41, 4905.42, 4905.70, 4906.10 and 4909.18. No reference is made to R.C. § 4928.143 and, thus, no authority is conferred to make use of the Commission's LTFR determinations in an ESP proceeding.

R.C. § 4928.143(B)(2)(c) mandates that the determination of need must be made in an ESP proceeding. Any determination of "need" in this proceeding would simply be a waste of time with no legal effect.

2. AEP Ohio did not comply with the rules associated with nonbypassable recovery under R.C. § 4928.143 and has not provided the Commission with essential information regarding Turning Point.

O.A.C. 4901:5-5-06(B) contains a list of detailed requirements which AEP Ohio must establish in the forecast year prior to any filing for an allowance under R.C. § 4928.143(B)(2)(c). Among other things, this rule requires that AEP Ohio provide data establishing: (1) a description of the EDU's current system; (2) the need for additional energy resources; and (3) the EDU's

⁹⁸ Partial Stipulation, ¶ 2.

resource plan to meet the base case projection of peak demand and total energy requirements.⁹⁹

This resource plan must include a comparison of the proposed plan with alternatives, including their anticipated costs.¹⁰⁰

a. AEP Ohio admitted that it failed to provide the information required by O.A.C. 4901:5-5-06(B).

AEP Ohio has not met the essential requirements of O.A.C. 4901:5-5-06(B). For example, O.A.C. 4901:5-5-06(B)(2)(b) requires AEP Ohio to provide the Commission with data regarding the maintenance requirements for planned units like Turning Point. AEP Ohio admits that its testimony failed to even address this point.¹⁰¹ O.A.C. 4901:5-5-06(B)(2)(f) requires AEP Ohio to provide information regarding the lead time for construction and implementation of Turning Point. Once again, AEP Ohio admits that its testimony failed to even address this point.¹⁰² O.A.C. 4901:5-5-06(B)(2)(j)(ii) requires AEP Ohio to provide an engineering analysis. AEP Ohio once again admits that it failed to address this point in its testimony.¹⁰³

AEP Ohio has also failed to provide the Commission with any information regarding the cost-effectiveness of Turning Point. O.A.C. 4901:5-5-06(B)(3)(c) specifically requires that:

“The electric utility shall demonstrate the cost-effectiveness of the plan through a comparison over the ten-year forecast horizon of the revenue requirement and rate impacts of the selected plan and alternative plans evaluated. The selection of the plan shall demonstrate adequate consideration of the risks, reliability, and uncertainties associated with the person’s selected plan and alternative plans, and of other factors the electric utility deems appropriate.”

⁹⁹ O.A.C. 4901:5-5-06(B).

¹⁰⁰ O.A.C. 4901:5-5-06(B).

¹⁰¹ Tr. p. 32.

¹⁰² Tr. p. 33.

¹⁰³ Tr. p. 33.

AEP Ohio admits that it failed to demonstrate that Turning Point was cost effective, and cost-effectiveness was not addressed in AEP Ohio witness Castle's testimony or in the attachments to his testimony.¹⁰⁴

b. As AEP Ohio has failed to provide the minimum information required by O.A.C. 4901:5-5-06, AEP Ohio has failed to establish a “need” for Turning Point.

In its direct testimony, AEP Ohio admits that it must comply with the provisions of O.A.C. 4901:5-5-06 in this proceeding.¹⁰⁵ The Commission adopted this rule for a reason. Under O.A.C. 4901:5-5-06(B), if an EDU intends to seek nonbypassable cost recovery under R.C. § 4928.143(B)(2)(c), it must provide all information necessary for the Commission to determine whether nonbypassable cost recovery is appropriate. Rather than complying with O.A.C. 4901:5-5-06, AEP Ohio has failed to provide any evidence establishing: (1) how much Turning Point will cost to construct; (2) the maintenance requirements for Turning Point; (3) how long it will take for Turning Point to be constructed; (4) an engineering analysis for Turning Point; (5) a comparison of the cost of Turning Point with the cost of alternatives; and (6) adequate consideration of the risks, reliability, and uncertainties associated with the EDU's selected plan and alternative plans. Without this essential information, which is required by O.A.C. 4901:5-5-06(B) to be filed in this proceeding, the Commission simply does not have the information it needs to find that there is a “need” for Turning Point for the purpose of R.C. § 4928.143(B)(2)(c).

¹⁰⁴ Tr. p. 34.

¹⁰⁵ Castle Direct, p. 6.

3. The Commission is prohibited from making a determination of need in this proceeding because AEP Ohio did not file its request for nonbypassable cost recovery in the correct forecast year.

AEP Ohio filed this LTFR on March 25, 2010.¹⁰⁶ O.A.C. 4901:5-5-06(B) states “[i]n the long-term forecast report filed pursuant to rule 4901:5-3-01 of the Administrative Code, the following must be filed in the forecast year prior to any filing for an allowance under sections 4928.143(B)(2)(b) and (c) of the Revised Code.”¹⁰⁷ Regardless of whether AEP Ohio’s 2010 LTFR filing meets the requirements of O.A.C. 4901:5-5-06, the 2010 LTFR filing does not satisfy O.A.C. 4901:5-5-06(B) because AEP Ohio’s current ESP application was filed on March 30, 2012. The 2010 LTFR Supplement is now out-dated and non-compliant. Because AEP Ohio’s 2010 LTFR was filed in 2010, it was not filed in the forecast year prior to ESP Ohio’s current ESP filing for an allowance under R.C. § 4928.143(B)(2)(c). Thus, AEP Ohio has not met the requirements of O.A.C. 4901:5-5-06(B).

4. The Attorney Examiner erred to the prejudice of FES by striking portions of Dr. Lesser’s testimony.

FES should have been permitted to address the Partial Stipulation and the testimony of the Stipulating Parties in its testimony. If these are appropriate issues for the Stipulating Parties, they are appropriate issues for FES. FES attempted to limit this proceeding to issues related to forecasting only. Yet, the Attorney Examiner rejected FES’ Motion to Strike, finding that “the parties may offer testimony with respect to paragraph 2 of the stipulation.”¹⁰⁸ As discussed above, Paragraph 2 of the Partial Stipulation includes the determination of “need” for the Turning Point facility under R.C. § 4928.143(B)(2)(c), which necessarily includes a review of its

¹⁰⁶ See Docket.

¹⁰⁷ O.A.C. 4901:5-5-06(B) (emphasis added). This language was amended effective Feb. 12, 2012, but the amendments did not change the meaning.

¹⁰⁸ Entry, February 29, 2012, ¶ 12.

cost effectiveness in a resource planning sense. However, when FES attempted to rebut the testimony offered by the Signatory Parties, the Attorney Examiner inappropriately struck the testimony of Dr. Lesser addressing these points.¹⁰⁹ This inappropriate double standard for testimony regarding Paragraph 2 prejudiced FES. The Commission should find that the Attorney Examiner erred and consider all parts of Dr. Lesser's testimony.

- a. As the only reason for a finding of need under R.C. § 4928.143(B)(2)(c) is to obtain nonbypassable cost recovery, FES should have been permitted to address whether nonbypassable cost recovery is appropriate.**

Paragraph 2 of the Partial Stipulation specifically references R.C. § 4928.143(B)(2)(c). As discussed above, this provision authorizes a nonbypassable cost recovery for an EDU that builds new generation capacity, subject to certain requirements. There is no reason to cite this statute and declare there to be a “need” for Turning Point other than to approve nonbypassable cost recovery for Turning Point. As the only reason to make a determination of “need” in this proceeding “based on resource planning projections submitted by AEP Ohio pursuant to R.C. 4928.143(B)(2)(c)”¹¹⁰ is to obtain nonbypassable cost recovery for Turning Point, it was inappropriate to strike testimony addressing this very issue. Either the reference to R.C. § 4928.143(B)(2)(c) should have been stricken from the Partial Stipulation, or FES should have been permitted to testify regarding the impact of its inclusion.

- b. Because the Partial Stipulation specifically references R.C. § 4928.143(B)(2)(c) and R.C. § 4928.64, FES should have been permitted to address the differences in these statutes in order to refute the Signatory Parties' definition of “need.”**

Even though the only reason to cite R.C. § 4928.143(B)(2)(c) is to obtain nonbypassable recovery, this not the only reason why Dr. Lesser's stricken testimony was relevant. As

¹⁰⁹ Tr. pp. 168-69.

¹¹⁰ Partial Stipulation, ¶ 2.

discussed above, the Stipulating Parties' definition of "need" under R.C. § 4928.143(B)(2)(c) is completely dependent on R.C. § 4928.64. FES offered testimony from Dr. Lesser rebutting the Stipulating Parties position that "need" can be determined by referencing R.C. § 4928.64, since these two statutes have completely different recovery mechanisms. As found by Dr. Lesser, if the statutes have completely different recovery mechanisms, then it is inappropriate to conclude that the determination of "need" under R.C. § 4928.143(B)(2)(c) can make reference to the alternative energy benchmarks of R.C. § 4928.64. Once again, even though the Stipulating Parties specifically rely on the interplay of these statutes while claiming there is a "need" for Turning Point, Dr. Lesser's testimony on this point was improperly stricken.

c. Because the Stipulating Parties were permitted to testify regarding cost recovery for Turning Point, it was prejudicial to prevent FES from rebutting this testimony.

The testimony of the Signatory Parties specifically referenced nonbypassable cost recovery. Staff witness Bellamy testified: "It is my understanding that generation project surcharges authorized by R.C. 4928.143(b)(2)[sic], must be based upon a demonstration of need under the integrated resource planning process to advance the policy provisions contained [sic] R.C. 4928.64."¹¹¹ AEP Ohio witness Castle not only referenced R.C. § 4928.143(B)(2)(c),¹¹² he also testified that the purpose of his testimony was to "support AEP Ohio's intent to enter into a potential capital leasing arrangement" for Turning Point.¹¹³ AEP Ohio witness Castle also testified that AEP Ohio intended to obtain an "allowance" for Turning Point under R.C. 4928.143(B)(2).¹¹⁴

¹¹¹ Bellamy Direct, p. 2 (emphasis added).

¹¹² Castle Direct, p. 4.

¹¹³ Castle Direct, p. 5.

¹¹⁴ Castle Direct, p. 6; Tr. p. 21.

Based on this testimony, both Signatory Parties acknowledged that the purpose of this proceeding is to obtain nonbypassable recovery for Turning Point. However, the Attorney Examiner inappropriately prevented FES from offering testimony discussing why nonbypassable cost recovery for this project is inappropriate.

d. The Attorney Examiner inappropriately denied FES' Motion To Strike testimony beyond the scope of this proceeding, then failed to allow FES to address the inappropriate points raised by the Signatory Parties.

On December 14, 2011, FES filed a Motion to Strike Paragraph 2 of the Partial Stipulation and to prevent testimony regarding non-forecasting issues in this proceeding. In this Motion, FES pointed out that AEP Ohio was attempting to expand the permitted scope of this proceeding well beyond that permitted by statute. FES argued that nothing in R.C. § 4935.04 or O.A.C. 4901:5 authorized the Commission to make a finding of “need” for Turning Point in this proceeding. The Attorney Examiner denied this motion and noted that R.C. § 4928.143(B)(2)(c) and R.C. § 4935.04 did not specifically prohibit the Commission from “also considering the need for the facility in a forecasting case.”¹¹⁵ As a result, the Attorney Examiner concluded that the Signatory Parties “should have the opportunity to offer the stipulation in its entirety to the Commission for its consideration. Additionally, . . . the parties may offer testimony with respect to paragraph 2 of the stipulation.”¹¹⁶

Regardless of whether the Attorney Examiner properly expanded the scope of this proceeding to include Paragraph 2 of the Partial Stipulation, the February 29, 2012 Entry authorized the parties to “offer testimony with respect to paragraph 2 of the stipulation.”¹¹⁷ It is unjust for the Attorney Examiner to allow Paragraph 2 of the Partial Stipulation to remain in the

¹¹⁵ February 29, 2012 Entry, ¶ 12.

¹¹⁶ February 29, 2012 Entry, ¶ 12.

¹¹⁷ February 29, 2012 Entry, ¶ 12.

record and to allow the Stipulating Parties to offer testimony regarding Paragraph 2 (including testimony regarding nonbypassable cost recovery under R.C. § 4928.143), while at the same time striking testimony from Dr. Lesser which expressly refutes these arguments. All testimony regarding Paragraph 2 should have been admitted.

5. AEP Ohio should not be able to use this proceeding as a way to avoid Commission review of Turning Point.

AEP Ohio is playing a shell game. It wants a determination of need in this proceeding, but no consideration of the costs of Turning Point in the resource planning sense. In its pending ESP proceeding, AEP Ohio wants the Commission to approve a “placeholder” nonbypassable Generation Resource Rider (“GRR”) without considering whether Turning Point is needed or a nonbypassable rider is justified.¹¹⁸ AEP Ohio will then seek in a separate proceeding to include all Turning Point costs in the GRR.¹¹⁹ Besides violating every applicable statute, this is improper as a matter of sound public policy. If AEP Ohio is allowed to play this game, the need for Turning Point will never seriously be reviewed or considered by the Commission. AEP Ohio’s attempt to game the system in this manner should be rejected.

III. CONCLUSION

FES respectfully requests that the Commission modify the Partial Stipulation by striking Paragraph 2. In the alternative, FES requests that the entire Partial Stipulation be rejected.

Respectfully submitted,

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¹¹⁸ Case No. 11-346-EL-SSO, Testimony of Laura Thomas filed March 30, 2012, p. 8.

¹¹⁹ Case No. 11-346-EL-SSO, Testimony of Phillip Nelson filed March 30, 2012, p. 20.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Post-Hearing Brief Of FirstEnergy Solutions Corp.* was served this 25th day of April, 2012, via e-mail upon the parties below.

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