

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Columbus Southern Power Company and)	
Ohio Power Company for Authority to)	Case No. 11-346-EL-SSO
Establish a Standard Service Offer)	Case No. 11-348-EL-SSO
Pursuant to §4928.143, Ohio Rev. Code,)	
in the Form of an Electric Security Plan)	
In the Matter of the Application of)	
Columbus Southern Power Company and)	Case No. 11-349-EL-AAM
Ohio Power Company for Approval of)	Case No. 11-350-EL-AAM
Certain Accounting Authority)	

**TESTIMONY OF TONY C. BANKS
ON BEHALF OF FIRSTENERGY SOLUTIONS CORP.**

Filed: May 4, 2012

TABLE OF CONTENTS

I.	INTRODUCTION & BACKGROUND.....	1
II.	THE MODIFIED ESP SHOULD BE REJECTED OR, AT THE VERY LEAST, SIGNIFICANTLY MODIFIED.....	3
III.	THE MODIFIED ESP WOULD PREVENT CUSTOMERS FROM RECEIVING THE BENEFITS OF A COMPETITIVE MARKET FOR ELECTRIC SERVICE	5
	A. The Modified ESP Would Preclude Effective Retail Competition.	6
	B. The Modified ESP Also Unnecessarily Delays Wholesale Competition.	17
IV.	THE MODIFIED ESP IS INCONSISTENT WITH CORPORATE SEPARATION AND PROVIDES FOR IMPROPER SUBSIDIES	23
V.	RIDER GRR IS UNSUPPORTED AND IMPROPER	28
VI.	THE MODIFIED ESP MAINTAINS OTHER BARRIERS TO COMPETITION IN VIOLATION OF STATE POLICY	29

1 **I. INTRODUCTION & BACKGROUND**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND POSITION.**

3 A. My name is Tony C. Banks. My business address is 341 White Pond Drive, Akron,
4 Ohio 44320. I am employed by FirstEnergy Solutions Corp. ("FES") as the Vice
5 President of Competitive Market Policies.

6 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
7 **PROFESSIONAL QUALIFICATIONS.**

8 A. I have a degree in accounting, followed by over 35 years of energy industry
9 experience in both natural gas and electricity, and in both regulated and competitive
10 markets. I first joined FES in 2004, as the Director of Marketing and then as a Vice
11 President for unregulated sales of electricity and energy-related products and services.
12 I then spent four years as the Vice President, Business Development, Performance &
13 Management, for FirstEnergy Service Company. In 2009, I rejoined FES as Vice
14 President of Product & Market Development, and transitioned in 2011 into my
15 current role as Vice President of Competitive Market Policies.

16 **Q. WHAT ARE YOUR RESPONSIBILITIES AS THE VICE PRESIDENT OF**
17 **COMPETITIVE MARKET POLICIES?**

18 A. As the Vice President of Competitive Market Policies, I am responsible for assisting
19 FES in overseeing and coordinating initiatives involving state public utilities
20 commissions, including the Public Utilities Commission of Ohio (the "Commission"),
21 the Federal Energy Regulatory Commission ("FERC"), regional transmission
22 organizations ("RTO"), and other policy developments that impact competitive
23 electric energy markets.

1 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

2 A. I am testifying on behalf of FES. FES is a licensed competitive retail electric
3 service (“CRES”) provider in Ohio and a leading competitive energy supplier
4 serving residential, commercial and industrial customers in the Midwest and Mid-
5 Atlantic regions, including the territories of Columbus Southern Power Company
6 and Ohio Power Company (collectively, “AEP Ohio”). FES supplies electricity to
7 customers in Illinois, Maryland, Michigan, New Jersey, Ohio and Pennsylvania.
8 FES also manages the energy procurement needs of more than 120,000 businesses.
9 FES is a significant corporate resident and supporter of Ohio. FES is proudly
10 headquartered in Akron, Ohio, where it has been for nearly 15 years. Over that
11 time, FES has grown and now, with its diverse subsidiary generating facilities,
12 employs more than 6,000 people in many different roles. FES also contributes tens
13 of millions of dollars annually to Ohio and local governments in property and other
14 taxes, and supports numerous charitable organizations in Ohio.

15 **Q. CAN YOU DESCRIBE FURTHER FES’ EXPERIENCE IN THE**
16 **COMPETITIVE ELECTRIC MARKETS IN OHIO?**

17 A. Yes. FES owns and operates competitive generation in Ohio and elsewhere. FES
18 offers a wide range of energy and energy-related products and services to wholesale
19 and retail customers across Ohio, including the generation and sale of electricity, as
20 well as energy planning, procurement and other services. Indeed, FES serves and
21 provides savings to customers of all classes. It also serves customers in all of the
22 Ohio electric distribution utilities’ (“EDUs”) service territories. As the leading CRES
23 provider in Ohio, FES provides competitive retail electric service to over one million

1 customers across the state. FES also has significant experience as a supplier at the
2 wholesale level, including competitive bid procurements in Ohio and other states.

3 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

4 A. I am providing FES' overall response to AEP Ohio's proposed electric security plan
5 (the "Modified ESP"). More specifically, I will testify regarding how the Modified
6 ESP will limit customers in AEP Ohio's service territory from accessing the full
7 benefits of an open competitive market for wholesale and retail electric service -- in a
8 variety of ways, including: through the Modified ESP's nonbypassable generation-
9 related riders, discriminatory two-tiered capacity prices for shopping customers; and
10 AEP Ohio's failure to fully incorporate a competitive bid process for SSO supply.

11 **II. THE MODIFIED ESP SHOULD BE REJECTED**
12 **OR, AT THE VERY LEAST, SIGNIFICANTLY MODIFIED** Error! Bookmark not
13 **defined.**

14 **Q. WHAT IS FES' OVERALL POSITION REGARDING THE MODIFIED ESP?**

15 A. The Modified ESP should be rejected because it will cost customers significantly
16 more than a market-rate offer (an "MRO"), because it limits wholesale and retail
17 competition, and because it has even fewer purported benefits than AEP Ohio's
18 previous ESP Stipulation, which was ultimately rejected by the Commission.

19 **Q. PLEASE EXPLAIN WHY THE MODIFIED ESP SHOULD BE REJECTED.**

20 A. The Modified ESP should be rejected because it fails the statutory test for an ESP;
21 namely, the Modified ESP is less favorable than the expected results of an MRO. In
22 fact, as FES witness Schnitzer explains, the Modified ESP can be expected to cost
23 AEP Ohio's customers more than an MRO, with the increased amount ranging from
24 hundreds of millions of dollars to over a billion dollars.

1 **Q. IF THE COMMISSION DOES NOT REJECT THE MODIFIED ESP, DOES**
2 **FES HAVE ANY RECOMMENDATIONS?**

3 A. Yes. If the Modified ESP is not rejected in its entirety, the Commission should make
4 significant modifications:

- 5 • The Commission should require AEP Ohio to use a competitive bid process to
6 procure 100% of the energy needed for its SSO supply effective June 2013,
7 with capacity provided by AEP Ohio at PJM's Reliability Pricing Model
8 ("RPM") prices.
- 9 • The proposed two-tiered pricing for capacity provided to CRES providers
10 should be eliminated and instead RPM-based capacity prices should be
11 applicable to all of AEP Ohio's shopping customers.
- 12 • The proposed nonbypassable generation-related riders, including the Rate
13 Stability Rider ("RSR") and the Generation Resource Rider ("GRR"), should
14 be eliminated to reflect the competitive electric generation market called for
15 by Ohio law.
- 16 • AEP Ohio's continuing shopping restrictions, including minimum stay
17 requirements for certain customers and a high switch fee, should be removed.

18 **Q. WHO ARE FES' OTHER WITNESSES?**

19 A. FES has four witnesses in addition to me. First, FES witness Michael Schnitzer will
20 demonstrate that: (1) the Modified ESP will cost AEP Ohio's customers significantly
21 more than the expected results of an MRO -- ranging from hundreds of millions of
22 dollars to over one billion dollars more; (2) AEP Ohio's "MRO Price test" is
23 inaccurate; (3) the Modified ESP is even less favorable for customers than the

1 already-rejected Stipulated ESP; and (4) AEP Ohio's proposed two-tiered capacity
2 pricing will constrain shopping.

3 Second, FES witness Jonathan Lesser will testify, among other things, that: (1)
4 the proposed two-tiered capacity pricing scheme is inefficient and discriminatory; (2)
5 the proposed RSR and GRR are unsupported and anti-competitive; and (3) the
6 Modified ESP will lead to significant above-market prices and to economic harms,
7 including job losses.

8 Third, FES witness Robert Stoddard will describe how RPM-based capacity
9 pricing is the most appropriate price for capacity provided to CRES providers.

10 Fourth, FES witness Rodney Frame will confirm that the Pool Agreement does
11 not preclude AEP Ohio from using a CBP to procure SSO supply.

12 **III. THE MODIFIED ESP WOULD PREVENT CUSTOMERS**
13 **FROM RECEIVING THE BENEFITS OF**
14 **A COMPETITIVE MARKET FOR ELECTRIC SERVICE**

15 **Q. HOW DOES A COMPETITIVE MARKET FOR ELECTRIC ENERGY**
16 **BENEFIT OHIO?**

17 A. Competition is the best way to promote lower generation prices for customers, to
18 promote greater productivity and efficiencies from the numerous existing generating
19 plants, to reduce the risk imposed on customers, and to provide the appropriate
20 market signals regarding the need for new generation.

21 **Q. CAN YOU EXPLAIN THE BENEFITS OF COMPETITION FURTHER?**

22 A. Yes. Competition – at both the retail level for customers that choose to shop and at
23 the wholesale level for procuring SSO – results in numerous benefits for customers
24 and the economy. Competition promotes lower prices to customers in the near- and
25 long-term. A competitive market encourages electric suppliers to reduce their costs,

1 while maintaining or increasing production -- thereby leading to improved operating
2 performance from existing generating plants. These cost reductions are then reflected
3 in lower prices that are enjoyed by all customers.

4 Competition also shifts risk away from customers and on to investors in
5 competitive suppliers, who instead bear the risk of generation investments, including
6 significant investments in environmental controls. Under a market system with
7 effective competition, suppliers have a strong incentive to minimize their costs and
8 make their generation resources more efficient because the suppliers and their
9 shareholders bear the risks of their business decisions. Ohio has begun to receive all
10 of these benefits as a result of the state's transition to a competitive market for
11 electric generation service.

12 **Q. DOES THE MODIFIED ESP IMPACT COMPETITION IN AEP OHIO'S**
13 **SERVICE TERRITORY?**

14 A. Yes. The Modified ESP would continue to prevent open, effective retail and
15 wholesale competition in AEP Ohio's service territory until June 2015.

16 ***A. The Modified ESP Would Preclude Effective Retail Competition.***

17 **Q. HOW WILL THE MODIFIED ESP IMPACT RETAIL COMPETITION IN**
18 **AEP OHIO'S SERVICE TERRITORY?**

19 A. The Modified ESP's proposed two-tier capacity pricing system will harm and limit
20 effective competition in AEP Ohio's service territory. CRES providers will be
21 charged \$146/MW-day for those customers who fall within the proposed arbitrary
22 caps for "Tier 1" pricing -- a price higher than the price AEP Ohio previously
23 proposed in its 2011 partial stipulation and a price higher than the average RPM-
24 based price for capacity during the term of the Modified ESP. CRES providers will

1 be charged \$255/MW-day -- an even higher above-market price -- for capacity for all
2 other shopping customers who do not fall within the Tier 1 pricing caps. AEP Ohio
3 again proposes to award the allotments of lower-priced capacity through a
4 complicated Detailed Implementation Plan (“DIP”) process. The DIP process is
5 confusing -- and it will continue to confuse customers, discourage retail suppliers
6 from participating in the market, and obscure opportunities for customers to save on
7 their generation service. The convoluted nature of the DIP procedures will
8 undoubtedly result in some shopping customers (of any customer class) choosing not
9 to shop simply because they were unable to navigate the DIP maze successfully or
10 were shut-out from receiving Tier 1 capacity.

11 Moreover, AEP Ohio’s DIP provides that the “Cap Tracking System” (“CTS”)
12 will not be operational for 60 calendar days after an order is issued in this proceeding.
13 AEP Ohio provides no explanation as to why it cannot implement the CTS
14 immediately. A 60-day delay is particularly unreasonable given that AEP Ohio
15 should have already developed and essentially finalized a nearly identical CTS based
16 on its previous ESP stipulation. In fact, in that ESP stipulation, AEP Ohio proposed a
17 CTS that was required to have been finalized in mid-February, around the time of the
18 Commission’s Entry on Rehearing rejecting the ESP stipulation. Thus, there is no
19 excuse for another 60 day delay in the development of the CTS. Without ready
20 access to the most basic information needed to navigate the DIP process, CRES
21 providers and customers will be further prejudiced.

22 **Q. PURSUANT TO REVISED CODE SECTION 4928.02(A), STATE POLICY**
23 **SEEKS TO “ENSURE THE AVAILABILITY TO CONSUMERS OF . . .**

1 **NONDISCRIMINATORY, AND REASONABLY PRICED RETAIL**
2 **ELECTRIC SERVICE.” DOES THE MODIFIED ESP PROVIDE**
3 **NONDISCRIMINATORY RETAIL ELECTRIC SERVICE?**

4 A. No. The Modified ESP’s proposed two-tiered capacity pricing is discriminatory.
5 Shopping customers who fall under the cap for Tier 1 will pay one price (\$146/MW-
6 day), while shopping customers who do not receive an allotment will pay
7 approximately 75% more for the exact same capacity service under Tier 2
8 (\$255/MW-day). This significant discrepancy in capacity pricing is discriminatory
9 and arbitrary. In addition, it is entirely unclear what non-shopping customers are
10 paying for capacity. AEP Ohio has failed to identify the amount and it has
11 consistently stated that it does not know what non-shopping customers are charged
12 for capacity through the SSO base generation.¹ Thus, there are essentially three
13 different prices for the same capacity in AEP Ohio’s service territory, each of which
14 is different than the RPM-based price paid for capacity everywhere else in Ohio.

15 **Q. PLEASE EXPLAIN FURTHER ABOUT HOW AEP OHIO PROPOSES TO**
16 **IMPLEMENT THE ALLOTMENTS OF TIER 1 CAPACITY.**

17 A. The Modified ESP’s DIP establishes a complicated process by which AEP Ohio
18 would maintain control over the distribution of Tier 1-priced capacity.² AEP Ohio

¹ See AEP Ohio Response to Industrial Energy Users-Ohio Int. 1-004 (AEP Ohio has performed no studies to unbundle the energy and non-energy components of the SSO base generation rate), attached hereto as Exhibit TCB-1. During the October 2011 hearings in this proceeding, AEP Ohio witnesses acknowledged they do not know what amount of the SSO base generation rate is attributable to capacity costs. See Hearing Transcript, Vol. I, pp. 85-86 (AEP Ohio witness Roush); Vol. V, pp. 730-731 (AEP Ohio witness Nelson); Vol. II, p. 179 (AEP Ohio witness Pearce).

² See Direct Testimony of William A. Allen Testimony (“Allen Testimony”), Exh. WAA-3 (“Capacity Set-Aside Allotment Rules Detailed Implementation Plan”).

1 proposes to conduct internal “audits” of the allotments, but after an initial audit, those
2 audits would happen only once a year and AEP Ohio proposes simply that “the results
3 of the audits will be provided to the Commission Staff.”³ This process is not enough.
4 To the extent the two-tiered capacity pricing scheme is not modified and the DIP goes
5 into effect, the Commission should require AEP Ohio to establish a thorough process
6 for the Commission’s review and audit of the DIP with fair opportunity for other
7 affected parties to participate in and comment on the results of the Commission’s
8 audits. Commission oversight and transparency are critical to ensure fairness in the
9 DIP process, which has a significant impact on the competitive market and customer
10 prices. Oversight and transparency are particularly critical because of AEP Ohio’s
11 self-interest in limiting shopping⁴ and because of the interests of its competitive
12 affiliate in receiving Tier 1 capacity.

13 **Q. DOES FES HAVE ANY SPECIFIC CONCERNS REGARDING THE DIP**
14 **PROCESS?**

15 A. Yes. The DIP provides that AEP Ohio will establish a queue through which it will
16 assign any available allotment of Tier 1-priced capacity to customers on a “first-
17 come, first-served basis.”⁵ FES’ specific concerns include that:

- 18 1) Customers can join the queue only after they have signed a contract with a
19 CRES provider, but before they know if they fall under the cap and will

³ DIP, p. 6.

⁴ See Section V , *infra*.

⁵ DIP, p. 4.

1 receive Tier-1 capacity prices, or instead will receive the higher \$255
2 price.

3 2) If a customer does not end up falling under the cap and seeks to return to
4 the SSO without ever having taken service from a CRES provider, AEP
5 Ohio could deem the customer subject to any applicable minimum stay.
6 Therefore, the customer could be blocked from shopping when the caps
7 incrementally increase the following year.

8 3) The proposed “Cap Tracking System” will not be operational for 60 more
9 days after an order approving the Modified ESP, which means that while
10 the caps are being filled, CRES providers and customers will have no
11 ready means of knowing where the caps stand and whether there is any
12 likelihood that they will fall under the cap.

13 **Q. WHAT IS THE IMPACT OF AEP OHIO’S REQUIREMENT FOR AN**
14 **AFFIDAVIT TO GET IN THE QUEUE?**

15 A. The DIP procedure would create confusion and uncertainty for customers because
16 they would be required to enter into a contract with a CRES provider just to get into
17 the queue. They would not know whether they fell under the caps and, thus, would
18 not know what price they would have to pay for capacity until after they signed a
19 contract. As a result, customers interested in shopping would face significant
20 uncertainty in their prices. In turn, because both suppliers and customers face so
21 much uncertainty in this regard, contracts would likely require contingencies, risk
22 premiums, and language providing for different outcomes. All of this would instill
23 significant confusion and uncertainty in shopping, reduce the price benefits of open

1 competition, and would dissuade customers from shopping, even before the caps are
2 reached.

3 **Q. WHAT HAPPENS IF A CUSTOMER IN THE QUEUE DOES NOT FIT**
4 **UNDER THE TIER 1 CAP?**

5 A. It is unclear. If the customer decides not to take CRES service (because of the
6 \$255/MW-day capacity price applied in Tier 2) after the customer provides the 90-
7 day notice of its intent to shop, the customer should not be deemed to have shopped.
8 The Commission should require AEP Ohio to confirm that those customers will
9 remain in the same position in the queue, without being subject to a 12-month
10 minimum stay on AEP Ohio's SSO.

11 **Q. WHAT ARE FES' CONCERNS REGARDING THE IMPLEMENTATION OF**
12 **THE CAP TRACKING SYSTEM?**

13 A. As was true with the similar process included in AEP Ohio's original ESP proposal,
14 the DIP process would impose uncertainty and confusion concerning retail shopping
15 in AEP Ohio's service territory. The most confusing period would be when the Tier 1
16 allotments are initially distributed. Customers who are already shopping will be
17 awaiting news of whether they were selected into Tier 1 or Tier 2. (Due to the
18 different rules created by the Modified ESP, customers that were previously informed
19 that they had received RPM-priced capacity under AEP Ohio's previous Stipulated
20 ESP are not guaranteed to receive Tier 1 under the Modified ESP -- another area of
21 confusion.) Also, customers who seek to shop would be vying to get into the queue
22 when the Tier 1 cap may or may not already be full. Suppliers and customers will
23 want and will need to understand the status of the queue and whether additional

1 allotments are available as they develop and assess existing contracts and any new
2 retail price offers and contracts. However, as I mentioned earlier, AEP Ohio proposes
3 that its “Cap Tracking System” will not be operational for another 60 days after a
4 Commission order approving the Modified ESP. As a result, suppliers and customers
5 will not have ready access to the critical information necessary to navigate the
6 process. Consequently, customers will face even more confusion and the competitive
7 market will be even more uncertain.

8 **Q. DOES FES HAVE ANY OTHER CONCERNS REGARDING THE DIP**
9 **PROCEDURE?**

10 A. Yes, AEP Ohio has not provided many of the necessary details regarding the
11 procedure, which are material to the function of the system and necessary for
12 transparency. As a result, it is impossible to fully assess or appreciate the impact of
13 the procedure on customers and retail competition because many questions remain.
14 For example: How, if at all, would the caps be affected by an increase in a
15 customers’ load?⁶ Where will currently shopping customers fall in the queue? How
16 can CRES providers and/or customers confirm their rights under the procedure?

17 FES cannot possibly identify all of the issues regarding a procedure that AEP
18 Ohio has not yet established. In addition, this lack of transparency also means that it
19 is impossible for the Commission to make an informed assessment of the Modified
20 ESP and its impact on customer choice. For that reason alone, the Modified ESP
21 should be rejected.

⁶ FES submits that any increases in the load of a customer receiving Tier 1-priced capacity should not impact the availability of Tier 1-priced capacity for other customers because the limited annual increases in the caps for Tier 1-priced would be even further reduced.

1 **Q. DOES THE MODIFIED ESP'S TWO-TIERED CAPACITY PRICING FOR**
2 **SHOPPING CUSTOMERS IMPACT GOVERNMENTAL AGGREGATION?**

3 A. Yes. AEP Ohio proposes that it will provide Tier 1 priced capacity for the load
4 associated with those governmental aggregation programs that were approved on or
5 before the November 2011 ballot.⁷ However, this provision for Tier 1 priced capacity
6 is limited to a guarantee for 2012 only (and would not apply in 2013 or beyond) and
7 is only available to non-mercantile customers. Hence, if a community passes a
8 governmental aggregation initiative after November 2011, there is no protection for
9 that community's access to Tier 1-priced capacity.

10 **Q. WHAT ARE FES' CONCERNS ABOUT THE MODIFIED ESP'S**
11 **PROVISIONS FOR GOVERNMENTAL AGGREGATION?**

12 A. The Modified ESP's provisions improperly discriminate among various governmental
13 aggregation programs and among various governmental aggregation customers.
14 Regarding the former discrimination, the provisions for Tier 1 priced capacity are
15 limited to governmental aggregation programs that were approved by communities on
16 or before the November 2011 ballot. This distinction between existing governmental
17 aggregation programs and subsequently initiated programs is improper, arbitrary and
18 discriminatory. All it does is increase the prices charged to existing governmental
19 aggregation programs by increasing the cost of capacity above market in Tier 1, and
20 further subjects any subsequent programs to the uncertainty of the DIP process and
21 the even higher capacity prices in Tier 2.

⁷ DIP, paragraph 3(f).

1 With regard to the latter discrimination, mercantile customers are expressly
2 excluded from the governmental aggregation provisions of the Modified ESP, even
3 though mercantile customers are able to participate in governmental aggregation
4 programs by opting into the programs. There is no basis on which AEP Ohio should
5 be able to discriminate against this group of governmental aggregation customers.
6 Thus, AEP Ohio's Modified ESP, which includes these two arbitrary and
7 discriminatory distinctions, does not *promote* governmental aggregation in AEP
8 Ohio's service territory. Consistent with the Commission's charge to promote and
9 encourage governmental aggregation, if the two-tier capacity pricing scheme not be
10 rejected, all customers in all governmental aggregation communities should receive
11 RPM-based priced capacity. At a minimum, all governmental aggregation
12 communities should be guaranteed Tier 1 priced capacity over the term of the
13 Modified ESP, and that capacity should not count towards the Modified ESP's caps.

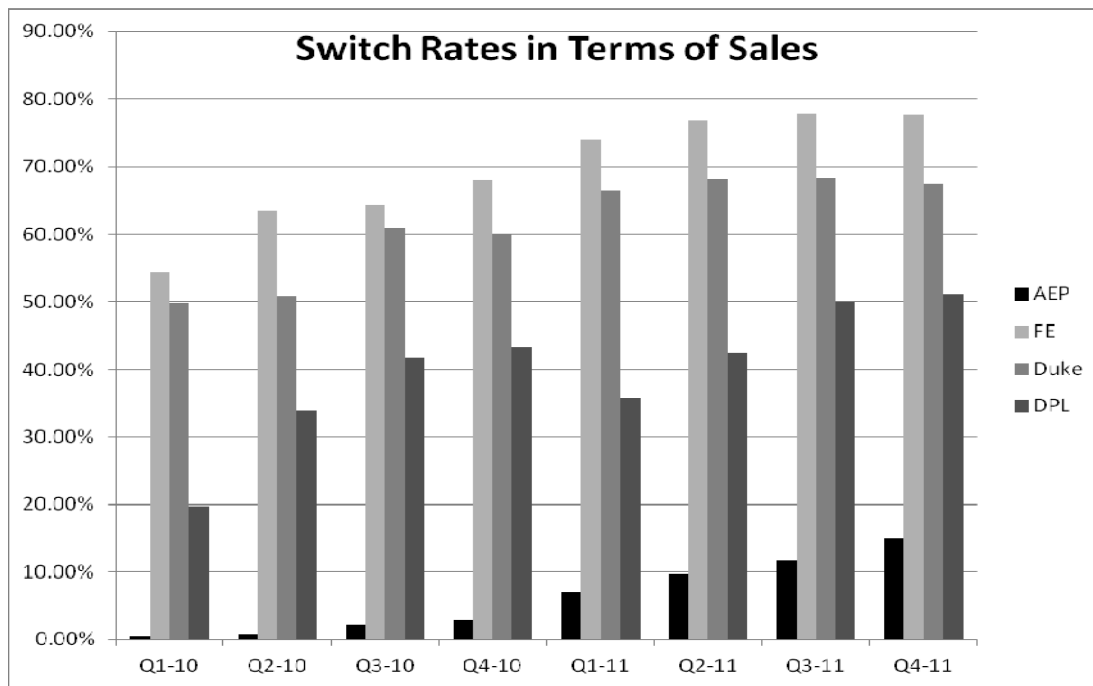
14 **Q. HAS AEP OHIO'S TERRITORY TRADITIONALLY BEEN A MARKET**
15 **THAT IS SUPPORTIVE AND OPEN TO COMPETITION?**

16 A. No. While shopping in AEP Ohio's service territory has increased in the last 6
17 months, AEP Ohio's shopping rates remain the lowest rates in the entire state.⁸ As of
18 December 31, 2011, AEP Ohio had a combined switch rate of 15%, when the other
19 EDUs have switch rates ranging from 51% - 78%.⁹ The graph below, based on the

⁸ As I will discuss later, there are a number of existing barriers to shopping that exist in AEP Ohio's service territory and that AEP Ohio plans to continue, in addition to the new components of the Modified ESP that are anti-competitive.

⁹ See PUCO, Division of Market Monitoring & Assessment, "Summary of Switch Rates from EDUs to CRES Providers in Terms of Sales For the Month Ending December 31, 2011" (noting switch rates of 32.5% for Columbus Southern and 7.8% for Ohio Power).

1 Commission's data, illustrates the vast difference in current shopping rates in terms of
2 sales between AEP Ohio and the other EDUs:



3
4 AEP Ohio witness Allen has testified that AEP Ohio's switch statistics have increased
5 since December 2011 to 26.1% as of March 1, 2012, with the *potential* for 36.7%.¹⁰
6 However, even with those increases, AEP Ohio's switch rate would still remain the
7 lowest in the state.

8 **Q. HOW DO THE PERCENTAGES INSTITUTED THROUGH THE CAPS**
9 **COMPARE WITH SHOPPING RATES IN OTHER EDUs' SERVICE**
10 **TERRITORIES?**

11 A. The data above reflect that if shopping in AEP Ohio's territory reached the maximum
12 rate set by the Modified ESP's caps -- 41%, shopping in AEP Ohio's territory in 2015
13 would still be less than the lowest rate of any other EDU in 2011.

¹⁰ Allen Testimony, p. 4.

1 **Q. IS THERE ANY EVIDENCE THAT AEP OHIO IS INTENTIONALLY**
2 **LIMITING SHOPPING THROUGH THE MODIFIED ESP?**

3 A. Yes. AEP Ohio's aversion to shopping in its service territory is clear. AEP's former
4 CEO stated, "I don't like customers switching in Ohio" and that "there is a concern
5 over the opportunity of customers to shop."¹¹ During a January 28, 2011 earnings
6 call, *AEP's CFO admitted that AEP has instituted "regulatory responses to*
7 *customers switching" that will continue.*¹² Referring to the original ESP filing of
8 AEP Ohio, AEP's CEO in that same earnings call admitted that "the rate design
9 activities that are filed in the ESP[,] when we get to 2012, I think you will see a real
10 drop-off in the number of shopping customers. They will still be there and still have
11 the freedom to do that, but their economic advantage will be to stay on the AEP
12 system as a retail customer."¹³

13 AEP Ohio's executives also admitted that the similar (and lower priced) caps
14 proposed in the Original ESP Proposal were designed to limit shopping. Richard
15 Munczinski, AEP's Senior VP for Regulatory Services, admitted that: "*Over those*
16 *[shopping cap] percentages, if you want to shop, you pay the full cost of \$255 per*

¹¹ AEP-Q3 2010 American Electric Power Earnings Conference Call, Oct. 19, 2010, Final Transcript; *see also* AEP Ohio's Response to FES RFA 16-003 (admitting to the CEO's statement), attached hereto as Exhibit TCB-2; Sanford C. Bernstein & Co. Strategic Decisions Conference, Fireside Chat with Mike Morris, AEP Chairman and CEO, Jun. 1, 2011; *see also* AEP Ohio's Response to FES RFA 16-005 (admitting to the CEO's statement), attached hereto as Exhibit TCB-3.

¹² AEP-Q4 2010 American Electric Power Earnings Conference Call, Final Transcript, Jan. 28, 2011); *see also* AEP Ohio's Response to FES RFA 9-002 and 9-003 (admitting to the CFO's statement), attached hereto as Exhibits TCB-4(a) and (b).

¹³ AEP-Q4 2010 American Electric Power Earnings Conference Call, Final Transcript, Jan. 28, 2011) (emphases added); *see also* AEP Ohio's Response to FES RFA 6-005 (admitting to the CEO's statement), attached hereto as Exhibit TCB-5.

1 *megawatt day. So the thought and the theory is that the shopping will be*
2 *constrained to the discounted RPM price.*¹⁴ He also stated that AEP Ohio “should
3 see no more shopping than the 20%, 30%, 40% levels that are included in the
4 stipulation.”¹⁵

5 AEP Ohio’s former CEO also brazenly acknowledged direct efforts at the sales
6 level to dissuade customers from shopping: “[*I*]*It’s almost like the old telephone*
7 *game of customers call and say they’re leaving and we offer than an equally*
8 *attractive rate, or something even a bit higher than the competitor.* Because over
9 the years we’ve treated these customers pretty well and they know that, so we’re
10 seeing some success in our retail operation and we continue to be aggressive in other
11 jurisdictions other than our own.”¹⁶

12 ***B. The Modified ESP Also Unnecessarily Delays Wholesale Competition.***

13 **Q. HOW DOES THE MODIFIED ESP IMPACT WHOLESALE COMPETITION**
14 **IN AEP OHIO’S SERVICE TERRITORY?**

¹⁴ AEP Conference Call to Announce Stipulation, Final Transcript, Sept. 7, 2011 (emphases added); *see also* AEP Ohio’s Response to FES RFA 21-002 (admitting to Mr. Munczinski’s statement), attached hereto as Exhibit TCB-6.

¹⁵ AEP Conference Call to Announce Stipulation, Final Transcript, Sept. 7, 2011 (emphases added); *see also* AEP Ohio’s Response to FES RFA 18-004 (admitting to Mr. Munczinski’s statement), attached hereto as Exhibit TCB-7.

¹⁶ AEP-Q1 2011 American Electric Power Earnings Conference Call, Apr. 21, 2011, transcript available from SeekingAlpha, at <http://seekingalpha.com/article/264837-american-electric-power-s-ceo-discusses-q1-2011-results-earnings-call-transcript?part=qanda> (last accessed Sept. 26, 2011 (emphases added), cited portion attached hereto as Exhibit TCB-8.

1 A. The Modified ESP unnecessarily precludes AEP Ohio's customers from receiving the
2 benefits of wholesale competition because the Modified ESP does not include a
3 competitively bid SSO until January of 2015. AEP Ohio also proposes to conduct an
4 energy-only CBP for 5% of its SSO load starting six months after certain orders are
5 issued adopting the Modified ESP and AEP Ohio's corporate separation plan -- but
6 only if it is "made whole."

7 **Q. DOES FES SUPPORT THE MODIFIED ESP'S CBP FOR SSO SERVICE**
8 **BETWEEN JANUARY 2015 AND MAY 2016?**

9 A. No. FES supports the use of a CBP to procure SSO load requirements because it is
10 the best mechanism to promote lower prices for customers, as I will discuss later.
11 However, AEP unilaterally makes the proposed CBP contingent on AEP Ohio's
12 termination of the Pool Agreement and approval of corporate separation. There is no
13 legitimate reason to make the CBP so conditioned, as FES witness Frame explains.
14 In addition, AEP Ohio has provided no explanation or detail as to how the CBP
15 would be structured. I cannot say, therefore, whether the proposed CBP structure will
16 maximize the benefits of a competitive process for customers. With these
17 contingencies and uncertainties, I cannot say whether FES supports the proposed
18 CBP.

19 **Q. DOES FES SUPPORT THE MODIFIED ESP'S CBP FOR 5% OF SSO**
20 **SERVICE PRIOR TO JANUARY 2015?**

21 A. No. While CBPs in general benefit customers, those benefits would be significantly
22 reduced if the process is used to procure only 5% of the SSO load, as opposed to the
23 benefits available if a CBP was used to procure 100% of the load. Further, AEP Ohio

1 again provides no detail as to how the CBP would be structured and I am unable to
2 say whether the CBP would best serve customers.

3 **Q. AEP OHIO SUGGESTS THAT THIS 5% CBP IS CONTINGENT ON AEP**
4 **OHIO BEING MADE “WHOLE.” WHAT IS FES’ RESPONSE TO THAT**
5 **REQUEST?**

6 A. It is unclear what AEP Ohio believes would be required to make it “whole” if the 5%
7 CBP is used. To the extent AEP Ohio is suggesting that it should receive some
8 additional revenue stream, it would be improper. Generation service is competitive in
9 Ohio and AEP Ohio is not entitled to be “made whole” -- a safety net that is not
10 available to any other participant in the wholesale markets. In fact, as I described
11 above, the lack of safety nets is what provides market participants with the incentives
12 to reduce costs and improve products, thereby promoting lower prices and benefits to
13 customers. In short, without any of the details surrounding what AEP Ohio may
14 demand from customers to make itself “whole” (and without any of the details
15 regarding the CBP structure itself), the Commission cannot approve this provision of
16 the Modified ESP.

17 **Q. COULD AEP OHIO PROCURE 100% OF ITS SSO LOAD THROUGH A CBP**
18 **NOW?**

19 A. Yes. AEP Ohio has acknowledged that there are no procedural barriers in the Pool
20 Agreement that would preclude AEP Ohio from using a CBP to procure SSO load¹⁷
21 and FES witness Rodney Frame confirms this. Further, by proposing a CBP to

¹⁷ See Testimony of Philip J. Nelson, p. 8; AEP Ohio Response to FES Int. 25-030, a copy of which is attached hereto as Exhibit TCB-9.

1 procure 5% of its SSO load, AEP Ohio has admitted that it can use a CBP now. Any
2 alleged financial harm to AEP Ohio is mitigated by the fact that AEP Ohio's
3 generation resources could participate in such an auction for 100% of SSO load on
4 the same terms and conditions as apply to any other affiliated generation companies
5 in the State of Ohio when those affiliates participate in the auctions of their affiliated
6 utilities. Under such a construct, AEP Ohio's affiliate(s) could not receive any
7 improper subsidy -- such as the Rate Stability Rider ("RSR") or other similar
8 mechanism -- so that the affiliate(s) are competing on a level playing field with all
9 other non-subsidized competitors.

10 **Q. DOES FES HAVE ANY RECOMMENDATIONS REGARDING THE USE OF**
11 **A CBP IN THE MODIFIED ESP?**

12 A. Yes. The Commission should modify the Modified ESP to ensure that AEP Ohio
13 procures 100% of its SSO through an energy-only, descending-clock CBP for service
14 beginning June 2013,¹⁸ with capacity provided by AEP Ohio at RPM prices. Then,

¹⁸ AEP Ohio's customers deserve to receive the benefits of wholesale competition immediately. FES proposes the June 2013 start date, however, as a conservative proposal to which AEP Ohio cannot reasonably object. June 2013 would align the auction delivery period with the start of the PJM planning year. It would also provide AEP Ohio more than enough time to achieve full corporate separation and to plan for the auctions, including the development of bidding rules and auction structure. Moreover, to the extent that termination of the Pool Agreement is a pre-condition to AEP Ohio's participation in the auction -- and FES witness Frame confirms it is not, AEP Ohio and the other Pool members can terminate the Pool Agreement prior to June 2013. In fact, the Pool members recently proposed to terminate the Pool Agreement at the end of the first quarter of 2013. *See* Feb. 10, 2012 filing by AEP Ohio, Appalachian Power Company, AEP Generation Resources, Inc., Indiana Michigan Power Company and Kentucky Power Company, FERC Docket No. ER 12-1042-000, at p. 6 ("In order to align the termination of the current agreement with retail restructuring in Ohio, the Pool Members unanimously agreed to waive the full three-year notice provision and request that the [FERC] accept termination at a date at or near the end of the first quarter of 2013 that will coincide with those related transactions.") (FERC Accession No. 20120210-5032). Although that request was subsequently withdrawn, it is clear that AEP Ohio and the Pool members have the ability to terminate the Pool Agreement as of 2013.

1 as of June 2015, when AEP Ohio is no longer an FRR entity, AEP Ohio should
2 procure 100% of its SSO through a descending-clock CBP for a full-requirements
3 product. The use of a CBP as of June 2013 will allow AEP Ohio's customers to
4 receive a competitively priced SSO sooner, which then represents a favorable
5 benchmark for CRES suppliers to aim to beat.

6 **Q. HOW DOES A CBP BENEFIT CUSTOMERS?**

7 A. A CBP allows customers to benefit from suppliers competing head-to-head to provide
8 SSO service. The use of staggered auctions and a slice-of-system product also allows
9 suppliers to mitigate their costs and reduce their financial risks, which then leads to
10 lower prices for customers. Customers are better protected from market price
11 fluctuations through a CBP. In a CBP, the supplier bears the risks, including risks
12 relating to price uncertainty, volumetric uncertainty, customer shopping, and other
13 sources. Suppliers are better equipped to manage these risks and mitigate the impact
14 of market variations. As a result, a CBP promotes lower, more stable prices for
15 customers.

16 **Q. IS THERE ANY EVIDENCE THAT WHOLESALE COMPETITION**
17 **PROVIDES BENEFITS IN OHIO?**

18 A. Yes. The FirstEnergy Ohio utilities and, more recently, Duke Energy Ohio ("DEO")
19 have instituted CBPs to procure their SSO load and the CBPs were very successful
20 and well-received by the Commission, competitive suppliers, the utilities, and
21 customers. These competitive wholesale procurements established an appropriately
22 open and transparent wholesale market that attracted numerous bidders – including
23 AEP Ohio's affiliate, American Electric Power Service Corporation ("AEPSC") and

1 AEP Energy Partners, Inc. – for tranches that included both energy and capacity.¹⁹
2 AEPSC was awarded 24 tranches in total across the First Energy utilities’ auctions
3 and 6 tranches in the DEO auction, with an additional 5 tranches awarded to AEP
4 Energy Partners, Inc. in the DEO auction. AEP Ohio’s affiliates have thus committed
5 to serve millions of MWhs of electric service to customers in the FirstEnergy and
6 DEO service territories without the benefit of a fuel adjustment or an above-market
7 capacity charge as are sought in this case.²⁰ Furthermore, winning bidders in these
8 auctions, including AEPSC, valued capacity at the PJM RPM price rather than an
9 arbitrary above market capacity price. AEP seems to believe in the benefits of

¹⁹ In the 2011 auction for Duke Energy Ohio, suppliers bid over 400 in the first round when the Auction Managers were seeking only 100 tranches. *In the Matter of the Procurement of Standard Service Offer Generation for Customers of Duke Energy Ohio, Inc.*, Case No. 11-6000-EL-UNC, Updated Auction Manager’s Report, filed Jan. 15, 2012 at p. 3. In the 2010 and 2011 auctions for the FirstEnergy Ohio utilities, suppliers bid over 210 tranches in the first rounds when the Auction Managers were seeking only 50 tranches in each round. *In the Matter of the Procurement of Standard Service Offer Generation for Customers of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 10-1284-EL-UNC, Auction Manager’s Report, filed Nov. 15, 2010 at p. 3 (211 tranches bid in round 1), and Auction Manager’s Report, filed Feb. 17, 2011 at p. 3 (225 tranches bid in round 1). The publically available information from the 2009 auction also reflects over-subscription in the initial round. *See In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan*, Case No. 08-935-EL-SSO, Auction Manager’s Redacted Notification of SSO Auction Results, filed Jun. 5, 2009, at p. 3.

²⁰ *See In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan*, Case No. 08-935-EL-SSO, Auction Manager’s Redacted Notification of SSO Auction Results, filed Jun. 5, 2009, at pp. 4-5; *In the Matter of the Procurement of Standard Service Offer Generation for Customers of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 10-1284-EL-UNC, Auction Manager’s Report, filed Nov. 15, 2010 at pp. 4-5 and Auction Manager’s Report, filed Feb. 17, 2011 at pp. 4-5; *In the Matter of the Procurement of Standard Service Offer Generation for Customers of Duke Energy Ohio, Inc.*, Case No. 11-6000-EL-UNC, Updated Auction Manager’s Report, filed Jan. 15, 2012 at p. 5.

1 competition and RPM-based capacity, except when it occurs in AEP Ohio's own
2 service territory.

3 As a result of the use of such a CBP, the FirstEnergy Ohio utilities' and DEO's
4 customers benefited from the promotion of lower prices at the wholesale level.²¹ For
5 example, the Commission announced that DEO's December 2011 auction will result
6 in a 17.5% decrease for residential customers.²² The lower prices at the wholesale
7 level also serve as a favorable benchmark for additional savings through retail
8 competition. Under the Modified ESP, AEP Ohio's customers would not receive the
9 full benefits of wholesale competition for three more years. Such a delay is not in the
10 interest of customers in AEP Ohio's service territory.

11 **IV. THE MODIFIED ESP IS INCONSISTENT WITH CORPORATE**
12 **SEPARATION AND PROVIDES FOR IMPROPER SUBSIDIES**

13 **Q. DOES THE FACT THAT AEP OHIO HAS NOT YET ACHIEVED**
14 **STRUCTURAL SEPARATION IMPACT COMPETITION IN ITS**
15 **TERRITORY?**

16 A. Yes – it affects both wholesale and retail competition. If AEP Ohio had achieved
17 structural separation, there would be no opportunity for AEP Ohio to favor its own
18 generation in the provision of SSO service. AEP Ohio would have transferred all of
19 its generation assets to a separate company (or at a minimum have functionally
20 operated them completely independently from the utilities) and would therefore have

²¹ For example, the FirstEnergy Ohio utilities' 2009 auction resulted in a clearing price of \$61.50/MWh, and the 2010/2011 auctions resulted in even lower prices, averaging \$55.60/MWh across the delivery periods. *See ids.*

²² Public Utilities Commission of Ohio Press Release, "Duke Energy auction leads to lower electric prices in 2012" (Dec. 15, 2011).

1 to procure its SSO generation requirements through a process that provided no
2 favoritism to its own generation and instead evaluated all generation (affiliated or not)
3 on an equal footing. SSO service under such a process, which would likely be a
4 competitive auction, would be inherently more competitively and objectively priced.
5 There also would be no need to seek above-market revenues or nonbypassable cost
6 recovery for generation investments because AEP Ohio would not be (and does not
7 need to be) making any such investments. Generation investment would then be truly
8 based on need because AEP Ohio would be responsible to shareholders for the
9 performance of those investments without ratepayer subsidies. In turn, without any
10 self-interest in the SSO price, AEP Ohio would have no incentive or need to institute
11 burdensome shopping rules or discriminatory prices for shopping customers.

12 **Q. DOES FES SUPPORT AEP OHIO'S PLANS TO FULFILL STRUCTURAL**
13 **CORPORATE SEPARATION?**

14 A. Yes. Corporate separation is long overdue for AEP Ohio and the Commission should
15 approve AEP Ohio's separation of its competitive generation services as soon as
16 possible. However, the Commission should retain proper oversight over the terms
17 and conditions of AEP Ohio's proposed corporate separation. Further, to the extent
18 the Modified ESP is approved, the Commission should mandate that a CBP (of the
19 type I have described above) go forward with or without AEP Ohio's exit from the
20 pool or approval of corporate separation. In fact, because neither AEP Ohio's exit
21 from the pool nor corporation separation is a requirement for holding a CBP for SSO
22 load, the Commission should order the CBPs to start effective June 2013.

1 **Q. IS THE MODIFIED ESP CONSISTENT WITH AEP OHIO’S CORPORATE**
2 **SEPARATION?**

3 A. No. While AEP Ohio states its intent to fulfill corporate separation as of January 1,
4 2014, several terms of the Modified ESP would provide generation-related subsidies
5 to AEP Ohio even after its generation assets are transferred to a separate affiliate. For
6 example, AEP Ohio seeks to charge CRES providers significantly above-market
7 capacity prices to recover its “full embedded costs” through May 31, 2015 – even
8 though AEP GenCo will provide that capacity starting January 1, 2014. Therefore, in
9 its proposed above-market capacity price structure, AEP Ohio seeks to recover above-
10 market revenues for the benefit of a competitive affiliate. Further, AEP Ohio seeks to
11 charge all of its ratepayers -- shopping and non-shopping -- the generation-related
12 RSR through May 31, 2015. AEP Ohio asserts that the RSR “will replace a portion
13 of” its “loss of generation revenues” due to shopping.²³ Again, as proposed and
14 unless modified by the Commission, this above-market, protectionist revenue would
15 be provided to AEP Ohio’s competitive generation affiliate starting January 1, 2014.

16 **Q. DOES FES HAVE ANY OTHER CONCERNS REGARDING THE MODIFIED**
17 **ESP’S PROVISIONS FOR AEP OHIO’S CORPORATE SEPARATION AND**
18 **POOL TERMINATION?**

19 A. Yes. AEP Ohio seeks approval of an undefined Pool Modification Rider, which
20 would allow AEP Ohio to request recovery of all costs associated with termination of
21 the AEP Pool Agreement if those costs exceed \$35 million. This provides AEP Ohio
22 with a greater chance to recover such costs than the Stipulation ESP proposal, which

²³ Allen Testimony, p. 13.

1 set the threshold at \$50 million (and its original proposal, which sought only
2 incremental costs over \$35 million²⁴). AEP Ohio has provided no estimate of the
3 “costs” it may seek to recover. As a result, the Commission and customers do not
4 know if they might face a request for \$36 million or \$360 million in the next few
5 years. Thus, this “placeholder” represents a potentially significant cost to customers
6 and precludes the Commission from conducting a full and proper assessment of the
7 impact of the Modified ESP.

8 In addition, Rider PMR is proposed to be nonbypassable, even though it is
9 generation-related. Thus, it violates state policy in that it improperly seeks to recover
10 generation-related revenue from shopping customers who have chosen to receive
11 generation service from a competitive supplier. If the undefined and unsupported
12 Rider PMR is not rejected in its entirety, the Commission should modify the rider to be
13 bypassable.

14 **Q. PURSUANT TO REVISED CODE SECTION 4928.20(K), THE COMMISSION**
15 **MUST “CONSIDER THE EFFECT ON LARGE-SCALE GOVERNMENTAL**
16 **AGGREGATION OF ANY NONBYPASSABLE GENERATION CHARGES,**
17 **HOWEVER COLLECTED, THAT WOULD BE ESTABLISHED UNDER” AN**
18 **ESP. DOES THE MODIFIED ESP ALLOW THE COMMISSION TO**
19 **CONSIDER THESE EFFECTS OF THE PMR?**

20 A. No. Without any showing of the basis for the PMR charges or the amount of such
21 charges, the Commission cannot make any determination of its effects on
22 governmental aggregation, or its effects on any other customers.

²⁴ See Testimony of Philip J. Nelson, filed Jan. 27, 2011, at p. 31.

1 **Q. DO THESE PROVISIONS OF THE MODIFIED ESP REPRESENT**
2 **ANTICOMPETITIVE SUBSIDIES?**

3 A. Yes. The above-market capacity pricing and RSR represent anti-competitive
4 subsidies both before and after AEP Ohio's corporate separation. As an AEP Ohio
5 executive recently admitted, AEP Ohio's receipt of above-market capacity pricing
6 "will allow [AEP Ohio] to make investments in our generation plants as it will in our
7 distribution because, again, we are a bundled company."²⁵

8 Before AEP Ohio separates its competitive generation services, these above-
9 market revenues result in CRES providers subsidizing AEP Ohio and would therefore
10 allow AEP Ohio to lower its wholesale and retail pricing artificially and distort the
11 competitive market in any other service territory in which it participates. More
12 egregiously, after AEP Ohio's corporate separation, AEP Ohio will be using its
13 position as an EDU to secure the above-market revenues for its competitive affiliate.
14 This will obviously distort the competitive market and provide AEP GenCo with an
15 unjustified and improper advantage over all other competitive suppliers, who have no
16 ability to secure guaranteed above-market revenues.

17 **Q. PURSUANT TO REVISED CODE SECTION 4928.02(I), STATE POLICY**
18 **SEEKS TO "ENSURE RETAIL ELECTRIC SERVICE CONSUMERS**
19 **PROTECTION AGAINST UNREASONABLE SALES PRACTICES,**
20 **MARKET DEFICIENCIES, AND MARKET POWER." DOES THE**
21 **MODIFIED ESP PROVIDE SUCH PROTECTION?**

²⁵ Case No. 10-2929-EL-UNC, Hearing Transcript, Vol. I, p. 34, 79 (AEP Ohio witness Richard Munczinski).

1 A. No. By virtue of AEP Ohio having elected to be an FRR entity in PJM, it has a
2 natural monopoly for capacity in its service territory. As such, AEP Ohio is able to
3 exercise market power over its ratepayers, while compounding the problem by not
4 allowing those ratepayers complete freedom to choose a CRES provider at market
5 based prices that are readily available in all other utility service territories in Ohio.
6 Of course, if AEP Ohio did not own generating facilities (as it would not if it had
7 achieved the legal, structural separation), there would be no basis on which it would
8 or could seek to recover revenue related to its own generation from all utility
9 customers. Instead AEP Ohio could only recover the costs of procuring, at arm's
10 length, generation for a neutral standard-service offer and recover the costs only from
11 the SSO customers. The bottom line is that the Modified ESP continues to expose
12 AEP Ohio's customers to distorted market power and deficiencies in the competitive
13 market.

14 **V. RIDER GRR IS UNSUPPORTED AND IMPROPER**

15 **Q. WHAT IS THE EFFECT OF THE MODIFIED ESP'S RIDER GRR?**

16 A. The GRR is another "placeholder" that could allow AEP Ohio to pass along
17 additional significant costs -- on a nonbypassable basis -- for the Turning Point Solar
18 project and other new (and currently unknown) generating facilities during the term
19 of the Modified ESP. Also, because the GRR is nonbypassable, shopping customers
20 could end up paying twice for the costs associated with generation service.

21 **Q. HAS AEP OHIO ESTABLISHED ANY BASIS ON WHICH TO APPROVE**
22 **THE TURNING POINT PROJECT?**

1 A. No. AEP Ohio has not made, or even attempted to make, any showing here regarding
2 any of the elements required for nonbypassable cost recovery in an ESP, which it was
3 required to do in this proceeding. AEP Ohio cannot meet the requirements for
4 nonbypassable cost recovery in any regard because there is no need for additional
5 generation for AEP Ohio's customers. Nor is there any need for AEP Ohio to build
6 Turning Point, or any need for AEP Ohio's distribution customers to bear the costs of
7 those generating facilities, as discussed by FES witness Lesser.

8 **Q. DOES FES HAVE ANY RECOMMENDATIONS REGARDING THE GRR?**

9 A. Yes. If the Commission decides not to deny the Modified ESP in its entirety, the
10 Commission should eliminate the GRR, recognizing that AEP Ohio has provided no
11 basis for its approval. AEP Ohio can include a GRR in its next ESP application,
12 assuming it could meet the statutory requirements. At a minimum, the Commission
13 should determine that the GRR must be bypassable because it: (a) violates state
14 policy and the Commission's own mission to foster competition; (b) improperly
15 favors AEP Ohio's own generation service, which should be competitive; and (c) the
16 costs of renewable energy resources must be recovered on a bypassable basis under
17 Ohio law. In addition, it is unfair for shopping customers to pay their supplier of
18 choice for renewable resources and pay AEP Ohio a nonbypassable charge to pay for
19 renewable resources.

20 **VI. THE MODIFIED ESP MAINTAINS OTHER BARRIERS**
21 **TO COMPETITION IN VIOLATION OF STATE POLICY**

22 **Q. PURSUANT TO REVISED CODE SECTION 4928.02(C), STATE POLICY**
23 **SEEKS TO "ENSURE DIVERSITY OF ELECTRICITY SUPPLIES AND**
24 **SUPPLIERS, BY GIVING CONSUMERS EFFECTIVE CHOICES OVER THE**

1 **SELECTION OF THOSE SUPPLIES AND SUPPLIERS AND BY**
2 **ENCOURAGING THE DEVELOPMENT OF DISTRIBUTED AND SMALL**
3 **GENERATION FACILITIES.” DOES THE MODIFIED ESP ENSURE THE**
4 **DIVERSITY AND DEVELOPMENT OF ELECTRICITY SUPPLIERS?**

5 A. No. The Modified ESP does the exact opposite with its above-market revenue,
6 improper Rider RSR, and purported placeholders for Rider GRR and PMR will
7 distort the market for generation and unfairly favor one generation supplier (AEP
8 Ohio and AEP GenCo, depending on the time period) over all other suppliers. Other
9 suppliers cannot receive guaranteed above-market revenues or guaranteed
10 nonbypassable cost recovery for generation-related investments. As a result,
11 competitive suppliers will not be on an even playing field (in AEP Ohio’s service
12 territory or in any other territory in which AEP Ohio supplies energy) with generation
13 that is subsidized by AEP Ohio’s captive ratepayers. AEP Ohio’s other procedural
14 barriers to competition in its service territory also burden competition and the
15 development of electricity suppliers.

16 **Q. WHAT OTHER BARRIERS TO COMPETITION ARE CONTAINED IN THE**
17 **MODIFIED ESP?**

18 A. While AEP Ohio proposes to eliminate the 90-day notice requirement for certain
19 customers, it seeks to maintain other burdensome minimum stay requirements related
20 to switching and a switch fee that is higher than all other Ohio utilities and that is
21 billed directly to customers.

22 **Q. WHAT ARE FES’ CONCERNS REGARDING AEP OHIO’S MINIMUM**
23 **STAY REQUIREMENTS?**

1 A. The Modified ESP would continue until 2015 both: (1) the 12-month minimum stay
2 for medium and large commercial and industrial customers and (2) the requirement
3 for residential and small commercial customers returning to SSO service to stay on
4 SSO service through April 15 if the customer received SSO service at any time during
5 the previous May 16 through September 15. By implementing these minimum stays,
6 AEP Ohio makes it more difficult for customers to switch, and thereby hinders
7 effective competition and favors its own generation service. To the extent AEP Ohio
8 believes these rules are necessary to mitigate shopping risks, this represents another
9 anti-competitive facet of AEP Ohio's proposed ESP that would be unnecessary if a
10 CBP was used to secure SSO service throughout the term of the Modified ESP.

11 **Q. WHAT ARE FES' CONCERNS REGARDING AEP OHIO'S CUSTOMER**
12 **SWITCHING FEE?**

13 A. I have concerns regarding the amount of the fee and the billing method, both of which
14 create unnecessary barriers to competition. AEP Ohio's switching fee is higher than
15 the other Ohio EDUs. Dayton Power & Light, the FirstEnergy Ohio utilities, and
16 Duke Energy Ohio all charge \$5 per switch, whereas AEP Ohio charges \$10 per
17 switch. In addition, AEP Ohio charges this switching fee directly to customers,
18 instead of allowing the supplier to pay the fee, as is the practice in the Duke and
19 FirstEnergy Ohio utility territories. The increased fee and the direct billing of that fee
20 to customers have a negative impact on competition by placing additional penalties
21 on customers who shop.

22 **Q. WHAT IS FES' RECOMMENDATION REGARDING THE BARRIERS TO**
23 **COMPETITION THAT YOU JUST DESCRIBED?**

1 A. The Commission should modify the terms and conditions of AEP Ohio's service to
2 immediately remove these barriers to shopping in its service territory. Whether the
3 Modified ESP is rejected in its entirety (as it should be) or further modified, the
4 burdensome minimum stay requirements should be removed immediately and the
5 switching fee should be modified to make the Modified ESP consistent with the
6 state's policy of ensuring effective competition for electric generation service and the
7 Commission's mission of "facilitating an environment that provides competitive
8 choices." Indeed, these barriers must be removed to allow for AEP Ohio's customers
9 to enjoy the benefits and savings provided as a result of a competitive market.

10 **Q. DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?**

11 A. Yes.

**OHIO POWER COMPANY'S RESPONSES
TO IEU-OHIO'S DISCOVERY REQUESTS
PUCO CASE 11-346-EL-SSO and 11-348-EL-SSO - Modified ESP
FIRST SET**



INTERROGATORY

IEU-1-004 Has AEP-Ohio performed any studies or analysis to unbundle its proposed SSO rates into energy and non-energy components in order to conduct a limited energy-only slice of system SSO auction for 5% of the SSO load?

RESPONSE

No such studies or analysis have been performed.

Prepared by: D. Roush

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
FIRSTENERGY SOLUTIONS
DISCOVERY REQUEST
CASE NO. 11-346-EL-SSO AND 11-348-EL-SSO
SIXTEENTH SET**

REQUEST FOR ADMISSION

RFA-16-003. Admit that on October 19, 2010, during American Electric Power's third-quarter 2010 earnings conference, Mike Morris stated: "I don't like customers switching in Ohio but a \$0.07 hit based on what we'll do with our own retail operation and other things that we'll do in 2011 as we look at the challenges in front of us."

RESPONSE

The Company objects to this request as seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving the foregoing objection(s) or any general objection the Company may have, the Company states as follows. Admit.

Prepared by: Counsel

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
FIRSTENERGY SOLUTIONS
DISCOVERY REQUEST
CASE NO. 11-346-EL-SSO AND 11-348-EL-SSO
SIXTEENTH SET**

REQUEST FOR ADMISSION

RFA-16-005. Admit that on June 1, 2011, at a Sanford C. Bernstein & Co. Strategic Decisions Conference, Mike Morris stated: "I think since the passage of Senate Bill 221, and now the change not only in the gubernatorial seat, but also the chair of the commission, Ohio is a bit of concern. And to your point, there is concern over the opportunity of customers to shop."

RESPONSE

The Company objects to this request as seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving the foregoing objection(s) or any general objection the Company may have, the Company states as follows: Admit.

Prepared by: Counsel

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
FIRSTENERGY SOLUTIONS
DISCOVERY REQUEST
CASE NO. 11-346-EL-SSO AND 11-348-EL-SSO
NINTH SET**

REQUEST FOR PRODUCTION OF DOCUMENTS

INT-9-002. Admit that Brian Tierney, as an Executive Vice President and Chief Financial Officer of American Electric Power, spoke during American Electric Power's January 28, 2011 fourth-quarter 2010 earnings call.

RESPONSE

That is correct.

Prepared By: Counsel

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSE TO
FIRSTENERGY SOLUTIONS
DISCOVERY REQUEST
CASE NO. 11-346-EL-SSO AND 11-348-EL-SSO
NINTH SET**

REQUEST FOR PRODUCTION OF DOCUMENTS

INT-9-003. Admit that on January 28, 2011, during American Electric Power's fourth-quarter 2010 earnings conference, Brian Tierney stated that "We have both competitive retail and regulatory responses to customers switching, and we'll continue both throughout the year "

RESPONSE

That is correct

Prepared By: Counsel

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S RESPONSES TO
FIRSTENERGY SOLUTIONS CORPORATION'S
DISCOVERY REQUEST
CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
SIXTH SET**

REQUESTS FOR ADMISSION

RPD-6-5: Admit that on January 28, 2011, during American Electric Power's fourth-quarter 2010 earnings conference, the Chairman and Chief Executive Officer of American Electric Power stated that "if in fact, the rate design activities that are filed in the ESP when we get to 2012, I think you will see a real drop-off in the number of shopping customers. They will still be there and still have the freedom to do that, but their economic advantage will be to stay on the AEP system as a retail customer."

ANSWER:

The Company admits that on January 28, 2011, Mike Morris, in response to a question posed by Bill Apicelli of Morgan Stanley, stated "if in fact, the rate design activities that are filed in the ESP when we get to 2012, I think you will see a real drop-off in the number of shopping customers. They will still be there and still have the freedom to do that, but their economic advantage will be to stay on the AEP system as a retail customer." The following quotes from the same January 28, 2011, earnings conference provide the background for the statement and the question that preceded the statement.

Mike Morris - American Electric Power - Chairman and CEO

"We have also included what we think is a very appropriate rate redesign issue. Like so many states before, there is, what we call in our vernacular, rate skewing. One of the costs to serve customers is not always the cost that's allocated to the customer class. Typically, residential have been given some relief in that regard. Industrial has also given some relief in that regard, and commercial customers paying more than the cost of service to serve them. We have tried to address that issue, particularly in the G rate and the rate designs that we put in place in ESP. We think that they very much mirror what one might see in the marketplace, and we think that that makes sense."

Bill Apicelli - Morgan Stanley - Analyst

"Okay, thank you. And then, on the shopping issue, between what you expect to have realized in 2010 and then your forecast of 14% in 2011, how much load would that leave at the C&I level that would have not been shopped, or what would the incremental exposure be I guess at year end 2011 based on your forecast?"

RFA-6-5 (CONTINUED)

Mike Morris - American Electric Power - Chairman and CEO

"Well, as Brian shared with you, it's an overall 6% of the AEP Ohio load. So it covers most of the class, but again, if in fact, the rate design activities that are filed in the ESP when we get to 2012, I think you will see a real drop-off in the number of shopping customers. They will still be there and still have the freedom to do that, but their economic advantage will be to stay on the AEP system as a retail customer."

Prepared By: Counsel

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S
RESPONSE TO
FIRST ENERGY SOLUTIONS' DISCOVERY REQUEST
IN PUCO CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
TWENTY-FIRST SET**

INTERROGATORY

STIP-FES-RFA-21-002

Admit that, during the conference call on September 7, 2011 regarding the Stipulation, Richard Munczinski stated: "What happens is those customers that get the discount as Brian mention are allowed – are priced out at the RPM prices. So the \$100, the \$16, and I think the \$26 going forward. Over those 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."

RESPONSE

Admit.

Prepared By: Richard E. Munczinski

**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S
RESPONSE TO
FIRST ENERGY SOLUTIONS'S DISCOVERY REQUEST
IN PUCO CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
EIGHTEENTH SET**

REQUEST FOR ADMISSION

18-004 Admit that, during the September 7th Conference Call, Richard Munczinski stated: "Yes, if your question is, does the current shopping levels, are they included in that discounted percentage, they are. So basically, we should see no more shopping than the 20%, 30%, 40% levels that are included in the stipulation "

RESPONSE

Admit.

Prepared By: Counsel

FINAL TRANSCRIPT

Thomson StreetEventsSM

AEP - Q1 2011 American Electric Power Co Inc Earnings Conference Call

Event Date/Time: Apr. 21. 2011 / 1:00PM GMT



Apr. 21. 2011 / 1:00PM, AEP - Q1 2011 American Electric Power Co Inc Earnings Conference Call

Paul Ridzon - KeyBanc Capital Markets - Analyst

What's driving that?

Brian Tierney - American Electric Power - EVP and CFO

Some of the things we talked about in off-system sales, in terms of the heat rates being higher than what we thought in the market. So as we're able to dispatch our units that aren't being dispatched for use of our own load, and are able to take those in the market. That's higher than what we thought. And as -- just in terms of volume, as some of those customers leave us and they're paying capacity payments, they're exceeding where we thought we'd be at this time year-to-date, associated with the volume that's being served by competitive suppliers.

Paul Ridzon - KeyBanc Capital Markets - Analyst

And when you look at megawatts that you've won in other territories versus what you've lost, how should we think about that?

Mike Morris - American Electric Power - Chairman, CEO

Well, we're doing reasonably well in that activity also, Paul. It looks like 1.5 million megawatt hours, so we continue to have some success and we'll continue to work there. So, it's almost like the old telephone game of customers call and say they're leaving and we offer them an equally attractive rate, or something even a bit higher than the competitor. Because over the years we've treated these customers pretty well and they know that, so we're seeing some success in our retail operation and we continue to be aggressive in other jurisdictions other than our own.

Paul Ridzon - KeyBanc Capital Markets - Analyst

And then, what's the latest thinking on PATH ?

Mike Morris - American Electric Power - Chairman, CEO

The latest thinking on PATH?

Paul Ridzon - KeyBanc Capital Markets - Analyst

Yes.

Mike Morris - American Electric Power - Chairman, CEO

We're ready, willing and able to go forward whenever the PJM wakes up and makes a decision that makes sense.

Paul Ridzon - KeyBanc Capital Markets - Analyst

What's your outlook as to when PJM could do that? Or what their timeline -- ?



**COLUMBUS SOUTHERN POWER COMPANY'S
AND OHIO POWER COMPANY'S
RESPONSE TO
FIRST ENERGY SOLUTIONS DISCOVERY REQUEST
IN PUCO CASE NOS. 11-346-EL-SSO AND 11-348-EL-SSO
TWENTY-FIFTH SET**

INTERROGATORY

STIP-FES-INT-25-030: Does the AEP Pool Agreement preclude AEP Ohio from participating in a wholesale power procurement auction? If so, identify the relevant provisions of the AEP Pool Agreement.

RESPONSE

Not explicitly, but conducting an auction to support AEP Ohio's standard service offer is not contemplated by the Pool and doing so without amending or dissolving the Pool would expose AEP Ohio to extensive financial and regulatory risk.

Prepared By: Philip J. Nelson

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Direct Testimony of Tony C. Banks on Behalf of FirstEnergy Solutions Corp.* was served this 4th day of May, 2012, via e-mail upon the parties below.

s/ Laura C. McBride
One of the Attorneys for FirstEnergy Solutions Corp.

Steven T. Nourse
Matthew J. Satterwhite
Anne M. Vogel
American Electric Power Corp.
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
stnourse@aep.com
mjsatterwhite@aep.com
amvogel@aep.com

Jeanne Kingery
Dorothy K. Corbett
Duke Energy Retail Sales
139 East Fourth St.
1303-Main
Cincinnati, OH 45202
jeanne.kingery@duke-energy.com
dorothy.corbett@duke-energy.com

Daniel R. Conway
Christen M. Moore
Porter Wright Morris & Arthur
41 South High St.
Columbus, OH 43215
dconway@porterwright.com
cmoore@porterwright.com

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh St., Suite 1510
Cincinnati, OH 45202
dboehm@bklawfirm.com
mkurtz@bklawfirm.com

Cynthia Fonner Brady
David I. Fein
550 W. Washington St., Suite 300
Chicago, IL 60661
cynthia.a.fonner@constellation.com
david.fein@constellation.com

Terry L. Etter
Office of the Ohio Consumers' Counsel
10 West Broad St., Suite 1800
Columbus, OH 43215
etter@occ.state.oh.us

Richard L. Sites
Ohio Hospital Association
155 East Broad St., 15th Floor
Columbus, OH 43215
ricks@ohanet.org

Thomas J. O'Brien
Bricker & Eckler
100 South Third St.
Columbus, OH 43215
tobrien@bricker.com

Shannon Fisk
2 North Riverside Plaza, Suite 2250
Chicago, IL 60606
sfisk@nrhc.org

Jay E. Jadwin
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
jejadwin@aep.com

Mark S. Yurick
Zachary D. Kravitz
Taft Stettinius & Hollister LLP
65 East State St., Suite 1000
Columbus, OH 43215
myurick@taftlaw.com
zkravitz@taftlaw.com

Terrence O'Donnell
Christopher Montgomery
Bricker & Eckler LLP
100 South Third St.
Columbus, OH 43215
todonnell@bricker.com
cmontgomcry@bricker.com

Gregory J. Poulos
EnerNOC, Inc.
101 Federal Street, Suite 1100
Boston, MA 02110
gpoulos@enernoc.com

Glen Thomas
1060 First Avenue, Ste. 400
King of Prussia, PA 19406
gthomas@gtpowergroup.com

Henry W. Eckhart
2100 Chambers Road, Suite 106
Columbus, OH 43212
henryeckhart@aol.com

C. Todd Jones
Christopher L. Miller
Gregory J. Dunn
Asim Z. Haque
Ice Miller LLP
250 West St.
Columbus, OH 43215
christopher.miller@icemiller.com
asim.haque@icemiller.com
gregory.dunn@icemiller.com

Michael R. Smalz
Joseph V. Maskovyak
Ohio Poverty Law Center
555 Buttles Ave.
Columbus, OH 43215
msmalz@ohiopoveritylaw.org
jmaskovyak@ohiopoveritylaw.org

Lisa G. McAlister
Matthew W. Warnock
Bricker & Eckler LLP
100 South Third St.
Columbus, OH 43215-4291
lmcaster@bricker.com
mwarnock@bricker.com

William L. Massey
Covington & Burling, LLP
1201 Pennsylvania Ave., NW
Washington, DC 20004
wmassey@cov.com

Laura Chappelle
4218 Jacob Meadows
Okemos, MI 48864
laurac@chappelleconsulting.net

Pamela A. Fox
Law Director
The City of Hilliard, Ohio
pfox@hilliardohio.gov

M. Howard Petricoff
Stephen M. Howard
Michael J. Settineri
Lija Kaleps-Clark
Benita Kahn
Vorys, Sater, Seymour and Pease LLP
52 E. Gay St.
Columbus, OH 43215
mhpetricoff@vorys.com
smhoward@vorys.com
mjsettineri@vorys.com
lkalepsclark@vorys.com
bakahn@vorys.com

Sandy Grace
Exelon Business Services Company
101 Constitution Ave. N.W.
Suite 400 East
Washington, DC 20001
sandy.grace@exeloncorp.com

Kenneth P. Kreider
David A. Meyer
Keating Muething & Klekamp PLL
One East Fourth St., Suite 1400
Cincinnati, OH 45202
kpkreider@kmmklaw.com
dmeyer@kmmklaw.com

Holly Rachel Smith
Holly Rachel Smith, PLLC
Hitt Business Center
3803 Rectortown Rd.
Marshall, VA 20115
holly@raysmithlaw.com

David M. Stahl
Arin C. Aragona
Scott C. Solberg
Eimer Stahl Klevorn & Solberg LLP
224 South Michigan Ave., Suite 1100
Chicago, IL 60604
dstahl@eimerstahl.com
aaragona@eimerstahl.com
ssolberg@eimerstahl.com

Stephanie M. Chmiel
Terrance A. Mebane
Carolyn S. Flahive
Thompson Hine LLP
41 S. High St., Suite 1700
Columbus, OH 43215
Stephanie.chmiel@thompsonhine.com
carolyn.flahive@thompsonhine.com
terrance.mebane@thompsonhine.com

Gary A. Jeffries
Dominion Resources Services, Inc.
501 Martindale St., Suite 400
Pittsburgh, PA 15212
gary.a.jeffries@dom.com

Steve W. Chriss
Wal-Mart Stores, Inc.
2001 SE 10th St.
Bentonville, AR 72716
stephen.chriss@wal-mart.com

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Ave.
Columbus, OH 43215-3927
barthroyer@aol.com

Werner L. Margard III
John H. Jones
William Wright
Thomas Lindgren
Assistant Attorneys General
Public Utilities Section
180 East Broad St., 6th Floor
Columbus, OH 43215
werner.margard@puc.state.oh.us
john.jones@puc.state.oh.us
william.wright@puc.state.oh.us
thomas.lindgren@puc.state.oh.us

Emma F. Hand
Douglas G. Bonner
Clinton A. Vince
SNR Denton US LLP
1301 K St., NW, Suite 600, East Tower
Washington, DC 20005
emma.hand@snrdenton.com
doug.bonner@snrdenton.com
Clinton.vince@snrdenton.com

Samuel C. Randazzo
Joseph E. Olikier
Frank P. Darr
McNees Wallace & Nurick
21 East State St., 17th Floor
Columbus, OH 43215
sam@mwncmh.com
joliker@mwncmh.com
fdarr@mwncmh.com

Diem N. Kaelber
Robert J. Walter
Buckley King LPA
10 West Broad St., Suite 1300
Columbus, OH 43215
kaelber@buckleyking.com
walter@buckleyking.com

Tara C. Santarelli
Environmental Law & Policy Center
1207 Grandview Ave., Suite 201
Columbus, OH 43212
tsantarelli@elpc.org

Jay L. Kooper
Katherine Guerry
Hess Corporation
One Hess Plaza
Woodbridge, NJ 07095
jkooper@hess.com
kguerry@hess.com

Robert Korandovich
KOREnergy
P. O. Box 148
Sunbury, OH 43074
korenergy@insight.rr.com

Mark A. Whitt
Melissa L. Thompson
Whitt Sturtevant LLP
PNC Plaza, Suite 2020
155 East Broad St.
Columbus, OH 43215
whitt@whitt-sturtevant.com
thompson@whitt-sturtevant.com

Colleen L. Mooney
David C. Rinebolt
Ohio Partners for Affordable Energy
231 West Lima St.
Findlay, OH 45840
cmooney2@columbus.rr.com
drinebolt@ohiopartners.org

Trent A. Dougherty
Cathryn Loucas
Ohio Environmental Council
1207 Grandview Ave., Suite 201
Columbus, OH 43212
trent@theoec.org
cathy@theoec.org

Joel Malina
Executive Director
COMPLETE Coalition
1317 F St., NW
Suite 600
Washington, DC 20004
malina@wexlerwalker.com

Allen Freifeld
Samuel A. Wolfe
Viridity Energy, Inc.
100 West Elm St., Suite 410
Conshohocken, PA 19428
afreifeld@viridityenergy.com
swolfe@viridityenergy.com

Dane Stinson
Bailey Cavalieri LLC
10 W. Broad Street, Ste. 2100
Columbus, OH 43215-3422
dane.stinson@baileycavalieri.com

Vincent Parisi
Matthew White
Interstate Gas Supply, Inc.
6100 Emerald Pkwy.
Dublin, OH 43016
vparisi@igsenergy.com
mswhite@igsenergy.com

Chad A. Endsley
Ohio Farm Bureau Federation
280 North High St.
P.O. Box 182383
Columbus, OH 43218
cendsley@ofbf.org

Brian P. Barger
4052 Holland-Sylvania Rd.
Toledo, OH 43623
bpbarger@bcslawyers.com

Joseph M. Clark
6641 North High Street, Suite 200
Worthington, OH 43085
jmclark@vectren.com

Sarah Reich Bruce
Ohio Automobile Dealers Association
655 Metro Place South, Suite 270
Dublin, OH 43017
sbruce@oada.com

Judi L. Sobecki
Randall V. Griffin
The Dayton Power & Light Company
1065 Woodman Dr.
Dayton, OH 45432
judi.sobecki@dplinc.com
randall.griffin@dplinc.com

Matthew R. Cox
Matthew Cox Law Ltd.
4145 St. Theresa Blvd.
Avon, OH 44011
matt@matthewcoxlaw.com

Roger P. Sugarman
Kegler, Brown, Hill & Ritter
65 E. State St., Suite 1800
Columbus, OH 43215
rsugarman@keglerbrown.com

Randy J. Hart
Rob Remington
David J. Michalski
Hahn Loeser & Parks LLP
200 Public Square, Suite 2800
Cleveland, OH 44114
rjhart@hahnlaw.com
rrremington@hahnlaw.com
djnichalski@hahnlaw.com

Sue A. Salamido
Kristin Watson
Cloppert, Latanick, Sauter & Washburn
225 E. Broad St., 4th Floor
Columbus, OH 43215
ssalamido@cloppertlaw.com
kwatson@cloppertlaw.com

Todd M. Williams
Williams Allwein and Moser LLC
Two Maritime Plaza, 3rd Floor
Toledo, OH 43604
toddm@wamenergylaw.com

Robert Burke
Braith Kelly
Competitive Power Ventures, Inc.
8403 Colesville Rd., Suite 915
Silver Spring, MD 20910
rburke@cpv.com
bkelly@cpv.com

Larry F. Eisenstat
Richard Lehfeldt
Robert L. Kinder, Jr.
Dickstein Shapiro LLP
1825 Eye St. NW
Washington, DC 20006
eisenstatl@dicksteinshapiro.com
lehfeldtr@dicksteinshapiro.com
kinderr@dicksteinshapiro.com

Jack D'Aurora
The Behal Law Group LLC
501 S. High Street
Columbus, OH 43215
jdaurora@behallaw.com

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Summary: Testimony of Tony C. Banks electronically filed by Ms. Laura C. McBride on behalf of FirstEnergy Solutions Corp.