

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company and The Toledo) Case No. 12-1230-EL-SSO
Edison Company for Authority to Provide for)
a Standard Service Offer Pursuant to R.C. §)
4928.143 in the Form of an Electric Security)
Plan)

**INITIAL POST-HEARING BRIEF OF OHIO EDISON COMPANY, THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY**

James W. Burk, Counsel of Record
Arthur E. Korkosz
Kathy J. Kolich
Carrie M. Dunn
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
(330) 384-5861
(330) 384-3875 (fax)
burkj@firstenergycorp.com
korkosza@firstenergycorp.com
kjkolich@firstenergycorp.com
cdunn@firstenergycorp.com

David A. Kutik (0006418)
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114
(216) 586-3939
(216) 579-0212 (fax)
dakutik@jonesday.com

Attorneys for Applicants, Ohio Edison
Company, The Cleveland Electric Illuminating
Company, and The Toledo Edison Company

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The Commission should approve the third Electric Security Plan (“ESP 3”) proposed by Applicants, Ohio Edison Company (“Ohio Edison”), The Cleveland Electric Illuminating Company (“CEI”) and The Toledo Edison Company (“Toledo Edison”) (collectively, the “Companies”), and 16 other interested parties (collectively, the “Signatory Parties”).¹ As described in the Application, Stipulation and Recommendation (the “Stipulation”) and the Direct Testimony and Supplemental Testimony of William R. Ridmann,² ESP 3 is essentially a two-

¹ The Signatory Parties include the Companies, Staff of the Public Utilities Commission of Ohio (“Staff”), Association of Independent Colleges and Universities of Ohio (“AICUO”), Nucor Steel Marion, Inc. (“Nucor”), Material Sciences Corporation, Consumer Protection Association, FirstEnergy Solutions Corp. (“FES”), Ohio Energy Group (“OEG”), Ohio Manufacturers Association (“OMA”), Industrial Energy Users–Ohio (“IEU-Ohio”), Ohio Partners for Affordable Energy (“OPAE”), Ohio Hospital Association (“OHA”), Council of Smaller Enterprises (“COSE”), Empowerment Center of Greater Cleveland, Cleveland Housing Network, The City of Akron (“Akron”), and Morgan Stanley Capital Group, Inc. Parties agreeing not to oppose the Stipulation include Kroger Company, GEXA-Energy Ohio, LLC, EnerNoc, Duke Energy Retail Sales, LLC, Duke Energy Commercial Asset Management, Constellation NewEnergy, Inc. and Exelon Generation Company, LLC. Tr. Vol. I, p. 59.

² The Application, Stipulation and Recommendation and its attachments are Company Exhibit 1. The Supplemental Information Filing from May 2, 2012 is Company Exhibit 2. The Direct Testimony of William R. Ridmann (“Ridmann Testimony”) is Company Exhibit 3. The Supplemental Testimony of William R. Ridmann (“Ridmann Supp. Testimony”) is Company Exhibit 4. The following citation formats are applied in this brief: direct testimony of a witness will be referred to by the witness’s last name followed by “Testimony,” e.g. “Ridmann Testimony;” rebuttal or supplemental testimony will be referred to by the witness’s last name followed by “Rebuttal Testimony” or “Supp. Testimony,” e.g. “Stoddard Rebuttal Testimony;” references to transcripts of the hearing in

year extension of the Companies' current and successful ESP, which the Commission approved in Case No. 10-388-EL-SSO,³ with two widely-applicable additional features.⁴ First, ESP 3 modifies the competitive bidding schedule in the current ESP to allow for the Standard Service Offer ("SSO") auctions, scheduled to occur in October 2012 and January 2013, to procure a portion of the Companies' SSO load for a three-year period (from June 2013 through May 2016), rather than for a one-year period (from June 2013 through May 2014). This modification of the auction schedule will allow the Companies to blend the current historically lower energy and capacity prices and the known higher 2015/2016 capacity prices occurring over the life of ESP 3. Thus, this modification will allow the Companies to offer customers more stable generation pricing through May 31, 2016.

Second, ESP 3 permits the extended recovery of renewable energy credit costs incurred to meet SB 221 requirements. This change will reduce the rate charged to customers currently for the recovery of renewable energy credits and help levelize the customers' charges over the remaining period of the current ESP and the period of ESP 3.

ESP 3 also maintains for an additional two years the benefits that the Commission recognized and approved under the current ESP. These benefits enhance the stability and predictability of rate levels and tariff provisions for customers. ESP 3 continues to: (a) assure the supply of electricity will be procured through a multi-auction, multi-year ladder

(continued...)

this case will be referred to as "Tr. Vol. __, p. __;" and exhibits will be identified by party name and exhibit number, e.g. "Company Exhibit 1."

³ *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. 10-388-EL-SSO. ("Case No. 10-388-EL-SSO"). The Commission approved the current ESP in its Opinion and Order, Case No. 10-388-EL-SSO (Entry date: Aug. 25, 2010).

⁴ A third additional feature relates to an economic development provision that provides for job retention for one party. The Companies also agreed to make certain changes to their EDI protocol and procedures to support customer switching.

competitive procurement process; (b) better assure adequate levels of investment in the distribution system by allowing more timely recovery of those investments; (c) promote demand response and energy efficiency, economic development and job retention; and (d) provide support for low income customers within the Companies' service areas. ESP 3 also includes several other elements that will additionally benefit low-income residential customers, including a substantial commitment of shareholder funds towards programs serving those customers. Importantly, ESP 3 continues the Companies' commitment not to implement a distribution rate increase or to seek cost recovery from customers for millions of dollars of costs, fees, and charges related to the Companies' membership (and transfer of membership) in a regional transmission organization ("RTO").

To allow the Companies to modify the competitive bidding process ("CBP") to allow for a three-year bid product in the October 2012 auction, the Signatory Parties have requested that ESP 3 be approved on an expedited basis. The Signatory Parties originally requested a Commission Order approving ESP 3 by June 20, but the case did not progress quickly enough to achieve that timing. An order by mid-July would still permit the planned auction process to occur on the existing schedule commencing on August 9 and concluding with the auction on October 23, but it would have to be done under the shadow of any pending applications for rehearing, the situation the Companies were seeking to avoid.⁵ A timely decision by the Commission is necessary to assure the benefits envisioned by ESP 3 are achieved. The parties' experience with the issues raised by the current ESP, including the discovery, testimony, and briefing compiled in connection with Case No. 10-388-EL-SSO,⁶ has allowed for a timely

⁵ Going forward in this fashion is preferred to changing the auction date.

⁶ The Commission has properly ordered that it will take administrative notice of certain documents in the record in Case No. 10-388-EL-SSO and certain documents in the record in *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of a*

submission of the ESP and its associated benefits to the Commission. Timely approval of the Stipulation by the Commission is the final step toward maximizing the benefits of ESP 3 for the Companies' customers.

The benefits under ESP 3 are well-established and have already been recognized by the Commission. The Stipulation reflects the cooperation between and among the Signatory Parties who have agreed to submit ESP 3 for the Commission's review and approval. ESP 3 includes significant quantitative and qualitative benefits that make ESP 3 more favorable in the aggregate than a market rate option ("MRO"). ESP 3 also complies with all applicable statutory and regulatory criteria. Accordingly, the Commission should approve ESP 3.

ARGUMENT

ESP 3 is essentially an extension of the Companies' current ESP that the Commission approved in Case No. 10-388-EL-SSO. To approve ESP 3, the Commission must find that it meets the underlying statutory criteria set forth in R.C. § 4928.143 for electric security plans. Under this test, ESP 3 must be more favorable in the aggregate than the expected result of an MRO.

As set forth in Section II, *infra*, ESP 3 meets this test. ESP 3 continues the benefits offered to customers under the current ESP that the Commission approved in Case No. 10-388-EL-SSO. ESP 3 also offers two widely-applicable additional features. First, ESP 3 modifies the competitive bidding process in the current ESP to allow for the auctions currently scheduled to occur in October 2012 and January 2013 to procure SSO load for a three-year period rather than

(continued...)

Market Rate Offer to Conduct Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications Associated with Reconciliation Mechanism, and Tariffs for Generation Service, Case No. 09-906-EL-SSO ("Case No. 09-906-EL-SSO"). Tr. Vol. III, p. 171. Citation to the hearing transcripts or records in those cases will first identify the case number and then follow the same format as other citations in this brief.

for a one-year period. Second, ESP 3 extends the recovery period for renewable energy credit costs through the end of ESP 3. The numerous quantitative and qualitative benefits of ESP 3 thus outweigh the benefits of an MRO.

Because ESP 3 is submitted to the Commission in the form of a settlement agreement, the Commission also must find that the Stipulation is reasonable.⁷ To do this, the Commission should accord the terms of the Stipulation substantial weight.⁸ The Commission also should consider three criteria:

- (1) Is the stipulation the product of serious bargaining among capable, knowledgeable parties?
- (2) Does the stipulation, as a whole, benefit ratepayers and the public interest?
- (3) Does the stipulation violate any important regulatory principle or practice?⁹

As set forth in Section III, *infra*, the Stipulation satisfies each of these criteria. The Stipulation is the product of serious bargaining among a diverse group of knowledgeable parties. ESP 3 benefits ratepayers and the public interest. The Stipulation does not violate any important regulatory principle or practice. Accordingly, the Commission should approve the Stipulation.

I. ESP 3 PROVIDES SIGNIFICANT BENEFITS TO CUSTOMERS.

Like the Companies' current ESP, ESP 3 includes numerous provisions that will provide diverse benefits to the Companies' customers. Importantly, nearly all of the terms and conditions contained in ESP 3 have already been considered and approved by the Commission in Case No. 10-388-EL-SSO.

⁷ Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into a settlement, such as the Stipulation submitted here.

⁸ See *Office of Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 125, quoting *Akron v. Pub. Util. Comm.* (1978), 55 Ohio St.2d 155.

⁹ *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St.3d 559, citing *Office of Consumers' Counsel*, 64 Ohio St.3d at 126.

A. ESP 3 Provides Greater Price Certainty Over The Proposed Term of ESP 3.

1. Generation

ESP 3's provisions for generation service provide significant benefits. First and foremost, the competitive bidding process ("CBP") proposed in this Stipulation mirrors in material respects the process that the Commission accepted in Case No. 10-388-EL-SSO.¹⁰ Indeed, even witnesses sponsored by the parties opposing the Stipulation recognized the success of the CBPs in the Companies' past and current ESPs. At the hearing, OCC witnesses Wilson Gonzalez and James Wilson and NOPEC/NOAC witness Mark Frye testified that the Companies' SSO auctions have been successful.¹¹ OCC has even issued press releases regarding the success of past auctions, including statements that a similarly structured auction held by FirstEnergy was "a great outcome for consumers in Northern Ohio."¹²

ESP 3 continues to allow the Companies to procure the necessary generation supply for their SSO load, other than the load discussed in Section I(D), *infra*, from June 1, 2014 until May 31, 2016 via a descending-clock CBP. ESP 3 envisions that the Companies will blend the results from the October 2012 and January 2013 auctions with results from prior auctions to set the price for the June 1, 2013 through May 31, 2014 period in the current ESP.¹³ Like the Companies'

¹⁰ Ridmann Testimony, p. 12. As Mr. Ridmann noted in response to questions by Attorney Examiner Price, there are a few changes in language of the Stipulation from the current ESP. Tr. Vol. II, pp. 40, 42-44, 46-48. However, these changes do not affect the benefits of ESP 3.

¹¹ Tr. Vol. III, p. 143 (Mr. Gonzalez: Q. "You would agree they [the auctions] have been successful." A. "To the extent they've yielded market price, yes."); Tr. Vol. II, p. 112 (Mr. Wilson: Q. "In fact, the Commission, the auction manager, have deemed it . . . that the auctions have been successful in procuring reliable power at reasonable prices, correct?" A. "That's my understanding, yes." Q. "And you have no reason to dispute that evaluation?" A. "Correct."); Tr. Vol. III, pp. 49-50 (Mr. Frye: Q. "You believe that those auctions have been successful?" A. "For the purposes in which they're intended, yes.").

¹² Company Exhibit 13; Tr. Vol. III, pp. 144-145.

¹³ See Stip., § A.1; Ridmann Testimony, p. 3.

prior CBPs, the proposed CBPs in ESP 3 are open, fair, transparent, competitive, standardized, clearly defined, and independently administered processes.¹⁴

The proposed CBPs continue to allow for significant Commission oversight. The Commission may retain a consultant to monitor the CBP and advise the Commission as to its progress.¹⁵ The Commission may reject the bid manager's selection of the CBP winning bidder(s) within 48 hours of the close of the auction if its consultant or the bid manager report that there were violations in the CBP rules such that the results should be invalidated, as set forth in the Stipulation.¹⁶ Further, the Stipulation provides that the Commission may make certain modifications to future CBP solicitations under the ESP, in accordance with recommendations from the CBP manager and/or the Commission's consultant.¹⁷

The CBP proposed by ESP 3 benefits ratepayers and the public interest by continuing to provide an open and competitive process that promotes lower and more stable generation prices, than would otherwise have been, during the two-year term of ESP 3. Under the current ESP, governmental aggregation and customer shopping have been very active,¹⁸ which has led to savings for customers.¹⁹ Under ESP 3, as in the current ESP, there are no minimum default service charges, standby charges or shopping caps.²⁰ As a result, ESP 3 continues to support governmental aggregation and individual customer shopping, which benefit the customers and the public interest.

¹⁴ Ridmann Testimony, pp. 11-12.

¹⁵ Stip., § A.1.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Indeed, as NOPEC/NOAC witness Mark Frye admitted, shopping levels and government aggregation within the Companies' territories are the highest in the state. Tr. Vol. III, pp. 29-30; *see also* Parisi Testimony, Exhibit 3 (switch rates as of Dec. 31, 2011).

¹⁹ Ridmann Testimony, p. 12.

²⁰ *Id.*

In addition, ESP 3 benefits competition. It continues the lower credit requirements for CBP bidders, provides additional customer information and data to CBP bidders and continues to allow the Generation Cost Reconciliation Rider (“Rider GCR”) to be avoidable under certain conditions.²¹ These provisions support wholesale and retail competition that benefits customers. NOPEC/NOAC witness Mark Frye testified that the CBP auctions have attracted a sufficient number of bidders to garner a competitive price.²² Further, in their agreement with Constellation and Exelon, the Companies also have agreed to make a number of changes to the electronic data interchange (“EDI”) protocol to support further customer shopping.²³

ESP 3 also incorporates two improvements over the current ESP. First, it extends the products in the currently scheduled October 2012 and January 2013 auctions from 12 months to 36 months for a portion of the Companies’ SSO load to capture the value of the current historically low energy and capacity prices for the ESP 3 term.²⁴ As was the case with the current ESP, ESP 3 envisions procurements of varied lengths of SSO load over multiple auctions. This will allow the Companies to blend the auction prices throughout the ESP 3 term.²⁵ Recognizing this well-accepted risk and price volatility mitigation strategy, the Commission has accepted this technique, called “laddering,” for use to procure loads under the current ESP.²⁶

There is no dispute that the current ESP successfully uses laddering to smooth out generation prices. Indeed, OCC witness James Wilson testified that “[laddering] will provide

²¹ *Id.*, p. 4.

²² Tr. Vol. III, p. 50.

²³ Tr. Vol. II, pp. 73-76; Company Exhibit 7 (NOAC Set 1-Interrogatory No. 1, Supplemental Attachment 1).

²⁴ Ridmann Testimony, p. 8.

²⁵ *Id.*; *see also* Stip., § A.1.

²⁶ Case No. 10-388-EL-SSO, Opinion and Order, pp. 8, 36.

more stable prices than buying on a year-by-year basis . . . because of averaging.”²⁷ NOPEC/NOAC witness Mark Frye testified that a mix of one-year, two-year and three-year products may avoid large rate swings.²⁸ Mr. Frye also acknowledged that customers may view stability in rates as a benefit.²⁹ OCC witness Wilson Gonzalez testified that laddering is an accepted tool to reduce risk and volatility.³⁰ And he acknowledged that OCC has in the past suggested laddering of products for an auction for SSO load.³¹

Similarly, the use of laddering under ESP 3 also should smooth out generation prices and mitigate volatility in generation prices for customers.³² The Companies’ witness William Ridmann explained that “under our approach posted in the ESP II and ESP III is we have several auctions and several products that we blend . . . that’s called laddering.”³³ He added, “We do that in order to smooth out the impact of variances that could occur in the market to the benefit of our customers.”³⁴ ESP 3’s use of laddering thus provides customers with price predictability that would not otherwise exist.³⁵

At the hearing, Mr. Ridmann demonstrated how laddering can mitigate volatility in pricing during his discussion of the Companies’ table of illustrative prices contained in AEPR Exhibit 2. In that exhibit, which was the Companies’ supplemental response to AEP Retail (“AEPR”) Interrogatory No. 11.7, the Companies compared two sets of illustrative prices that

²⁷ Tr. Vol. II, p. 139.

²⁸ Tr. Vol. III, p. 49.

²⁹ *Id.*

³⁰ *Id.*, p. 142.

³¹ *Id.*, pp. 141-142.

³² Ridmann Supp. Testimony, p. 5; Tr. Vol. I, p. 172.

³³ Tr. Vol. I, p. 172.

³⁴ *Id.*

³⁵ Ridmann Supp. Testimony, p. 6.

were based on holding energy prices constant (based on the results of the Companies' most recent CBPs) and adding in known differences in capacity prices from the applicable PJM RPM auctions for the three delivery years covered by ESP 3.³⁶ The tables on AEPR Exhibit 2 specifically compared illustrative prices using the blending proposed by ESP 3 with what prices might be without blending.³⁷

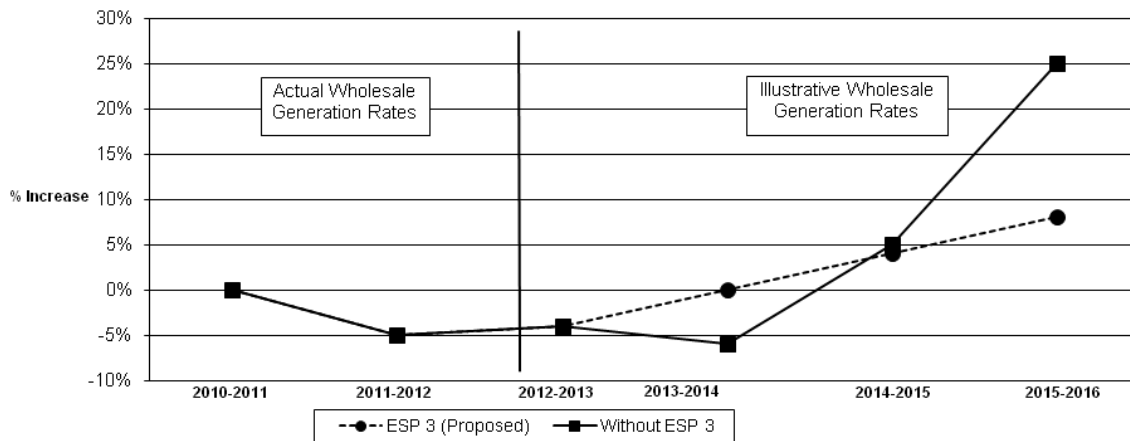
Comparing the results between the two charts shows that prices will remain more stable if the Companies procure a three-year product in the October 2012 and January 2013 auctions (and continue to use laddering during ESP 3) than if the Companies procure a series of one-year products. As Mr. Ridmann pointed out, the illustration in AEPR Exhibit 2 indicated that if the Companies do not use laddering, then customers could experience substantial year-to-year increases (in this illustration, as high as 25 percent comparing delivery years 2014/2015 and 2015/2106) based on changes in capacity pricing.³⁸ The following graph, which incorporates the analysis the Companies used in AEPR Exhibit 2, demonstrates the benefit of laddering over the proposed term of ESP 3.

³⁶ Tr. Vol. I, pp. 151, 154-155, 161-163.

³⁷ *Id.*, pp. 151, 154-155, 162.

³⁸ *Id.*, p. 155.

**FirstEnergy Ohio Companies Wholesale Generation Rates
Percentage Change from Previous Planning Year**



Illustrative of energy prices resulting from FE Ohio 1/24/12 auction and known PJM capacity costs; actual future prices will differ based on the outcome of future auctions

	Actual				Illustrative		
	2010-2011	2011-2012	2012-2013		2013-2014	2014-2015	2015-2016
ESP 3 (Proposed)	0%	-5%	-4%	ESP 3 (Proposed)	0%	4%	8%
Without ESP 3	0%	-5%	-4%	Without ESP 3	-6%	5%	25%

ESP 3’s use of laddering, moreover, may result in savings to customers. Although no one can know with certainty what the rates will be, the Companies’ witness William Ridmann provided an estimate of the potential value of laddering under ESP 3: “for every \$1/MWH decrease in the future blended auction clearing price, our non-shopping customers would save approximately \$13.2 million per year.”³⁹ Laddering also may allow the Companies to “lock in . . . lower energy prices to the October, 2012, and January ’13, auction.”⁴⁰ Mr. Ridmann explained that “[energy prices] are still very low compared to the nine-year history.”⁴¹

The second improvement in ESP 3 is the extension of the recovery period for renewable energy credit costs over the life of the ESP 3 plan.⁴² This extension will mitigate the near term

³⁹ Ridmann Supp. Testimony, p. 6.

⁴⁰ Tr. Vol. I, p. 153.

⁴¹ *Id.*

⁴² See Stip., § A.4.

rate impact on customers related to costs for compliance with the statutory benchmarks for renewable energy resources.⁴³

2. Distribution

ESP 3's distribution provisions provide additional certainty and stability to customer rates. ESP 3 includes a distribution base rate-freeze through May 31, 2016, subject to the "significantly excessive earnings test" ("SEET"), except for certain emergency conditions available under R.C. § 4909.16.⁴⁴ This provision serves to help stabilize the distribution portion of customer rates for another two years, by continuing the distribution base rate freeze instituted by the current ESP.⁴⁵

ESP 3 also continues to provide for important investments in the Companies' distribution infrastructure by continuing the Delivery Capital Recovery Rider ("Rider DCR") through the ESP 3 period.⁴⁶ These investments benefit customers by helping maintain the Companies' delivery systems and service reliability.⁴⁷ Rider DCR allows the Companies to recover related taxes and a return on and of plant in service associated with distribution, subtransmission, general, and intangible plant that was not included in the Companies' last base distribution rate case, Case No. 07-551-EL-AIR.⁴⁸

⁴³ Ridmann Testimony, p. 8.

⁴⁴ Stip., § B.1.

⁴⁵ Ridmann Testimony, pp. 12-13.

⁴⁶ Stip., § B.2.

⁴⁷ Ridmann Testimony, p. 6.

⁴⁸ Stip., § H.2; *see also* Ridmann Testimony, p. 6 citing *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices and for Tariff Approvals*, Case No. 07-551-EL-AIR.

In addition, revenue collected under Rider DCR will be capped,⁴⁹ reconciled quarterly and is subject to the SEET.⁵⁰ Further, the quarterly updates to Rider DCR are subject to review and, in addition, the Stipulation provides for an annual audit process.⁵¹ Indeed, OCC witness Wilson Gonzalez testified that Rider DCR contains features that would not be available under a rate case, including quarterly reconciliation and annual audits and caps.⁵² NOPEC/NOAC witness Mark Frye testified that the quarterly reconciliation and annual audit are positive aspects of Rider DCR.⁵³

3. Transmission

The Companies continue their commitment not to seek recovery from retail customers for Midwest ISO (“MISO”) exit fees and PJM Interconnection, LLC (“PJM”) integration costs. Additionally, the Companies agree not to seek recovery of Regional Transmission Expansion and Planning (“RTEP”) legacy charges (“Legacy RTEP Costs”)⁵⁴ for the longer of the five-year period of June 1, 2011 through May 31, 2016 or when a total of \$360 million of Legacy RTEP Costs have been paid by the Companies but not recovered through retail rates, provided PJM’s cost allocation methodology is not substantially altered.⁵⁵ All other RTEP costs that are charged to the Companies, either directly or indirectly, shall be recovered from customers through the

⁴⁹ As part of the Stipulation, the Signatory Parties agreed to increase the annual caps applicable to Rider DCR by \$15 million on an annual basis for the Companies in aggregate. Ridmann Testimony, p. 14. This increase is consistent with the increase in the cap that occurs under the current ESP on an annual basis. *Id.*

⁵⁰ Stip., § B.2.

⁵¹ *Id.*

⁵² Tr. Vol. III, pp. 139-141.

⁵³ *Id.*, pp. 42-43.

⁵⁴ Legacy RTEP charges are costs billed by PJM for RTEP projects which were approved by the PJM Board before June 1, 2011. Stip., § C.2.

⁵⁵ Ridmann Testimony, p. 7.

Companies' Non-Market Based Services Rider ("Rider NMB").⁵⁶ This provision benefits customers by providing certainty to customers that they will not have to pay \$360 million in Legacy RTEP Costs imposed by FERC/RTO in accord with the Stipulation's provisions.⁵⁷ In addition, the exclusion of these charges will make future Rider NMB charges for each of the Companies lower than they otherwise would have been.⁵⁸

4. Rate Design and Other Riders

ESP 3 continues the riders approved in the current ESP, with a few modifications that primarily reflect the extension of expiration dates to May 31, 2016. Indeed, ESP 3 continues certain rate options that would otherwise expire, such as the Economic Load Response ("ELR") peak demand reduction rider and the time-differentiated pricing riders approved by the Commission in Case No. 09-541-EL-ATA.⁵⁹ The continuation of all riders approved in the current ESP furthers certainty and stability in the Companies' current rate design and riders.⁶⁰ Certainty and stability in the Companies' rate design and riders benefits the ratepayers and the public interest.

B. ESP 3 Continues To Provide Substantial Support For Energy Efficiency And Demand Response Programs.

1. Interruptible Service Options

ESP 3, as with the current ESP, will continue the Companies' interruptible service offerings in the form of Rider ELR and Rider OLR as a demand response program under R.C. §

⁵⁶ Stip., §§ C.2, 6.

⁵⁷ Ridmann Testimony, p. 7.

⁵⁸ *Id.*

⁵⁹ Ridmann Testimony, p. 5 citing *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of an Experimental Critical Peak Pricing Rider, a Revised Generation Service Rider Which Includes a Time-of-Day Option, and an Experimental Real Time Pricing Rider*, Case No. 09-541-EL-ATA.

⁶⁰ Stip., § D; Ridmann Testimony, pp. 15-16.

4928.66.⁶¹ Demand response programs may benefit all customers by creating a revenue stream from those resources that clear the PJM capacity auctions and by potentially putting downward pressure on the auction clearing price.⁶²

2. Renewable Energy Credits

Under ESP 3, the Companies may continue to meet their renewable energy resource requirements by purchasing Renewable Energy Credits (“RECs”).⁶³ RECs may be solicited through a request for proposal (“RFP”) process conducted by an independent bid manager.⁶⁴ RFPs can be a useful tool in setting market value for a product.⁶⁵ Any requirements remaining after the RFP process will be acquired through bilateral contracts. The costs associated with the Companies’ acquisition of RECs will be recovered through Rider AER.⁶⁶ As discussed in Section A.4 of the Stipulation, ESP 3 will extend the recovery period for renewable energy credit costs over the remaining life of the current ESP and the life of ESP 3. This extension will reduce the near term rates charged to customers arising from compliance with statutory benchmarks for renewable energy resources and smooth out the rate levels over the remaining time period of the current ESP and the time period of ESP 3.⁶⁷

The Retail Energy Supply Association (“RESA”) and Direct Energy Services, LLC and Direct Energy Business, LLC (collectively “Direct Energy”) do not challenge the Signatory Parties’ proposal to achieve the Companies’ compliance with renewable energy resource requirements through the purchase of RECs. Instead, as set forth in Teresa Ringenbach’s

⁶¹ Stip., § D.1.

⁶² *Id.*; Ridmann Supp. Testimony, pp. 3-5.

⁶³ Stip., § A.4.

⁶⁴ *Id.*

⁶⁵ Case No. 09-906-EL-SSO, Tr. Vol. IV, p. 493.

⁶⁶ Stip., § A.4.

⁶⁷ Ridmann Testimony, p. 15.

testimony, they challenge the extension of the recovery period.⁶⁸ Ms. Ringenbach testified that the extension will unfairly skew the Companies' "price to compare" as compared to CRES providers' offers because CRES providers do not have the ability to "manipulate customer compliance costs."⁶⁹

It is Ms. Ringenbach's testimony, however, that is skewed. She admitted that customers who take generation service from a utility could view the Companies' proposal to extend the collection of renewable energy credits as a benefit.⁷⁰ She acknowledged that CRES providers could structure their pricing to spread out the collection of their renewable energy costs.⁷¹ She also failed to acknowledge that the Companies face regulatory constraints that are not applicable to CRES providers. Simply put, Ms. Ringenbach placed the interests of CRES providers above the interests of customers.

The Stipulation must be viewed as a package.⁷² Certain of its elements will tend to be more beneficial to competitive suppliers and some will benefit customers. Here, as part of that balancing of interests among parties, the Companies and the Signatory Parties chose to benefit customers by extending the recovery period.⁷³

⁶⁸ Ringenbach Testimony, p. 15.

⁶⁹ *Id.*

⁷⁰ Tr. Vol. III, pp. 83-84.

⁷¹ *Id.*, p. 83.

⁷² See *Consumers' Counsel v. Pub. Util. Comm.* (1992) 64 Ohio St. 3d 123, 126 (endorsing the consideration of a stipulation as a "package" with regard to benefits to ratepayers and the public interest); *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Duke Energy Ohio, Inc. and Related Matters*, Case No. 11-218-GA-GCR, Opinion and Order, p. 6 (Entry date: Mar. 14, 2012) (finding that stipulation should be viewed as a package when assessing benefit to ratepayers); *In the Matter of the Determination of the Existence of Significantly Excessive Earnings for 2010 Under the Electric Security Plan of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 11-4553-EL-UNC, Opinion and Order, p. 4 (Entry date: Jan. 18, 2012) (same).

⁷³ Notably, recognizing the potential benefits to them, a number of competitive suppliers signed the Stipulation as Signatory Parties, while others are non-opposing parties, including members of RESA.

3. Other Initiatives

- *Eligibility for Mercantile Projects.* Under ESP 3, college or university members of AICUO may seek to institute mercantile-sited energy efficiency projects pursuant to R.C. § 4928.66.⁷⁴ The Stipulation makes clear that AICUO member institutions will be eligible as a mercantile customer for such projects if their aggregate load qualifies as a mercantile customer. The AICUO member institutions also will seek to assist the Companies in performing energy-related research through the institutions' capable professionals.⁷⁵

- *The LED Pilot.* ESP 3 will continue to support the initiation of a LED streetlight pilot program by CEI for the City of Cleveland (the "LED Pilot") that was approved in Case No. 10-388-EL-SSO.⁷⁶ Under the LED Pilot, CEI and the City of Cleveland will work cooperatively regarding the installation of LED streetlights in Cleveland during ESP 3 with the billing procedures set forth in the Stipulation.⁷⁷ This project will result in energy efficiency savings for Cleveland's residents.

- *Energy Efficiency Contributions for Akron and Lucas County.* Under ESP 3, the Companies will provide direct funding to the City of Akron and Lucas County to support energy efficiency and sustainability goals.⁷⁸ The Companies will contribute to each of the City of Akron and Lucas County \$100,000 in 2014 and \$100,000 in 2015 to be used for the benefit of Ohio Edison and Toledo Edison customers, with such amounts recovered in Rider DSE.⁷⁹

⁷⁴ Stip., § E.5.

⁷⁵ *Id.*, § E.6.

⁷⁶ *Id.*, § F.4.

⁷⁷ *Id.*

⁷⁸ *Id.*, § E.7-8.

⁷⁹ *Id.*

- *Continued Funding of Energy Efficiency Administrators.* ESP 3 provides for continued service from and compensation of energy efficiency (“EE”) administrators, along with the opportunity for the Companies to appoint additional administrators for commercial and industrial programs.⁸⁰ Signatory Parties who were appointed as energy efficiency administrators in Case 08-935-EL-SSO⁸¹ and continued in Case No. 10-388-EL-SSO, including COSE, AICUO, OHA, and OMA, shall continue to serve in that role.⁸²

- *Retail Market Enhancements.* Under ESP 3, the Companies will continue to provide enhanced customer data and information subject to and consistent with the Commission’s rules.⁸³ Under an agreement between the Companies and Constellation and Exelon, the Companies have agreed to provide additional customer data and information, including loss factor and service voltage.⁸⁴ The Companies also agreed to support supplier drop rescission requests via supplier initiated EDI 814 Reinstatement, adopt EDI standards for special meter configuration and provide supplier bill messaging on utility consolidated bills.⁸⁵

C. ESP 3 Continues To Provide Economic Development Funding.

The statutory criteria for electric security plans authorize and anticipate that such plans will include provisions for economic development.⁸⁶ Consistent with the General Assembly’s expectations and the Commission’s Order in Case No. 10-388-EL-SSO, ESP 3 continues to

⁸⁰ *Id.*, § E.2.

⁸¹ *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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 08-935-EL-SSO (“Case No. 08-935-EL-SSO”).

⁸² *Id.*

⁸³ *Stip.*, § G.

⁸⁴ Tr. Vol. II, pp. 73-76; Company Exhibit 7 (NOAC Set 1-Interrogatory No. 1, Supplemental Attachment 1).

⁸⁵ Tr. Vol. II, pp. 73-76.

⁸⁶ R.C. § 4928.143(B)(2)(i); Opinion and Order, Case No. 10-388-EL-SSO, p. 39. The relevant criteria for electric security plans are discussed in further detail in Section II, *infra*.

provide economic development provisions to help stimulate the economy of the Companies' territories and the development and retention of jobs in the region. The costs associated with these provisions, which are discussed further below, are recovered through the Companies' current Economic Development Rider ("Rider EDR"), other than, of course, the Companies' shareholders' own contributions.⁸⁷ These provisions provide important quantitative and qualitative benefits to the region, the significance of which cannot be underestimated in light of the current state of the economy.

- *Continued Support for Expansion of the Cleveland Clinic.* ESP 3 continues the provisions agreed to under the current ESP providing support for the expansion of the Cleveland Clinic.⁸⁸

- *Continued Support for Domestic Automakers.* The Signatory Parties' agreement recognizes that automakers play an important economic role in the Companies' communities and, consistent with R.C. § 4928.02(N), the global economy. ESP 3 continues the economic development provisions under the current ESP for domestic automakers in the Companies' territories that used more than 45 million kWhs in 2009.⁸⁹ The automakers' incremental usage during the term of ESP 3 that is above the average monthly consumption baseline will be granted a discount of 1.0-1.2¢/kWh, even if the automakers shop for generation.⁹⁰ The discount is structured, therefore, to encourage increased business and, derivatively, the economy and job prospects in the Companies' service territories: "the provision will not kick in unless there is increased business in the domestic auto industry."⁹¹ As clarified as part of questioning from the

⁸⁷ See generally Stip., § F.

⁸⁸ Stip., § F.2.

⁸⁹ *Id.*, § F.3.

⁹⁰ Case No. 10-388-EL-SSO, Tr. Vol. I, p. 137.

⁹¹ *Id.*, Tr. Vol. III, p. 579.

bench, this provision is incremental to the provisions that were included in the current ESP and constitutes an economic development benefit.⁹²

- *Rate Mitigation for Certain Rate Schedules.* ESP 3 continues to cap the average total rate overall percentage increase for customers taking service on Private Outdoor Lighting, Traffic Lighting, Street Lighting and Rate GT rates to one and one-half times the system average overall percentage rate increase by Company.⁹³ The percentage increase cap will be derived by comparing the rate levels for the twelve months ending May 2015 to the twelve months ending May 2014, incorporating the rates derived from the applicable CBP results. This provision of ESP 3 continues the societal benefits provided under the current ESP because lighting schedule customers, who are mostly municipalities, and GT customers, who are generally large manufacturers, can help spur economic activity in the region.⁹⁴

- *Additional Shareholder Commitment.* The Companies' shareholders commit through ESP 3 to contribute \$2 million to economic development and job retention programs.⁹⁵ The Companies often become aware of such opportunities through their contact with the business community and from customers directly.⁹⁶ This commitment will continue the Companies' investment in their communities via direct funding over the two-year term of ESP 3.

⁹² Tr. Vol. II, pp. 268-269.

⁹³ Stip., § A.5.i.

⁹⁴ Case No. 09-906-EL-SSO, Tr. Vol. IV, p. 586.

⁹⁵ Stip., § F.1.

⁹⁶ Case No. 10-388-EL-SSO, Tr. Vol. I, pp. 107-108.

D. ESP 3 Continues To Provide Support For Low Income Customers.

ESP 3 continues several features for low income customers that the Commission found under the current ESP to benefit rate payers and the public interest.⁹⁷ These provisions include a discount for generation service and funding for fuel assistance programs.

- *PIPP Discount.* Customers taking service under the percentage of income payment plan (“PIPP”) will receive a 6 percent discount off of their price to compare.⁹⁸ The retail load associated with PIPP customers will not be included in the CBP product, but will instead be supplied to the Companies via a wholesale bilateral contract for the duration of the term of the ESP 3, which insures the discounted price. PIPP customers will remain retail customers of the Companies for generation service but will, as part of ESP 3, receive generation service at a discounted rate. Further, the Stipulation recognizes that the Ohio Department of Development may seek an alternative supply agreement for PIPP customers with another competitive supplier in accordance with R.C. § 4928.54.⁹⁹ Accordingly, the Stipulation provides a benefit of *at least* a 6 percent discount off of retail generation rates for PIPP customers.

- *Funding for Community Connections.* ESP 3 continues funding the Community Connections program at a level of \$5 million dollars per year.¹⁰⁰ This program provides energy efficiency and weatherization assistance to low income residential customers.¹⁰¹ As was done under the current ESP and as set forth in the Companies’ last distribution rate case, the funding will be recovered from all customers through Rider DSE.¹⁰²

⁹⁷ Opinion and Order, Case No. 10-388-EL-SSO, pp. 33, 36-37.

⁹⁸ Stip., § A.1.

⁹⁹ *Id.*; see also Tr. Vol. I, pp. 113-114, 123-124; Opinion and Order, Case No. 10-388-EL-SSO, p. 29.

¹⁰⁰ Ridmann Testimony, p. 7; Stip., § E.4.

¹⁰¹ *Id.*

¹⁰² Stip., § E.4.

- *Funding for Fuel Fund Programs.* ESP 3 commits the Companies to make \$1 million available to OPAE for its fuel fund program over the term of ESP 3, which provides financial assistance for customers in need to pay for utility services.¹⁰³ Funding of an additional \$8 million across all three Companies also will continue to be made available over the term of ESP 3 to help low income customers in the Companies' service territories pay their electric bills.¹⁰⁴ The funding for these programs will be provided by the Companies' shareholders and not recovered from customers.¹⁰⁵

E. ESP 3 Resolves Other Matters That Are Or Would Otherwise Be The Subject Of Litigation.

ESP 3 also provides certainty and stability to the Commission, its Staff, and interested parties, as well as customers, by resolving current and future matters that would require significant resources and unknown outcomes. The agreements reached in the Stipulation would resolve *Materials Science Corporation v. The Toledo Edison Company*, Case No. 12-919-EL-CSS, which is currently pending before the Commission. Upon Commission approval of the Stipulation authorizing Toledo Edison to bill and collect a charge of \$6.00 per kVa of billing demand under Rider EDR and other conditions as set forth in the Stipulation, Material Sciences Corporation agrees to dismiss with prejudice its complaint against Toledo Edison.¹⁰⁶

In addition, the Stipulation's terms obviate the possibility of other proceedings. The Companies' agreement to a distribution base rate-freeze eliminates, except for limited circumstances, the possibility of a distribution base rate increase during the term of ESP 3.¹⁰⁷

¹⁰³ *Id.*, § H.5.

¹⁰⁴ Ridmann Testimony, pp. 6-7.

¹⁰⁵ *Id.*, p. 7.

¹⁰⁶ Stip., § H.9.

¹⁰⁷ The Companies retain the right to institute a distribution rate proceeding under certain emergency situations. Stip., § B.1.

The Stipulation also resolves disputes concerning the Companies' recovery of lost distribution revenue ("LDR") associated with approved energy efficiency and peak demand reduction programs through May 31, 2016.¹⁰⁸ The Signatory Parties agree that the Companies will be allowed to recover all LDR attributable to energy efficiency and peak demand reduction programs approved by the Commission during the proposed term of ESP 3, as they are now authorized to do under the current ESP for all programs.¹⁰⁹ As a matter of equity, LDR recovery permits the Companies to recover their costs while distribution rates are frozen and sales are declining due to energy efficiency mandates, thereby enabling the Companies to be made whole. The recovery of LDR thus aligns the Companies, Signatory Parties, and customers' interests to serve energy efficiency,¹¹⁰ furthering the policy goals embodied in Senate Bill 221. Indeed, OCC witness Wilson Gonzalez has testified in three prior cases that the recovery of LDR provides incentives for companies to put energy efficiency programs in place.¹¹¹

II. ESP 3 IS MORE FAVORABLE THAN THE EXPECTED RESULTS OF AN MRO.

To approve an application for an ESP, the Commission must determine "whether the ESP, including its pricing and all other terms and conditions including deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142."¹¹² A "pure numeric test should not be

¹⁰⁸ Ridmann Testimony, p. 6.

¹⁰⁹ Stip., § E.3; Opinion and Order, Case No. 10-388-EL-SSO, p. 14.

¹¹⁰ Tr. Vol. I, pp. 178-179; *see also* Tr. Vol. III, pp. 121-122.

¹¹¹ Tr. Vol. III, p. 121.

¹¹² Case No. 10-388-EL-SSO, Opinion and Order, at p. 7; *accord* R.C. § 4928.143(C)(1).

conclusive of [the Commission's] analysis.”¹¹³ The Commission must consider both quantitative and qualitative factors in its analysis.¹¹⁴

The provisions of ESP 3 are more favorable than an MRO from both a quantitative and qualitative prospective.¹¹⁵ Indeed, ESP 3 continues provisions included in the current ESP that the Commission has already found to be more favorable than an MRO.¹¹⁶

A. The Quantitative Benefits Of ESP 3 Are More Favorable Than An MRO.

ESP 3 represents a *quantitative* benefit over an MRO. In fact, using the same methodology accepted by the Commission in Case No. 10-388-EL-SSO, Mr. Ridmann demonstrated that ESP 3 provides benefits of over \$200 million to customers, on a net present value basis.¹¹⁷ The Companies’ calculation of the quantitative benefits illustrates the benefit of the proposed ESP by focusing on the differences between the proposal and an MRO.¹¹⁸

In calculating the benefit of ESP 3, the Companies considered the following quantitative provisions of the ESP: (1) estimated Rider DCR revenues from June 1, 2014 through May 31, 2016; (2) estimated PIPP generation revenues for the period of the ESP 3, reflecting the 6% discount provided by the Companies; (3) economic development funds and fuel fund commitments that the Companies’ shareholders, not customers, will contribute; and (4) estimated RTEP costs that will not be recovered from customers.¹¹⁹ The Companies’ quantitative analysis

¹¹³ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, Opinion and Order, p. 32 (Entry date: Dec. 14, 2011) (“Case No. 11-346-EL-SSO”).

¹¹⁴ *Id.*

¹¹⁵ *See* R.C. § 4928.143(C)(1).

¹¹⁶ Opinion and Order, Case No. 10-388-EL-SSO, pp. 42-45.

¹¹⁷ Ridmann Testimony, p. 16, WRR-Attachment 1.

¹¹⁸ *Id.*, pp. 17-19.

¹¹⁹ *Id.*, p. 17.

of an MRO included: (1) estimated revenue from base distribution rate increases based on the proposed Rider DCR revenue caps; and (2) generation revenue from PIPP customers excluding the 6% discount discussed above in Section I(D). With the exception of the timing of recovery of costs permitted to be recovered under Rider DCR, the Companies did not include provisions that would be expected to impact both ESP 3 and an MRO in a similar manner; *e.g.*, riders that the Commission has approved in prior cases and that continue under their own terms regardless of approval of ESP 3.¹²⁰

The Companies' calculation then converted the quantitative impact into present value dollars.¹²¹ This thorough and reasoned calculation confirmed that ESP 3's quantitative benefits over an MRO are over \$200 million in present value dollars to the Companies' customers.¹²²

Consistent with calculations that supported the current ESP, the Companies included an adjustment for regulatory lag associated with Rider DCR in their analysis of ESP 3. This calculation decreased the level of benefit provided by ESP 3.¹²³ Recently, in Case No. 11-346-EL-SSO, however, the Commission determined that concerns over including an adjustment for the regulatory lag associated with a rider comparable to Rider DCR were unwarranted because the applicant in that case, AEP Ohio, would otherwise be able to seek an increase in base distribution rates.¹²⁴ If the Companies' adjustment for DCR regulatory lag was excluded from

¹²⁰ *Id.*, p. 18.

¹²¹ *Id.*, WRR-Attachment 1.

¹²² *Id.*

¹²³ Ridmann Supp. Testimony, pp. 7-8.

¹²⁴ Ridmann Supp. Testimony, p. 7; Case No. 11-346-EL-SSO, Order dated December 14, 2011, p. 31. Although the Commission subsequently rejected the ESP proposed there, the order rejecting the ESP did so without mentioning anything about the DCR-like rider at issue or how it should be treated for purposes of the ESP versus MRO test. *See* Entry on Rehearing, Case No. 11-346-EL-SSO (Entry date: Feb. 23, 2012); *see also* Tr. Vol. III, pp. 132-134.

the analysis of the quantitative benefits of ESP 3, then the net present value to customers of the ESP over an MRO increased from \$200.6 million to \$226.5 million.¹²⁵

Staff witness Robert Fortney provided another perspective of the ESP versus MRO analysis that also establishes that ESP 3 is better in the aggregate than an MRO – even without the Commission needing to consider ESP 3’s “qualitative” benefits.¹²⁶ Mr. Fortney testified that “the costs to consumers of the Delivery Capital Recovery (DCR) Rider, which are included in Mr. Ridmann’s ESP analysis and the costs of a distribution case, which are included in Mr. Ridmann’s MRO analysis” could be considered as a “wash”:

If the companies do not recover those costs through the DCR, it is probable that they would file distribution rate cases (in an AIR) to recover those same costs. While there may be some variation in the amounts recovered due to the timing of rate cases and the concept of “date certain,” in the long run, the companies would recover the equivalent of the same costs.¹²⁷

Mr. Fortney also pointed out that his reasoning is consistent with Case No. 11-346-EL-SSO, in which the Commission found, “Further, we note that the Non-Signatory Parties concerns about the DIR not being present in the price analysis are unwarranted, because AEP-Ohio would otherwise be entitled to see an increase in distribution rates pursuant to Section 4909.19, Revised Code.”¹²⁸

Mr. Fortney observed that, given the Commission’s treatment of a DCR-like rider in Case No. 11-346-EL-SSO, even if foregoing RTEP cost recovery was eliminated as an ESP 3 benefit, ESP 3 still benefitted customers relative to an MRO by over \$21 million.¹²⁹ As Mr. Fortney

¹²⁵ Ridmann Supp. Testimony, p. 8.

¹²⁶ Fortney Testimony, pp. 4-5.

¹²⁷ *Id.*

¹²⁸ *Id.*, p. 5, quoting Opinion and Order, Case No. 11-346-EL-SSO, p. 31 (Entry date: Dec. 14, 2011).

¹²⁹ Fortney Testimony, p. 5

noted, “Under that perspective, the Commission would not even need to take the ‘qualitative’ benefit of ESP 3 into account.”¹³⁰

A few opposing intervenors attempt to diminish the quantitative benefits of ESP 3. As demonstrated below, their attempted challenges do not alter the result that ESP 3 is more beneficial than an MRO.

1. Intervenor’s quantitative analyses are incorrect or incomplete.

Mainly through the testimony of OCC witness Gonzalez and NOPEC/NOAC witness Frye, the intervenors opposing the Stipulation criticized Mr. Ridmann’s calculations of the relative quantitative benefits of ESP 3 compared to an MRO. These witnesses focused on three issues: (1) whether foregoing RTEP cost recovery should be considered a benefit of ESP 3; (2) whether the treatment of Rider DCR in Mr. Ridmann’s analysis is correct; and (3) whether the PIPP customer benefits provided in ESP 3 should be considered a benefit. None of these arguments carry the day.

a. Foregoing RTEP cost recovery should be considered as a benefit of ESP 3.

OCC contended that the Companies should not “double-count” RTEP benefits as a benefit under ESP 3 because this benefit is not unique to ESP 3.¹³¹ On the stand, however, Mr. Gonzalez contradicted that position by testifying that each settlement is unique and that all parties are perfectly free to enter into a brand new deal.¹³²

¹³⁰ *Id.*

¹³¹ Gonzalez Testimony, p. 28.

¹³² Tr. Vol. III, pp. 128-129.

NOPEC/NOAC witness Frye also opposed counting as a benefit to ESP 3 the Companies' agreement to forego recovery of RTEP costs.¹³³ Mr. Frye admitted that this commitment by the Companies was a benefit of the Companies' current ESP.¹³⁴ Like Mr. Gonzalez, Mr. Frye admitted that nothing required the Companies to have the same terms in the proposed ESP as the current ESP.¹³⁵ He further admitted that the Companies were free to attempt to renegotiate the terms of the current ESP.¹³⁶ Here, the Signatory Parties did just that; the ESP 3 is a unique deal.

Yet, even following Mr. Gonzalez's "no double-count" rule, the Companies should be able to consider a benefit of approximately \$39 million in nominal RTEP savings that were not included as a benefit in the Companies' analysis of the quantitative benefits of the current ESP as compared to an MRO.¹³⁷ Removing all RTEP savings except for the \$39 million not recognized in the Companies' analysis of the current ESP results in an aggregate net present value ESP 3 benefit of over \$23 million over an MRO.¹³⁸

Further, according to Staff witness Fortney, even if all RTEP cost savings were removed from the analysis, and Mr. Ridmann's treatment of Rider DCR remained in the calculation, a

¹³³ Frye Testimony, pp. 4-5. Mr. Frye contradicted himself on several occasions. Most notably, his direct testimony suggested that the Commission should reject ESP 3 because it failed the ESP versus MRO test. *Id.*, p. 7. On cross-examination, however, he conceded that he did not have an opinion as to whether the ESP 3 failed the ESP versus MRO test or even whether the Commission should approve ESP 3. Tr. Vol. III, pp. 33-36. He then appeared to recant the later testimony on redirect. *Id.*, p. 54. Such unreliable testimony should not be relied upon by the Commission in making its determination in this proceeding.

¹³⁴ Tr. Vol. III, p. 43.

¹³⁵ *Id.*, p. 44.

¹³⁶ *Id.*, p. 45.

¹³⁷ Case No. 10-388-EL-SSO, Ridmann Testimony, WRR-Attachment 1.

¹³⁸ The \$39 million of nominal savings is approximately \$30 million on a net present value basis. The record shows that simply removing 100% of the RTEP savings from the analysis results in the ESP 3 being less favorable than an MRO by approximately \$7 million on a net present value basis. *See* Fortney Testimony, p. 2. Therefore, adding back in \$30 million yields a positive ESP 3 benefit of \$23 million on a net present value basis. When combined with the removal of the assumed regulatory lag associated with Rider DCR (which Mr. Ridmann testified as approximately \$26 million on a net present value basis; *see* Ridmann Testimony, WRR-Attachment 1), the ESP 3 is more beneficial than an MRO by approximately \$49 million on a net present value basis.

potential \$7 million cost of ESP 3 over an MRO would be outweighed by the qualitative benefits of ESP 3.¹³⁹ As noted above, Mr. Fortney also testified that both Mr. Ridmann's RTEP and DCR figures should be removed and that doing so resulted in a \$21 million benefit for the ESP 3.¹⁴⁰

b. Rider DCR should be included in the ESP versus MRO comparison with recognition of a regulatory lag, or in the alternative, considered a “wash.”

In his prefiled testimony, OCC witness Gonzalez attempted to make several arguments regarding Rider DCR, *i.e.*: (1) Rider DCR is less beneficial than recovery of similar costs in a rate case; (2) Rider DCR should not be allowed because the Companies should be required to recover these costs through a rate case; and (3) Rider DCR, as proposed, should not be allowed because the Companies did not make any showing regarding reliability, as allegedly required under R.C. § 4928.143(B)(2)(h). NOPEC/NOAC witness Frye also improperly attempted to inflate the cost of Rider DCR. As demonstrated below, none of these contentions withstands even the most cursory scrutiny.

OCC witness Gonzalez complained that Rider DCR is less beneficial to customers than if the Companies sought an increase through a rate case.¹⁴¹ This argument is refuted by Staff witness Robert Fortney, who testified that the costs of Rider DCR when compared to both the ESP 3 and an MRO are a “wash.”¹⁴² Mr. Gonzalez's argument also is contradicted by the

¹³⁹ Fortney Testimony, pp. 3-4.

¹⁴⁰ *Id.*, pp. 4-5.

¹⁴¹ Gonzalez Testimony, p. 22.

¹⁴² *See* Fortney Testimony, p. 4.

Commission's order in Case No. 11-346-EL-SSO in which the Commission noted that concerns over the exclusion of similar costs from the ESP versus MRO analysis were unwarranted.¹⁴³

Indeed, Mr. Gonzalez's testimony during cross-examination contradicted his direct testimony. On the stand, Mr. Gonzalez testified that Rider DCR provided benefits to customers under the ESP 3 that would not otherwise be available. He testified that these benefits included a quarterly reconciliation, a detailed annual audit that allows other parties to participate, a cap on how much costs the Companies can recover, and a gradual increase of costs that may not be available under a rate case.¹⁴⁴

Mr. Gonzalez also argued that the Companies should be required to file a rate case to recover the costs associated with Rider DCR.¹⁴⁵ But that same argument already has been rejected by the Commission. The Commission specifically stated that "the statutory authority to file an application under Section 4928.143, Revised Code is separate and independent from the statutory provisions of Section 4909.18 Revised Code."¹⁴⁶ On cross-examination, Mr. Gonzalez admitted that Rider DCR recovery is allowed under Senate Bill 221.¹⁴⁷

Mr. Gonzalez further appeared to testify that Rider DCR should not be approved because the Companies were required to make some type of showing relating to service reliability under R.C. § 4928.143(B)(2)(h). But this view collapsed at the hearing as a result of Mr. Gonzalez's admissions. Mr. Gonzalez admitted that the Commission had previously approved Rider DCR

¹⁴³ Opinion and Order, Case No. 11-346-EL-SSO, p. 31(Entry date: Dec. 14, 2011). Mr. Gonzalez also admitted that even though the Commission subsequently rejected the ESP in that case, the Commission did not mention anything about the DCR costs. Tr. Vol. III, p. 132. Indeed, a fair reading of the Commission's February 23, 2012 order in that case rejecting the ESP at issue shows that the Commission's decision had nothing to do with the valuation of DCR-type costs in an ESP versus MRO analysis. *Id.*

¹⁴⁴ Tr. Vol. III, pp. 139-141.

¹⁴⁵ Gonzalez Testimony, pp. 22-23.

¹⁴⁶ Third Entry on Rehearing, Case No. 10-388-EL-SSO, p. 6 (Entry date: Feb. 9, 2011).

¹⁴⁷ Tr. Vol. III, p. 117.

without any reference to R.C. § 4928.143(B)(2)(h).¹⁴⁸ Mr. Gonzalez admitted that Senate Bill 221 directs the Commission to examine issues relating to reliability as set out in R.C. § 4928.143(B)(2)(h).¹⁴⁹ He admitted that Staff witness Peter Baker examined the reliability issues of the Companies' distribution system using the Companies' reliability data from consumer surveys.¹⁵⁰

At the hearing, Mr. Gonzalez contradicted his direct testimony as initially filed and admitted that the Companies have no obligation under the current ESP to come forward with a new application for reliability standards as of 2014.¹⁵¹ He admitted that he corrected his direct testimony to reflect the stipulation in Case No. 09-759-EL-ESS,¹⁵² the Companies' reliability standards case.¹⁵³ Mr. Gonzalez agreed that the Stipulation in that case obligated the Companies to apply for new reliability standards if the Companies exceeded two or more of six applicable historical average reliability measures.¹⁵⁴ He further agreed that the Companies had not exceeded two or more of those measures.¹⁵⁵ Mr. Gonzalez also admitted that he was not aware

¹⁴⁸ *Id.*, p. 116; Opinion and Order, Case No. 10-388-EL-SSO, p. 41 ("The provisions of the Combined Stipulation related to Rider DCR were not filed under Section 4928.143(B)(2)(h), Revised Code; therefore, there is no requirement to conduct an examination of the reliability of FirstEnergy's distribution system.").

¹⁴⁹ Tr. Vol. III, pp. 116-117.

¹⁵⁰ Mr. Gonzalez admitted that he incorrectly testified that Mr. Baker relied on surveys conducted in 2004. He acknowledged that Mr. Baker relied on surveys from 2008. Tr. Vol. III, p. 117. Both Mr. Ridmann and Mr. Baker corroborated that the surveys were taken in 2008. Tr. Vol. II, pp. 17, 232.

¹⁵¹ Tr. Vol. III, p. 118.

¹⁵² *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of Proposed Reliability Standards*, Case No. 09-0759-EL-ESS, Public Utilities Commission of Ohio ("Case No. 09-0759-EL-ESS").

¹⁵³ Tr. Vol. III, pp. 117-118.

¹⁵⁴ *Id.*, p. 118.

¹⁵⁵ *Id.*

of any other obligation apart from the settlement in Case 09-759-EL-ESS that the Companies have made to file a new application regarding reliability standards.¹⁵⁶

Even if the Commission was required to review the Companies' reliability (which it is not), Staff witness Peter Baker testified that the Companies have met the requirements of R.C. § 4928.143(B)(2)(h).¹⁵⁷ He explained that the Companies' application in Case No. 09-759-EL-ESS met the Companies' requirement to file an application with the Commission to establish specific minimum performance standards.¹⁵⁸ He testified that "[u]ltimately the Companies stipulated to a tighter standard based on a shorter, more recent time period and a roughly ten percent allowance for variability."¹⁵⁹ Indeed, he noted that OCC's counsel participated in the Companies' application and negotiations in that case.¹⁶⁰

Mr. Baker also testified that the Companies not only met but performed better than the required standards as set by the system average interruption frequency index ("SAIFI") and the customer average interruption duration index ("CAIDI.")¹⁶¹ Mr. Baker concluded that "the Companies' and their customers' reliability expectations are in alignment and...the companies are dedicating sufficient resources to the reliability of their distribution systems."¹⁶²

NOPEC, NOAC and OCC's concerns regarding the amount of recovery under Rider DCR were proven to be overstated. The evidence of record showed that these concerns were based on incorrect assumptions regarding the potential increase of Rider DCR.¹⁶³ During cross-

¹⁵⁶ *Id.*

¹⁵⁷ Baker Testimony, p. 6.

¹⁵⁸ *Id.*, p. 4.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*, p. 5.

¹⁶² *Id.*, p. 6.

¹⁶³ Frye Testimony, pp. 6-7; Gonzalez Testimony, p. 36.

examination, NOPEC/NOAC witness Mark Frye and OCC witness Wilson Gonzalez both admitted that under ESP 3 the maximum potential increase in Rider DCR revenue over the current ESP based on the proposed revenue *caps* is \$45 million over the entire ESP 3 period; not the \$405 million that they cited in their respective prefiled testimony.¹⁶⁴ And both witnesses admitted that residential customers would pay less than half of any increase in Rider DCR.¹⁶⁵

2. ESP 3 provides a benefit to customers by continuing to serve PIPP customers at a price that is six percent off of the SSO price for other customers.

OCC, RESA and Direct Energy objected to the provisions under the Stipulation that provide that the PIPP load will be supplied at a discount of 6 percent. They contended that the Companies should bid the PIPP load in an auction.¹⁶⁶

But OCC, RESA and Direct Energy presented no evidence to show that an auction would provide a greater benefit to PIPP customers than the 6 percent discount provided under the Stipulation. None of the witnesses who recommended a separate auction for the PIPP load did any analysis to show that an auction would generate a price lower than that offered by the Stipulation.¹⁶⁷ Nor did OCC, RESA or Direct Energy provide any evidence that a company other than FirstEnergy Solutions would provide a discount of 6 percent for this load.

Further, as Mr. Gonzalez admitted, a supplier participating in a PIPP load CBP would have to forego the opportunity to sell power at market prices,¹⁶⁸ something that no other supplier would commit to do.¹⁶⁹ On the other hand, the Stipulation provides for a real, tangible benefit to

¹⁶⁴ See Tr. Vol. III, pp. 41-42; *Id.*, pp. 119-120.

¹⁶⁵ *Id.*, p. 42; *Id.*, p. 120.

¹⁶⁶ Ringenbach Testimony, p. 16; Gonzalez Testimony, pp. 30-31.

¹⁶⁷ See Ringenbach Testimony, p. 16; Gonzalez Testimony, pp. 30-31.

¹⁶⁸ Tr. Vol. III, p. 134.

¹⁶⁹ *Id.*, pp. 134-135.

PIPP customers, and indirectly all customers who might otherwise have to pay for PIPP arrearages, by providing a guaranteed discount of 6 percent below the SSO price.

B. The Qualitative Benefits Of ESP 3 Are More Favorable Than An MRO.

ESP 3 includes numerous qualitative benefits in the form of economic development, rate design provisions, energy efficiency funding, support for customer shopping and price certainty and stability for customers. This package of benefits would not be available under an MRO.¹⁷⁰ In terms of economic development, ESP 3 continues to provide credits for large customers, including those with interruptible load participating under the Companies' Rider ELR; credits for large automaker facilities; and financial support for the Cleveland Clinic. The proposed rate design under ESP 3 continues to support gradualism through the Companies' Rider EDR, which provides credits to non-standard residential customers, schools and municipalities. The Companies will also continue to retail rate designs to reflect capacity and energy components of the CBP prices separately, thus sending appropriate price signals to customers. Additional rate design benefits of the ESP 3 include the aforementioned extended recovery of renewable energy credit costs and the extension of the Companies' time-differentiated pricing options.¹⁷¹

Under ESP 3, the Companies will continue to provide funding to energy efficiency administrators to help facilitate the achievement of their energy efficiency and demand response goals under SB 221,¹⁷² as well as funding to specific municipalities for purposes of energy efficiency.¹⁷³ Funding for low income customers through the Community Connections program will continue under ESP 3, along with the previously discussed discount for PIPP customers.

¹⁷⁰ See generally *Stip.*; compare R.C. § 4928.142 (setting forth requirement for an MRO to include a compliant competitive bid process and meet certain information and RTO standards) with R.C. § 4928.143.

¹⁷¹ *Stip.*, §§A, F, H.

¹⁷² R.C. § 4928.66.

¹⁷³ *Stip.*, §E.

ESP 3 also promotes competition in the generation markets and shopping, which can lead to lower prices for all customers.¹⁷⁴ Under the proposed ESP 3, there are no minimum stay provisions for residential and small commercial customers, no minimum default service charges, no standby charges, and no shopping credit caps. ESP 3 also provides for lower credit enhancements for CBP bidders, the bypassability of Rider GCR under certain circumstances, competitive procurement for RECs, and enhanced customer data and information for suppliers subject to and consistent with the Commission's rules.¹⁷⁵

ESP 3's comprehensive terms provide more certainty and stability for the Companies' customers through May 2016, and allow customers to plan proactively for their electricity needs. The three-year auction contracts proposed under ESP 3 along with the base distribution rate freeze for the term of the ESP 3 will provide an additional level of price predictability that would not exist otherwise.¹⁷⁶

ESP 3 further resolves outstanding or anticipated issues regarding the Companies' provision of electric service. Thus, ESP 3 minimizes the regulatory resources that would otherwise need to be expended in determining the issues agreed upon in the ESP. In short, ESP 3 provides numerous *qualitative* benefits that make it more favorable than an MRO.

Importantly, the Staff recommended the approval of the ESP 3 based in large part on ESP 3's qualitative benefits.¹⁷⁷ Staff witness Fortney testified, "Staff . . . recommends that the Commission conclude that in light of the 'qualitative' benefits provided by ESP 3, the application in the instant proceeding should be approved, and the Stipulation should be

¹⁷⁴ Ridmann Testimony, pp. 11-12.

¹⁷⁵ Stip., § G. The Companies' agreement with Constellation and Exelon also provides for enhanced customer data and information for Suppliers. Fein Testimony, Attachment A.

¹⁷⁶ Ridmann Supp. Testimony, p. 6.

¹⁷⁷ Fortney Testimony, p. 4.

adopted.”¹⁷⁸ Mr. Fortney explained that the Companies had outlined several “qualitative” benefits that the Commission should consider. He testified that these “qualitative” benefits include the three-year auction product, the additional two-year distribution rate increase “stay-out” and the continuation of the rate options provided in the current ESP. He also testified that “the electric security plan can offer significant advantages for the Applicant, the ratepayers of the Applicant and the public at large.”¹⁷⁹ Thus, the Staff recommends the approval of ESP 3.

OCC witness Gonzalez initially appeared to testify that the Commission should not consider qualitative benefits in assessing whether an ESP satisfied the statutory ESP versus MRO test.¹⁸⁰ But, on cross-examination, he admitted that the Commission has stated that it may consider qualitative benefits¹⁸¹— and that he agreed that such benefits could be considered.¹⁸² NOPEC/NOAC witness Frye also admitted that qualitative benefits could be considered.¹⁸³

While not denying many of ESP 3’s qualitative benefits, detailed above, the intervenors opposing the Stipulation centered most of their criticisms on ESP 3’s proposed procurement of a three-year product in the October 2012 and January 2013 SSO auctions. These criticisms are without merit.

As an initial matter, the arguments that a three-year auction product, as part of a staggered multi-year, multi-auction procurement strategy, is not beneficial are belied by the Commission’s approval of the current ESP. The current ESP includes three-year, two-year and

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ Gonzalez Testimony, pp. 35-36.

¹⁸¹ Tr. Vol. III, p. 135. Mr. Gonzalez’s testimony demonstrated a view of potential qualitative benefits that was at odds with his position supporting residential customers. For example, he denied that keeping residential distribution base rates frozen benefitted customers. Tr. Vol. III, pp. 136-137. He similarly denied that having the Commission regularly review the SSO process via an ESP was a benefit of an ESP over an MRO. Tr. Vol. III, pp. 137-139.

¹⁸² *Id.*

¹⁸³ *Id.*, p. 36.

one-year products and laddering as a technique.¹⁸⁴ OCC witness James Wilson acknowledged that the Commission has approved SSO auctions in the past that included three-year products.¹⁸⁵ He also admitted that those auctions successfully acquired the supply for the SSO load and that he would have no reason to believe the auctions were not successful in terms of procuring reliable and reasonably priced power, as the Commission and the CBP manager had determined.¹⁸⁶

OCC witness Wilson argued that there is too much uncertainty – indeed, “extraordinary uncertainty” – in the market to adopt a three-year product and thus “it is not clear that the FE Companies proposal is advantageous as this time.”¹⁸⁷ But his testimony was inconsistent on a number of fronts. For example, on one hand, he admitted that the one thing about the energy market that’s certain is uncertainty.¹⁸⁸ On the other, he suggested that he could somehow predict that there will be less uncertainty in the future.¹⁸⁹ He said this even though he admitted that no one knows when the “extraordinary uncertainty” about which he is concerned will be resolved.¹⁹⁰ He also admitted that, for any auction, at any particular time, there could be a number of factors about which suppliers could be uncertain.¹⁹¹ In fact, in a year or two, he admitted, there could be new uncertainties that no one knows about now.¹⁹² Tellingly, the best he could say is that now

¹⁸⁴ Opinion and Order, Case No. 10-388-EL-SSO, p. 33; Stipulation and Recommendation, Case No. 10-388-EL-SSO, Attachment A, p. 2; Stoddard Rebuttal Testimony, p. 17; *see also* Tr. Vol. I, pp. 154, 167, 171-172.

¹⁸⁵ Tr. Vol. II, p. 113.

¹⁸⁶ *Id.*, p. 112. OCC witness Gonzalez and NOPEC/NOAC witness Frye also admitted that the Companies’ prior SSO auctions have successfully procured reliable electricity at reasonable prices. Tr. Vol. III, pp. 49-50, 143.

¹⁸⁷ Wilson Testimony, p. 6.

¹⁸⁸ Tr. Vol. II, pp. 114.

¹⁸⁹ *Id.*, pp. 149-150.

¹⁹⁰ *Id.*, pp. 147-148.

¹⁹¹ *Id.*, pp. 114-115.

¹⁹² *Id.*, p. 141.

“may not” – as opposed to will not – be an “advantageous time” to procure a three-year product.¹⁹³

As Mr. Wilson further admitted, the strategy of waiting also has risks.¹⁹⁴ These risks, particularly of steep price increases,¹⁹⁵ would be borne by customers.¹⁹⁶

Mr. Wilson stated that the Commission should not adopt a three-year product because of uncertainty regarding high costs, particularly because of allegedly higher risk premiums that would be included by suppliers in their bids.¹⁹⁷ But he also testified, “[I]n general, including a three-year product will tend to smooth out generation costs, reducing customers’ exposure to the ups and downs of generation prices and forward expectations.”¹⁹⁸ What’s more, Mr. Wilson admitted that he has not performed an analysis on how the uncertainties that he has alleged may affect energy prices.¹⁹⁹ Nor did he conduct any quantitative analysis regarding the size of supplier premiums associated with the market uncertainties that he is concerned about.²⁰⁰

The one aspect of Mr. Wilson’s testimony that was consistent was his admissions demonstrating that he lacks experience regarding the CBP process and hedging strategies. Mr. Wilson has not participated in any manner in a CBP process.²⁰¹ He has not advised a regulatory

¹⁹³ *Id.*, p. 115.

¹⁹⁴ *Id.*, pp. 141-142.

¹⁹⁵ Tr. Vol. II, p. 141; Stoddard Rebuttal Testimony, p. 4.

¹⁹⁶ *Id.*, p. 142; Stoddard Rebuttal Testimony, pp. 16-17.

¹⁹⁷ *Id.*, p. 116.

¹⁹⁸ Wilson Testimony, p. 6.

¹⁹⁹ Tr. Vol. II, p. 116.

²⁰⁰ *Id.*

²⁰¹ *Id.*, p. 110.

body about designing hedging strategies.²⁰² Nor has he advised any regulatory body about competitive bidding processes for wholesale load.²⁰³

What it appears that Mr. Wilson is good at doing is, like a real life “Chicken Little,” listing the possible uncertainties facing any particular auction and then complaining that there is such “extraordinary uncertainty” that would preclude proceeding with auctions with three-year products. Notably, in December 2009, Mr. Wilson worried about similar “extraordinary” risks and uncertainties involving the Companies’ proposed MRO.²⁰⁴ At that time, he complained about the “extraordinary uncertainty surrounding the then-pending migration of American Transmission Systems Inc. (“ATSI”) into PJM, among other things.²⁰⁵ Of course, none of Mr. Wilson’s concerns then prevented the subsequent auctions held by the Companies from being an unqualified success.²⁰⁶ Simply put, Mr. Wilson may best be described as a “Johnny One Note” – and a wrong note at that.

In contrast, the Companies’ witness Robert Stoddard has extensive experience in designing CBP processes, hedging strategies and PJM RPM auctions.²⁰⁷ He has advised regulatory bodies, utilities and bidders alike.²⁰⁸ Mr. Stoddard testified to the common sense notion that, in times of great uncertainty, adopting risk mitigation strategies, such as using a ladder procurement technique with three-year auction products is a prudent strategy.²⁰⁹ He

²⁰² *Id.*, p. 111.

²⁰³ *Id.*

²⁰⁴ Case No. 09-906-EL-SSO, Wilson Testimony, p. 27. At the hearing, Attorney Examiner Price took administrative notice of Mr. Wilson’s testimony in Case No. 09-906-EL-SSO, which was identified as Company Exhibit 9. Tr. Vol. II, p. 166.

²⁰⁵ Tr. Vol. II, p. 153.

²⁰⁶ Tr. Vol. II, p. 112; Tr. Vol. III, pp. 49-50, 143.

²⁰⁷ Stoddard Rebuttal Testimony, pp. 1-2; Tr. Vol. IV, pp. 33-37; *see also* Company Exhibit 14(a).

²⁰⁸ *Id.*

²⁰⁹ *Id.*, p. 14.

explained that laddering allows suppliers to assume the risk and “allocate it fairly at a fair price” to consumers.²¹⁰ In contrast, according to Mr. Stoddard, Mr. Wilson’s wait-and-see strategy attempts to time the market,²¹¹ which is fraught with risks, especially for customers.²¹²

In addition, Mr. Stoddard testified that the three specific areas of “extraordinary uncertainty” that Mr. Wilson alleged regarding the PJM markets are exaggerated.²¹³ First, Mr. Stoddard disagreed with Mr. Wilson’s reliance on a large amount of plant retirements in ATSI as a factor driving uncertainty.²¹⁴ Mr. Stoddard explained that plant retirements are not a driving factor because most of these retirements have been announced. He also noted that substantially all of the existing generating units, other than those with announced deactivations, participated in and cleared the BRA.²¹⁵ Further, it is unlikely that new generation will enter the ATSI zone before 2016 given that the time to bring any substantially-sized new resource to market is before the BRA auction.²¹⁶ Mr. Stoddard explained this timing results from the fact that capacity payments for most units “represent a significant fraction of the total revenue stream that those plants will earn.”²¹⁷ He noted that “[if] you haven’t cleared in the base residual auction, you don’t get capacity payments, so you are taking out a big chunk of the economics of why you would be entering [the market].”²¹⁸ Thus, operational generation resources available to serve

²¹⁰ Tr. Vol. IV, p. 52.

²¹¹ Mr. Wilson admitted that his view was that October 2012 and January 2013 may not be an “advantageous time” to pursue a three-year product. Tr. Vol. II, p. 146.

²¹² Stoddard Rebuttal Testimony, pp. 16-17.

²¹³ *Id.*, p. 3.

²¹⁴ *Id.*, p. 13.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ Tr. Vol. IV, p. 20.

²¹⁸ *Id.*

ATSI load through the period of ESP 3 are currently known with a high degree of certainty and, thus, is not an “extraordinary risk,” contrary to Mr. Wilson’s unsupported assertion.²¹⁹

Second, Mr. Stoddard testified that Mr. Wilson’s concerns regarding transmission upgrades are unwarranted. Mr. Stoddard testified, “the PJM Board of Managers has approved a slate of transmission upgrades aimed at addressing reliability concerns related to plant deactivations throughout the PJM footprint.”²²⁰ As a result, the market is well aware of these planned upgrades.²²¹

Mr. Stoddard’s testimony on these points was corroborated by a PJM Staff Whitepaper, entitled, “Transmission Expansion Advisory Committee (TEAC) Recommendations to the PJM Board,” dated May 2012.²²² The PJM Whitepaper explained the process of generating unit deactivations (*i.e.*, retirements) within PJM.²²³ The PJM Whitepaper then noted what units had requested deactivation and the dates of the requests.²²⁴ The PJM Whitepaper then detailed the numerous transmission upgrade projects, their cost and expected in-service dates.²²⁵ As the PJM

²¹⁹ Mr. Stoddard observed that the increases in capacity prices in ATSI for the 2015/2016 delivery year do not necessarily foretell increases in energy prices, noting that the prices for coal and natural gas for that period are currently unknown. Tr. Vol. IV, p. 58. Mr. Stoddard pointed to his analyses of the constrained area in the state of Maine where the trend in energy prices did not follow capacity prices. *Id.*, pp. 99-101.

²²⁰ Stoddard Rebuttal Testimony, p. 13.

²²¹ *Id.*

²²² Company Exhibit 8.

²²³ *Id.*, pp. 1-2.

²²⁴ *Id.*, pp. 2-3. Notably, the deactivation requests from FirstEnergy Solutions came within one month of the publication of two final environmental regulations, Mercury and Air Toxic Standard (“MATS”) and the Cross-State Air Pollution Rule (“CSAPR”). Stoddard Rebuttal Testimony, pp. 6, 8. As Mr. Stoddard observed, “Given the importance of these decisions—involving hundreds of millions of dollars in capital assets—it was not unreasonable that these generation owners took a month or two to assess the EPA’s final rules and evaluate their fleet’s future economics under different alternatives.” Stoddard Testimony, pp. 8-9.

²²⁵ Company Exhibit 8, pp. 13-22.

Whitepaper observed, “The PJM Board met on May 17th and approved the elements of the RTEP [Regional Transmission Expansion Plan] documented herein.”²²⁶

Third, Mr. Stoddard testified that Mr. Wilson’s concerns that new alternate resources (EE and Demand Response) products will create uncertainty are unfounded.²²⁷ Mr. Stoddard explained that alternate resources products are not a driver of capacity or energy prices; these products only represent a small percentage of the market.²²⁸ Thus, Mr. Stoddard concluded that Mr. Wilson has exaggerated the risk of extraordinary uncertainty.²²⁹

Yet, even if the Commission agrees that this is a time of extraordinary uncertainty, Mr. Stoddard testified that this uncertainty actually increases the benefit of adopting a hedging strategy, like laddering. As Mr. Stoddard explained, “to the extent that the Commission believes that future market risks are high, this argues for obtaining greater certainty, not *against*, contrary to Mr. Wilson’s testimony.”²³⁰ He noted that “[i]nsurance is valued most in risky situations.” Thus, it is during times of high risk that securing a hedging strategy, like laddering, provides the most value to customers.²³¹

Mr. Stoddard further explained that, in a “risky situation,” the Commission needs to decide who is able to best manage that risk; *i.e.*, the Companies’ customers or suppliers.²³² He testified that “the presence of a large number of sophisticated bidders in the SSO auctions is the assurance that consumers should take that we are seeing competitive prices for whatever risk is

²²⁶ *Id.*, p. 12.

²²⁷ Stoddard Rebuttal Testimony, p. 14.

²²⁸ *Id.*

²²⁹ *Id.*, p. 12.

²³⁰ *Id.*, p. 4.

²³¹ *Id.* Further, Mr. Stoddard observed that there could be efficiencies in managing risk over a multi-year horizon that might be lost by having a shorter horizon. *Id.*, p. 132.

²³² Tr. Vol. IV, pp. 51-52.

in the market.”²³³ Mr. Stoddard noted, “You can’t get rid of risk through these markets. What we can do is allocate it fairly at a fair price.”²³⁴ He testified that “the way the ESP 3 is designed is that we are gradually, deliberately shifting portions of the future-year risk from customers to suppliers in a measured and timed way.”²³⁵

In sum, Mr. Wilson asks the Commission (without any credible support) to reject a tested, approved and prudent strategy and to place the risk of increased generation prices on customers rather than suppliers. This is inconsistent with the Commission’s past decisions and public policy. Mr. Stoddard fully addressed Mr. Wilson’s objections to the Companies’ three-year auction product as part of a prudent risk mitigation laddered procurement strategy, and Mr. Wilson’s objections should therefore be disregarded.

NOPEC/NOAC witness Frye argued that the Commission should adopt two-year and one-year auction products instead of a three-year product.²³⁶ This recommendation contrasts with his recommendation made about two years ago when, noting the likelihood of increasing prices, he suggested that the entirety of the Companies’ SSO load be procured via a three-year product.²³⁷

Mr. Frye failed to provide any credible reason as to why a one-year product immediately following a two-year product would be better than procuring a three-year product representing only a portion of the load in an overall laddered procurement approach. Mr. Frye admitted that use of a procurement approach that minimizes risks from unpredictability and volatility is

²³³ *Id.*, p. 52.

²³⁴ *Id.*

²³⁵ *Id.*, p. 53.

²³⁶ Frye Testimony, p. 14.

²³⁷ Tr. Vol. III, p. 46.

prudent.²³⁸ He further admitted that laddering is an acceptable method to hedge risks and would be a reasonable thing to do.²³⁹ Mr. Frye admitted that his proposal would call for auctions in October 2012 and January 2013 seeking a two-year product beginning delivery over a year later, in June 2014.²⁴⁰ In Case No. 10-388-EL-SSO, however, the Commission found that a nearly one-year period between an auction and the delivery of power was too long.²⁴¹ Mr. Frye was unaware of the Commission's views on this issue.²⁴²

Mr. Frye's contention that a three-year product will harm customers who leave after the first year of service is not a credible reason to reject a procurement strategy that includes three-year products. Indeed, as Mr. Frye admitted, this criticism could apply to any rate that involves averaging costs over time.²⁴³ Mr. Frye's complaint also overlooked the opposite (but yet equally likely) situation.²⁴⁴ A customer who joins near the end of the three-year period or who expands a business may receive greater benefit than one who joins at the beginning of this period.²⁴⁵ In sum, the intervenors opposing the Stipulation presented no credible reason for believing that ESP 3 does not provide substantial qualitative benefits over an MRO.

Clearly, whether on a quantitative basis, qualitative basis, or a combination thereof, the Companies' proposed ESP 3 is more favorable in the aggregate as compared to the expected

²³⁸ *Id.*, p. 48.

²³⁹ *Id.*, pp. 48-49.

²⁴⁰ *Id.*, pp. 47-48.

²⁴¹ Opinion and Order, Case No. 10-388-EL-SSO, p. 34.

²⁴² Tr. Vol. III, p. 48.

²⁴³ *Id.*, pp. 52-53.

²⁴⁴ *Id.*

²⁴⁵ Mr. Frye's suggestion that, if a three-year product is procured, the Companies should somehow discount their costs, Frye Testimony, p. 13, makes no sense. Mr. Frye admitted that suppliers bidding on a three-year product would likely take the time value of money into account when fashioning their bids. *Id.*, pp. 51-52. This would necessarily be reflected in the prices arising from the CBP. Mr. Frye also admitted that when the Companies are purchasing a three-year product with an average cost assessed over the length of the purchase period, the Companies' cost would not be less at the beginning of the period. *Id.*, p. 50.

results that would otherwise apply under an MRO. Therefore, ESP 3 should be approved by the Commission.

III. THE STIPULATION SHOULD BE APPROVED BECAUSE IT IS THE PRODUCT OF SERIOUS BARGAINING AMONG CAPABLE AND KNOWLEDGEABLE PARTIES, BENEFITS RATEPAYERS AND THE PUBLIC INTERESTS AND DOES NOT VIOLATE IMPORTANT REGULATORY PRINCIPLE OR PRACTICE.

To adopt the Stipulation, the Commission must determine whether the Stipulation is reasonable. To do this, the Commission examines three criteria: 1) whether the settlement is the result of serious bargaining amongst capable, knowledgeable parties; 2) whether the settlement as a package benefits customers and the public interest; and 3) whether the settlement package violates any regulatory principle or practice.²⁴⁶ The Commission should accord substantial weight to terms of the settlement agreement.²⁴⁷

A. The Stipulation Is The Product Of Serious Bargaining Among Capable And Knowledgeable Parties.

The Signatory Parties and all parties that were involved in Case No. 10-388-EL-SSO have engaged in broad discussions related to the provisions in ESP 3. Because most of the components of ESP 3 are identical to the current ESP, the parties have already extensively negotiated and litigated these issues in Case No. 10-388-EL-SSO.

Indeed, the Commission has already found that the Signatory Parties engaged in “serious bargaining” to develop the provisions of the current ESP.²⁴⁸ The negotiations in that case were initiated by Staff during the Companies’ MRO proceeding, Case No. 09-906-EL-SSO. The Companies, the Signatory Parties, and others then continued that process through extensive negotiations in Case No. 10-388-EL-SSO. In that case, the Signatory Parties and others devoted

²⁴⁶ Opinion and Order, Case No. 10-388-EL-SSO, p. 20.

²⁴⁷ *Id.* citing *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*(1994), 68 Ohio St. 3d 559.

²⁴⁸ Opinion and Order, Case No. 10-388-EL-SSO, p. 24.

significant time and effort to the development of the current ESP. The Commission recognized this time and effort and found that the Stipulation was “the product of serious bargaining among capable, knowledgeable parties.”²⁴⁹

Here, the Stipulation is similarly the result of serious bargaining. Commencing in March, the Companies reached out to all parties in Case No. 10-388-EL-SSO to enter into discussions about the ESP 3 proposed. The Companies engaged with many of those parties in a broad range of ESP discussions resulting in a total of nineteen signatory parties and six additional non-opposing parties.²⁵⁰ The Companies provided all parties with a draft of the ESP 3 Stipulation.²⁵¹ And parties were involved in the negotiations regarding the changes presented in ESP 3 from the current ESP.²⁵² Indeed, even OCC witness Gonzalez and NOPEC/NOAC witness Frye acknowledged that OCC, NOPEC and NOAC had the opportunity to review a draft of the Stipulation and provide comments.²⁵³ Negotiations continued through and past the time of the filing of the Application and Stipulation in this case. In fact, the Companies and Constellation NewEnergy, Inc. and Exelon Generation Company, LLC reached a supplemental agreement just prior to the hearing.²⁵⁴

The Signatory Parties to ESP 3 are the same capable and knowledgeable parties that the Commission recognized as such under the current ESP.²⁵⁵ The Signatory Parties have

²⁴⁹ *Id.*

²⁵⁰ Ridmann Testimony, p. 9. Although AEPR and the Sierra Club did not participate in Case No. 10-388-EL-SSO, the interests that these groups represent, CRES providers and environmental issues, were represented by other groups in that case, *e.g.* Constellation New Energy, Inc. and Environmental Law and Policy Center. Case No. 10-388-EL-SSO, Second Supplemental Stipulation.

²⁵¹ Stip., p. 4; Tr. Vol. I, pp. 25, 26, 101.

²⁵² Ridmann Testimony, pp. 13-14.

²⁵³ Tr. Vol. III, pp. 25, 26, 101.

²⁵⁴ Tr. Vol. I, p. 41; Fein Testimony, Attachment A; *see also* Company Exhibit 7.

²⁵⁵ *See* Opinion and Order, Case No. 10-388-EL-SSO, p. 24.

consistently participated in the Companies' regulatory proceedings, including the Companies' prior ESP and MRO proceedings, and other Ohio utility proceedings, and have been represented by similarly experienced counsel. Indeed, the Commission has recognized this type of experience in approving other stipulations.²⁵⁶

The Signatory Parties also are numerous and diverse.²⁵⁷ They include the Commission's Staff and a large municipality (both of which represent the interests of all customers including residential customers),²⁵⁸ along with representatives of manufacturers, industrial and commercial customers, hospitals, small businesses, schools of all levels, low and moderate-income residential customers, CRES providers, and other generation service providers.²⁵⁹ The Commission has previously recognized in Case No. 10-388-EL-SSO that these parties represent a broad perspective of interests.²⁶⁰

The diversity of the Signatory Parties is not diminished because OCC, NOPEC and NOAC oppose the Stipulation.²⁶¹ OCC witness Gonzalez testified that even if OCC does not sign the Stipulation, the Stipulation could meet the three-prong test particularly with regard to the "first prong" of the Stipulation approval test.²⁶² And Mr. Gonzalez admitted that in the past

²⁵⁶ See *In the Matter of the Application of Duke Energy Ohio, Inc., to Establish its Fuel and Economy Purchased Power Component of its Market-Based Standard Service Offer for the Period of Jul. 1, 2007, through Dec. 31, 2008*, Case No. 07-974-EL-UNC, Opinion and Order, p. 8 (Entry date: Sept. 30, 2009) (approving stipulation and finding first criterion met where "[t]he parties to these cases have been involved in numerous cases before the Commission and have provided extensive and helpful information to the Commission").

²⁵⁷ Ridmann Testimony, p. 10.

²⁵⁸ Tr. Vol. III, p. 29; see Case No. 10-388-EL-SSO, Tr. Vol. III, p. 775.

²⁵⁹ See Stip. (signature pages); Ridmann Testimony, p. 10. Kroger Company, GEXA-Energy Ohio, LLC, EnerNoc, Duke Energy Retail Sales, LLC, Duke Energy Commercial, Asset Management, Constellation NewEnergy, Inc. and Exelon Generation Company, LLC also do not oppose the Stipulation. See Ridmann Testimony, p. 10; Tr. Vol. I, p. 59.

²⁶⁰ Opinion and Order, Case No. 10-388-EL-SSO, p. 24.

²⁶¹ Wilson Testimony, pp. 3-4 ; Frye Testimony, p. 4. Indeed, Mr. Gonzalez also admitted that in Case No. 10-388-EL-SSO OCC similarly complained that the Stipulation lacked representation from residential consumers and yet the Commission approved the Stipulation in that case. Tr. Vol. III, p. 101.

²⁶² Tr. Vol. III, p. 107.

OCC has considered some of the Signatory Parties to represent the interests of “consumers”: specifically, OPAE, the Empowerment Center of Greater Cleveland and the Cleveland Housing Network.²⁶³ NOPEC/NOAC witness Frye’s objections as to the alleged lack of “broad residential support” also failed. He admitted that he claimed that NOPEC and NOAC represented residential customers, in part, because these entities represented municipalities which, in turn, represented residential customers.²⁶⁴ Thus, the City of Akron’s support of the Stipulation qualified as support by a residential customer representative.

OCC’s complaints about the speed of the negotiation process, also made through Mr. Gonzalez’s testimony,²⁶⁵ ring hollow. Mr. Gonzalez failed to explain why any additional time was necessary. Mr. Gonzalez overlooked that the process used to negotiate the Stipulation is consistent with negotiation processes used in other cases.²⁶⁶ He also ignored that ESP 3 is essentially an extension of the current ESP, an ESP that has produced several successful SSO auctions that have benefited customers with reasonably priced generation service. Mr. Wilson’s alleged concern that no group meeting had been held²⁶⁷ was merely make weight. There is no evidence that any party requested a group meeting to discuss any of the changes. Nor did Mr.

²⁶³ Tr. Vol. III, pp. 109-113; *see also* Company Exhibits 10, 11. Mr. Gonzalez appeared to testify that these parties had entered into some type of improper side agreement. Specifically, Mr. Gonzalez testified that these parties entered into “an agreement not included in the Stipulation for an annual \$1.4 million fuel fund contribution.” Gonzalez Testimony, p. 9. Mr. Gonzalez contradicted his own testimony on the stand. He acknowledged that: the fuel fund was included as part of the Stipulation; the agreement he pointed to only related to how the monies to be paid under the Stipulation would be spent; and the “side agreement” was not a separate agreement for additional monies. He also admitted that the Companies’ shareholders, not customers, would pay for the fuel fund and that these payments would not be considered as “transfer payments.” Tr. Vol. III, p. 115.

²⁶⁴ Tr. Vol. III, pp. 29-31.

²⁶⁵ Gonzalez Testimony, pp. 7-8.

²⁶⁶ *See* Opinion and Order, Case No. 10-388-EL-SSO, p. 24 (refusing to find that the negotiation “process was rushed” even though on relatively expedited schedule); *In The Matter of the Commission’s Review and Adjustment of the Fuel and Purchased Power and System Reliability Tracker Components of Duke Energy Ohio, Inc., and Related Matters*, Case No. 07-723-EL-UNC, Opinion and Order, p. 13 (Entry date: Feb. 27, 2008) (agreeing with Staff that “even though negotiations were brief, there is no indication that the bargaining was not serious”).

²⁶⁷ *See* Gonzalez Testimony, p. 7.

Gonzalez show that any such meeting, even if requested by OCC, was needed or would have been of any value.

Indeed, neither Mr. Gonzalez nor any other party identified an issue that a party was unable to discuss with the Companies during the negotiations for the Stipulation. Although certain intervenors have complained that they have not had enough time to consider the impact of the increased capacity prices that resulted from the PJM's most recent BRA auction,²⁶⁸ these arguments are belied by the fact that the potential likely range of BRA clearing prices in ATSI was known during the time period that negotiations for the Stipulations were conducted. PJM declared that ATSI would be separate for purposes of the reliability pricing model ("RPM") in February 2012. Analysts then predicted that prices in the ATSI zone would clear at a premium above \$250-\$300 per MW-day due to retirements of several older coal-fired plants.²⁶⁹ As a result, these parties had access to information indicating that ATSI capacity prices would rise from the levels that had been obtained for the prior delivery year. These intervenors could have addressed any concerns regarding increased capacity prices in negotiations with the Companies.

The Stipulation is a comprehensive document containing provisions that have been subjected to extensive negotiations and approved by the Commission in Case No. 10-388-EL-SSO. The Signatory Parties are diverse parties with years of experience. The Stipulation satisfies the first criterion for approval by the Commission.

²⁶⁸See generally *AEP Retail Energy Partners, LLC's Motion to Continue Hearing Date, and to Modify Procedural Schedule*, Case No. 12-1230-EL-SSO (Filed: May 29, 2012); *Joint Motion for Continuance of the Evidentiary Hearing or, in the Alternative, Joint Motion for a Partial Continuance to Consider Customer Bill Impacts and Joint Motion for an Extension of the Time for Filing Testimony of Parties Not Signing FirstEnergy's Stipulation and Request for Expedited Ruling by Northeast Ohio Public Energy Council, Northwest Ohio Aggregation Coalition and Office of the Ohio Consumers' Counsel*, Case No. 12-1230-EL-SSO (Filed: June 1, 2012).

²⁶⁹See Scott DiSavino, *PJM power auction may be worth \$10 Bln*, Reuters, May 9, 2012, attached as Exhibit A to *Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company's Memorandum Contra AEP Retail Energy Partners LLC's Motion to Extend the Procedural Schedule*, Case 12-1230-EL-SSO (Filed: May 31, 2012).

B. The Stipulation Benefits Ratepayers and the Public Interest.

The Stipulation proposes to adopt an ESP that contains essentially the same provisions as the current ESP – an ESP that has produced several successful SSO auctions that have benefitted customers with reasonably priced generation service. As set forth in Section I, *supra*, ESP 3 includes numerous provisions that will provide diverse benefits to the Companies’ customers and that the Commission approved in case No. 10-388-EL-SSO.

Indeed, the broad benefits of ESP 3 are demonstrated because ESP 3 meets the statutory test under R.C. § 4928.143 as described above in Section II. ESP 3 benefits ratepayers because “its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, [are] *more favorable in the aggregate* as compared to the expected results that would otherwise apply under” a market-rate offer.²⁷⁰ Electric security plans also are beneficial because R.C. § 4928.143 provides for breadth and flexibility. The statute explicitly anticipates both quantitative and qualitative benefits, including the opportunity to promote economic development, job retention, and energy efficiency programs.²⁷¹ Here, the Signatory Parties have proposed an ESP that takes advantage of all of these features of an electric security plan and, in so doing, benefits customers and the public interest. As a result, the Stipulation satisfies the second criterion of the Commission’s review.

C. The Stipulation Does Not Violate Important Regulatory Principle Or Practice.

The Stipulation violates no regulatory principle or practice. Most of the provisions in ESP 3 as set forth in the Stipulation are similar or identical in all material respects to the

²⁷⁰ R.C. § 4928.143(C)(1) (emphasis added).

²⁷¹ R.C. § 4928.143(B)(2)(i).

provisions under the current ESP that the Commission approved in Case No. 10-388-EL-SSO.²⁷² Importantly, the Commission found in that case that the provisions of the current ESP did not violate any important regulatory principle or practice.²⁷³

Like the current ESP, the provisions of ESP 3 are consistent with state policy as set forth in R.C. § 4928.02. ESP 3 is designed to ensure that the Companies will provide adequate, reliable, safe, efficient and reasonably priced electric service.²⁷⁴ It supports improvements to the electric utility distribution system.²⁷⁵ It continues the regulatory principle of gradualism to help transition certain customers to market based prices by blending auction results over a longer period of time.²⁷⁶ It protects at risk populations.²⁷⁷ And it provides benefits to industrial customers to help facilitate the global economy.²⁷⁸

ESP 3 also furthers the State's policy of providing no barriers to shopping.²⁷⁹ The ESP 3 continues the Companies' existing rates and riders associated with the provision of current standard service offer generation service, all of which are bypassable, and the Companies' CBP cost-recovery reconciliation mechanism, Rider GCR, which is conditionally bypassable.²⁸⁰ ESP

²⁷² Ridmann Testimony, p. 11; *see also* Opinion and Order, Case No. 10-388-EL-SSO, p. 42.

²⁷³ Opinion and Order, Case No. 10-388-EL-SSO, p. 42.

²⁷⁴ Ridmann Testimony, p. 12; *see also* R.C. § 4928.02(A).

²⁷⁵ *Id.*, p. 12; *see also* R.C. § 4928.02(F).

²⁷⁶ *Id.*, p. 12; *see also In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA, Opinion and Order, pp. 18-20 (Entry date: May 25, 2011) (discussing the nature and application of the "principle of gradualism."); *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates*, Case No. 07-589-GA-AIR, Entry on Rehearing, p. 3 (Entry date: July 23, 2008) (same).

²⁷⁷ Ridmann Testimony, p. 12; *see also* R.C. § 4928.02(L).

²⁷⁸ *Id.*, p. 12; *see also* R.C. § 4928.02(N).

²⁷⁹ *See* R.C. §§ 4928.02(B), (H).

²⁸⁰ *Stip.*, § A.7. Only if the balance of Rider GCR reaches 5% of the generation expense over two consecutive quarters, in accordance with the specified calculation or circumstances, would Rider GCR shift to recovery on a non-bypassable basis.

3 also includes no minimum default service rider or stand-by charges for shopping customers.²⁸¹ Nor is there any minimum stay requirement for residential or small commercial non-aggregation customers.²⁸² Indeed, as even NOPEC/NOAC witness Frye testified, the levels of shopping and government aggregation activity in the Companies' territories are the highest among Ohio's electric distribution companies.²⁸³

The Stipulation includes another important additional benefit to customers. It reduces the risk of unforeseen or unanticipated customer outcomes because it is essentially an extension of existing, successful ESP.²⁸⁴

As set forth below, the intervenors opposing the Stipulation presented no credible evidence or argument that ESP 3 infringes on any regulatory principle or precedent.

1. The parties had ample opportunity to conduct discovery.

OCC witness Gonzalez contended that the Stipulation violates Ohio law and Commission rules governing discovery rights.²⁸⁵ Specifically, he complained that OCC was unable to conduct discovery.²⁸⁶ Mr. Gonzalez, however, failed to identify any discovery that OCC requested that the Companies did not provide to OCC or any discovery that OCC wanted to pursue but, because of time constraints, could not. There is a reason for this omission: the Companies in fact responded to numerous discovery requests from a variety of non-signatory parties, including OCC.²⁸⁷ As demonstrated in Section I, *supra*, most of the components of ESP 3 are either identical or similar to those in the current ESP and thus are well known to the parties,

²⁸¹ Stip., § A.3.

²⁸² *Id.*, § A.2.

²⁸³ Tr. Vol. III, pp. 30-31; *see also* Parisi Testimony, Exhibit 3.

²⁸⁴ Ridmann Testimony, p. 12.

²⁸⁵ Gonzalez Testimony, p. 11.

²⁸⁶ *Id.*, pp. 17-18.

²⁸⁷ Tr. Vol. I, pp. 18-19.

including OCC. OCC has thus failed to show that the Companies have violated any discovery rule or failed to provide ample discovery in this action.

2. The Stipulation's proposed exclusion of deferred carrying charges from SEET calculations is reasonable and consistent with Commission precedent.

OCC witness Duann raised a narrow objection to a provision of the Stipulation which addresses how certain calculations will be performed for purposes of the annual SEET required by R.C. § 4928.143(F). Specifically, he opposes the provision which allows for adjustment to the Companies' future SEET calculations to exclude the impact of deferred carrying charges.

To put the issue in context, R.C. § 4928.143(F) provides that for each year of an ESP, the Commission will undertake a SEET review of each of the Companies' earnings. The starting point for determining what a company's earnings are for this SEET review is its reported financial results. Certain adjustments are then made²⁸⁸ and the adjusted results are then compared to the earnings, as measured by return on equity ("ROE"), of publicly-traded companies of comparable business and financial risk. One such adjustment, expressly provided for in the proposed ESP 3 (but to which Dr. Duann took exception), is exclusion of the impact of deferred carrying charges from the SEET calculation of each of the Companies' return on equity. Importantly -- although Dr. Duann largely overlooked the point -- the identical exclusion has been in both of the previous ESP Stipulations agreed to for these Companies and has twice been accepted by the Commission in its approval of those Stipulations.²⁸⁹ The Stipulation here simply provides that this exclusion continue to be applied in the future SEET reviews for these Companies.

²⁸⁸ Dr. Duann at first opined that reported financial results without adjustment should be used in calculating ROE for SEET purposes but readily belies that view as he recognizes "[e]xtraordinary items or one-time events may be excluded." Duann Testimony, p. 9.

²⁸⁹ Second Opinion and Order, Case No. 08-935-EL-SSO, p. 12 (Entry date: Mar. 25, 2009); *see generally* Opinion and Order, Case No. 10-388-EL-SSO (Entry date: Aug. 25, 2010).

While Dr. Duann suggested several reasons for his opposition to the provision, none is well-founded. He stated that in its decision in the AEP Ohio 2009 SEET proceeding,²⁹⁰ the Commission “has held that deferrals should not be excluded from the electric utility’s ROE calculation for the purposes of the SEET.”²⁹¹ He went on to suggest that the AEP result represents the “current practice” of the Commission, and, presumably, is a basis to reject the provision proposed here. His lay observation, however, is misguided.²⁹² The AEP Ohio 2009 SEET decision is not precedent which should guide the result here.

While it is correct that the Commission included the impact of deferrals in the SEET calculations in AEP Ohio’s 2009 SEET review case, the circumstances of that case are distinguishable from those of the Companies here. The underlying AEP ESP which gave rise to the SEET review for the AEP companies in that case provided no guidance or direction as to the SEET treatment of their deferrals and, as a result, left that as an open issue to be litigated in the first AEP Ohio SEET review.²⁹³

In contrast, the two prior ESPs for these Companies *expressly* provided for the exclusion of deferred carrying charges as does the proposed Stipulation here. Thus, the applicable precedent in this situation is the Commission’s decision in its generic SEET proceeding in which it stated:

²⁹⁰ Dr. Duann’s testimony used a case designation convention for the SEET review filings where the year reference is to the period for which the EDU’s earnings are being examined. Thus, for example, his reference to “AEP Ohio’s 2009 SEET case” is to the review of 2009 earnings, although the case was in fact filed in 2010 and not decided until 2011. *See generally In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Administration of the Significantly Excessive Earnings Test Under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Admin. Code*, Case No. 10-1261-EL-UNC, Opinion and Order (Entry date: Jan. 11, 2011) (“Case 10-1261-EL-UNC”).

²⁹¹ Duann Testimony, p. 9.

²⁹² Dr. Duann’s credentials do not include a law degree, nor does he purport to be offering legal opinions.

²⁹³ Opinion and Order, Case No. 10-1261-EL-UNC, pp. 30-31 (Entry date: Jan. 11, 2011).

[T]he Commission further finds that where an electric utility's ESP or MRO has been resolved by stipulation, which includes a method for the treatment of write-offs and deferrals in calculating the SEET, the Commission is not modifying the stipulation with this proceeding, to the extent that the issue is adequately addressed in the stipulation and the order approving the stipulation. Accordingly, the approved standard service offer stipulations of Duke and FirstEnergy shall stand as approved by the Commission to the extent the treatment of deferrals and write-offs in the SEET calculation were addressed.²⁹⁴

Moreover, the Commission's decision in its generic SEET proceeding provides further rationale why, rather than being precedent for the treatment of deferrals for SEET purposes, the effect of the Commission's decision in AEP's 2009 SEET case should be limited to its own underlying circumstances:

The Commission recognizes that the issues surrounding the treatment of deferrals are extremely complex. . . . Because many factors need to be considered in order to weigh the appropriateness of the treatment of any given deferral, the Commission finds that the treatment of deferrals, for purposes of the SEET, should be determined on a case-by-case basis.²⁹⁵

Thus, Dr. Duann's advocacy of what effectively amounts to a rule of general applicability for the inclusion of deferrals for SEET purposes has already been rejected by the Commission in the generic SEET proceeding in favor of applying a case by case approach. The notion that "one size fits all" EDUs based upon the result of a single SEET review involving just the AEP Ohio companies should again be rejected and is not a basis for rejection or modification of the Stipulation here.

Dr. Duann also said he found no justification in the Stipulation or its accompanying materials in support of the exclusion of deferred carrying charges from the future SEET

²⁹⁴ *In the Matter of the Investigation into the Development of the Significantly Excessive Earnings Test Pursuant to Amended Substitute Senate Bill 221 for Electric Utilities* ("generic SEET proceeding"), Case No. 09-786-EL-UNC, Finding and Order, p. 16 (Entry date: June 30, 2010).

²⁹⁵ *Id.*

calculations during the period of the proposed ESP.²⁹⁶ What he overlooked, however, is that the Stipulation here, as was the case with the Stipulations that supported the Companies' earlier ESPs, reflects the result of negotiations and give and take bargaining. In such negotiations and bargaining, various Signatory Parties agreed upon a package of provisions which encompassed the individual items that the Parties considered held value for each of them. Thus, *arguendo* (and consistent with Dr. Duann's perspective), while the Companies may be benefitted by being less in jeopardy of an adverse future SEET determination by having this exclusionary provision, the trade off is that customers have also realized a benefit in the Stipulations from the creation and continuation of the deferrals.²⁹⁷ As the Commission recognized in its consideration of deferrals in the generic SEET proceeding:

[D]eferrals are a regulatory tool used by the Commission to avoid rate shock to customers and as such can be a public benefit.²⁹⁸

No Stipulation that expressly captures such a tradeoff is to be found in the AEP Ohio circumstances upon which OCC witness Duann bases his recommendation.

Finally, Dr. Duann offered no analytic support for his conjecture that "the ROEs of the three utilities calculated under this provision may be *much* lower than the ROEs reported in the FirstEnergy EDU's financial statements."²⁹⁹ In fact, rather than being "much lower" as he suggests, an actual analysis provided by Company witness Ridmann showed the impact of excluding deferred carrying charges from SEET calculations is minimal³⁰⁰ and, with the

²⁹⁶ Duann Testimony, p. 12.

²⁹⁷ Creation of the deferrals necessarily prompts accrual of a carrying charge, required so that over the course of recovery of the deferred costs, the Companies are ultimately made whole.

²⁹⁸ Finding and Order, Case No. 09-786-EL-UNC, p. 16.

²⁹⁹ Duann Testimony, p. 8 (emphasis added).

³⁰⁰ With respect to CEI in 2011, for example, the impact of the deferred carrying charges would have been approximately 100 basis points which, even if added to the 2% ROE (as calculated for SEET purposes), would still produce a result vastly below any reasonably determined SEET threshold. Tr. Vol. I, p. 220.

securitization of deferred balances pursuant to the application filed in Case No. 12-1465-EL-ATS, will be considerably smaller still.³⁰¹ Contrary to Dr. Duann's speculation, there is little impact on the SEET review or likely SEET determination from exclusion of the deferred carrying charges and no reason to reject or modify the Stipulation.

3. Recovery of lost distribution revenue is permissible and proper.

OCC witness Gonzalez contended that the Commission should reject the Stipulation's provision for recovery of lost distribution revenues ("LDR").³⁰² His argument, however, overlooks the Commission's approval of the Companies' recovery of LDR in Case No. 10-388-EL-SSO.

There is no dispute that recovery of LDR is allowed under R.C. § 4928.143.³⁰³ Nor is there any dispute that successful energy efficiency programs can benefit customers. Indeed, OCC witness Mr. Gonzalez testified in three other cases that successful energy efficiency programs result in lost distribution revenue.³⁰⁴ Mr. Gonzalez also testified, as he had previously, that recovery of lost distribution revenue provides incentives for companies to put energy efficiency programs in place.³⁰⁵

Mr. Gonzalez also contended that the open-ended nature of the LDR collection period will harm customers.³⁰⁶ This concern is unfounded. The proposed Stipulation only seeks authority to continue recovery of lost distribution revenue during the period June 1, 2014 through

³⁰¹ *Id.*, pp. 219-220. Upon approval of the securitization application, the impact of the remaining deferred carrying charges on any one of the Companies' SEET earnings would be no more than 20 basis points. *Id.*, p. 220.

³⁰² Gonzalez Testimony, pp. 37-41.

³⁰³ Third Entry on Rehearing, Case No. 10-388-EL-SSO, p. 8 (Entry date: Feb. 9, 2011); *see also* R.C. § 4928.143(B)(2)(h).

³⁰⁴ Tr. Vol. III, p. 121. The fact that these cases involved natural gas utilities is a distinction without a difference. The same energy efficiency concerns apply within the electricity distribution context. *Id.*, p. 122.

³⁰⁵ Tr. Vol. III, pp. 121-122.

³⁰⁶ Gonzalez Testimony, pp. 37-38.

May 31, 2016.³⁰⁷ Moreover, the Commission has already rejected this same argument in Case No. 10-388-EL-SSO.³⁰⁸ In that case, the Commission held that any recovery of LDR beyond the time period covered by Stipulation is not relevant. The Commission also found that Mr. Gonzalez’s “assumptions” regarding his complaints regarding the Companies open-ended collection of LDR to be “arbitrary and unrealistic.”³⁰⁹

In this case, Mr. Gonzalez’s original calculation of the Companies’ potential LDR recovery also was wrong. On the stand, he acknowledged that he had overstated the amount of potential LDR recovery in his pre-filed testimony.³¹⁰ After recanting his prior testimony, Mr. Gonzalez testified that the potential LDR recovery beginning with 2012 was \$49.9 million, not \$75.6 million.³¹¹ And he admitted that the total potential amount of LDR recovery for the ESP 3 time period (the relevant time period) was \$22.2 million.³¹²

In sum, OCC’s challenge to the Companies’ recovery of LDR boils down to an unsupported complaint that the Commission should reject the Stipulation because it allows for LDR recovery.³¹³ The OCC does not argue that the recovery of LDR violates any specific regulatory principle or rule. The OCC’s unsupported challenge thus should be rejected.

4. ELR interruptible load programs benefit all customers.

OCC witness Gonzalez also contended that Rider DSE unfairly collects costs associated with ELR interruptible load programs, which are demand response resources, from residential

³⁰⁷ Stip., § E.3.

³⁰⁸ Opinion and Order, Case No. 10-388-EL-SSO, p. 45.

³⁰⁹ *Id.*, pp. 44-45.

³¹⁰ Tr. Vol. III, pp. 123-124.

³¹¹ *Id.*, p. 124.

³¹² *Id.*

³¹³ *Id.*, p. 161.

customers.³¹⁴ He argued that Rider DSE should be eliminated in favor of full collection of these costs from non-residential customers.³¹⁵

OCC asserted this argument in Case No. 10-388-EL-SSO.³¹⁶ The Commission nonetheless approved the Stipulation and allowed the Companies to recover the costs associated with demand response resources from all customers.³¹⁷

Indeed, Mr. Gonzalez admitted that the existence of Rider ELR interruptible load programs could lead to lower generation prices that would benefit all customers.³¹⁸ Mr. Gonzalez also acknowledged that Rider ELR interruptible load when called under Rider ELR because of an emergency situation can serve as a benefit to customers to the extent it helps to avoid a capacity shortfall.³¹⁹ He explained that emergency interruption under Rider ELR provides the benefit of “reliability” to all customers.³²⁰

Thus, even OCC witness Gonzalez recognized that the Companies’ Rider ELR interruptible load program benefits all customers. As a result, residential customers should share in the cost of securing these benefits. The Commission should reject OCC’s argument.

5. The absence of a purchase of receivables program or supplier consolidated billing is appropriate.

Certain opposing intervening parties (specifically, Interstate Gas Supply, Inc. (“IGS”), RESA, Direct Energy Services, LLC and Direct Energy Business, LLC) contended that the Commission should require the Companies to implement a purchase of receivables (“POR”)

³¹⁴ Gonzalez Testimony, p. 42.

³¹⁵ *Id.*, p. 42.

³¹⁶ Tr. Vol. III, p. 102.

³¹⁷ *Id.*, p. 104.

³¹⁸ *Id.*, p. 99.

³¹⁹ *Id.*, p. 100.

³²⁰ *Id.*

program.³²¹ Such a program is not included under the current ESP and is not proposed as part of the Companies' ESP 3 filing.

Since 2003, the Companies have applied partial payments received from shopping customers pursuant to a priority that first arose from a stipulation in Case No. 02-1944-EL-CSS.³²² This Partial Payment Posting Priority applies partial payments generally in the following order: (1) CRES arrears; (2) utility service arrears; (3) utility service current bill; and (4) CRES current bill.³²³

Over the past decade, shopping levels have increased in the Companies' territories. Today, the Companies have the highest level of shopping in the state.³²⁴ Switch rates as of December 31, 2011, published by the Commission's Division of Market Monitoring & Assessment, were as follows:³²⁵

³²¹ Ringenbach Testimony, p. 16; Parisi Testimony, p. 4.

³²² *In the Matter of the Complaint of WPS Energy Services, Inc. and Green Mountain Energy Company v. FirstEnergy, Cleveland Electric Illuminating Company, and Ohio Edison Company*, Case No. 02-1944-EL-CSS, Opinion and Order, p. 3 (Entry date: Aug. 6, 2003).

³²³ *Id.*

³²⁴ Tr. Vol. II, p. 19; Tr. Vol. III, pp. 29-30.

³²⁵ Parisi Testimony, Exhibit 3.

Company	Residential	Commercial	Industrial	Total
CEI	74.51	77.91	70.73	74.55
Ohio Edison	64.14	72.83	70.72	64.95
Toledo Edison	62.89	72.30	79.40	63.79
Columbus Southern	4.41	21.68	25.47	6.33
Duke Energy	30.86	44.19	62.62	32.57
DPL	9.58	32.30	53.75	12.56
Ohio Power	3.08	6.65	7.80	3.64

Even Direct Energy Services, LLC, Direct Energy Business, LLC (collectively “Direct Energy”) and RESA’s witness, Teresa Ringenbach, admitted that CRES providers are not suffering a competitive disadvantage from the lack of a POR program.³²⁶ IGS witness Vincent Parisi similarly admitted that “we’re on equal footing with respect to other CRES providers, with or without [a POR program].”³²⁷

In comparison, a POR program essentially provides a subsidy to CRES providers that undermines the market and sends the wrong price signals to customers.³²⁸ IGS, Direct Energy and RESA witnesses each testified that a POR program would shift uncollectible expenses that a CRES provider incurs and place them on the Companies.³²⁹ As a result, non-shopping customers of the Companies would bear the uncollectible expenses generated from customers of the CRES

³²⁶ Tr. Vol. III, p. 64.

³²⁷ Tr. Vol. II, p. 210.

³²⁸ Tr. Vol. I, p. 267.

³²⁹ Tr. Vol. II, pp. 187-188; Tr. Vol. III, p. 66.

providers.³³⁰ These are expenses that the customers of the Companies would not otherwise bear.³³¹ Indeed, IGS witness Mr. Parisi acknowledged that subsidies are not pro-competitive.³³² Direct and RESA witness Ringenbach was unaware of any public utility laws or rules that prohibit subsidies in Ohio.³³³ But in fact, R.C. § 4928.02(H), specifically sets forth state policy as one of avoiding anticompetitive subsidies flowing from noncompetitive retail electric service to competitive retail electric service and vice versa. Therefore, Direct Energy's, RESA's, and IGS's proposal to be subsidized by nonshopping customers for their uncollectible expense is directly at odds with this state policy.

A POR program also may lead to higher amounts of uncollectible expenses for customers.³³⁴ CRES providers currently have higher uncollectible expenses compared to utilities.³³⁵ Under a POR program, CRES providers would be relieved of any risk of non-collection.³³⁶ Instead, CRES providers, under the Direct Energy and IFS preferred approach,³³⁷ would receive payment for their billing regardless of how much their customers ultimately pay.³³⁸ Indeed, Mr. Parisi and Ms. Ringenbach acknowledged that this program would allow a CRES provider to become indifferent as to whether its customers pay their electric bills.³³⁹

³³⁰ Tr. Vol. III, p. 68.

³³¹ *Id.*, pp. 69-70, 90.

³³² Tr. Vol. II, p. 187.

³³³ Tr. Vol. III, p. 67.

³³⁴ Tr. Vol. I, pp. 247-248; Tr. Vol. II, pp. 189-190.

³³⁵ Tr. Vol. II, p. 189.

³³⁶ *Id.*, p. 194.

³³⁷ Tr. Vol. III, p. 68; Tr. Vol. II, p. 187.

³³⁸ Tr. Vol. II, pp. 193, 194.

³³⁹ *Id.*, p. 194; Tr. Vol. III, pp. 68-69.

Notably, none of the parties supporting a POR program performed any studies to determine the effect that a POR program would have on low income customers.³⁴⁰ Indeed, Ms. Ringenbach testified that the Commission should consider such a study before adopting a purchase of receivables program.³⁴¹ Worse, the parties advocating a POR program seek an order compelling the Companies to cover the cost of uncollectible expenses for CRES providers *but have provided no information regarding the extent of these costs*. Ms. Ringenbach testified that she did not know whether Direct Energy has any collection issues with customers.³⁴² She did not know the debt collection practices of any other CRES providers serving the Companies' territories.³⁴³ Nor did she know the debt collection practices of CRES providers in other states that do not offer a POR program.³⁴⁴ None of the intervenors has studied the effect that a POR program would have on the Companies.³⁴⁵

Nor have the parties advocating for a POR program demonstrated there is a need for such a program. Ms. Ringenbach testified that only five states out of the fifteen states offering competitive retail electric service currently offer a POR program to CRES providers.³⁴⁶ Company witness William Ridmann explained that “[t]he other states mentioned where there is POR programs have shopping rates substantially lower than [the Companies’ shopping rates].”³⁴⁷

IGS witness Vincent Parisi also revealed a fundamental misunderstanding of the scope and intent of Attachment D to the Stipulation and Recommendation. Attachment D is related

³⁴⁰ *Id.*, p. 195; Tr. Vol. III, p. 71.

³⁴¹ Tr. Vol. III, p. 71.

³⁴² *Id.*, pp. 71-72.

³⁴³ *Id.*, p. 72.

³⁴⁴ *Id.*

³⁴⁵ *Id.*, pp. 72-73.

³⁴⁶ *Id.*, p. 64.

³⁴⁷ Tr. Vol. II, p. 18.

solely to a phase-in credit for governmental aggregation programs in the event that the Commission orders a phase-in under R.C. § 4928.144. Mr. Parisi believed that Attachment D applied to all receivables of a supplier serving a governmental aggregation regardless of whether any phase-in has been ordered by the Commission. But such a view is contradicted by the plain and unambiguous language of the first sentence of R.C. § 4928.144.³⁴⁸ Specifically, the first sentence of Attachment D sets the scope and purpose for this provision; it only applies when the Commission has ordered a phase-in under R.C. § 4928.144 of generation pricing arising out of the auction provided for in the Stipulation and Recommendation. While IGS witness Mr. Parisi seemed to understand this, he did not understand other provisions of Attachment D.³⁴⁹ He acknowledged that the Commission has never ordered a phase-in as contemplated by Attachment D and he did not expect that the Commission would do so in this proceeding.³⁵⁰ Because of IGS witness Mr. Parisi's misinterpretation and misunderstanding of the applicability of Attachment D, the Commission cannot rely upon his recommendation in deciding this issue.

Most importantly, adoption of a POR program would require the Commission to change its current rules regarding disconnection. Utilities do not presently have the ability to disconnect for nonpayment of charges provided by CRES providers.³⁵¹ IGS witness Vincent Parisi admitted that a "key component" of IGS's recommendation for a POR program is for the utility to have the ability to disconnect for CRES charges.³⁵² Direct Energy and RESA witness Teresa Ringenbach similarly admitted that part of her proposal for a POR program requires an electric utility to have the ability to disconnect customers for nonpayment of charges provided by CRES

³⁴⁸ Tr. Vol. II, p. 201.

³⁴⁹ *Id.*, p. 199.

³⁵⁰ *Id.*, p. 198.

³⁵¹ Tr. Vol. III, p. 70.

³⁵² Tr. Vol. II, p. 212.

providers.³⁵³ Mr. Parisi and Ms. Ringenbach also acknowledged that the total amount that would cause a customer to be disconnected would increase under a POR program.³⁵⁴ Thus, none of these recommendations is feasible unless the Commission changes the disconnection rules for electric utilities.

Given the high level of shopping in the Companies' certified territories and the number of suppliers available to serve those customers,³⁵⁵ a POR program is not needed to "jump start" competition as was needed in other states. Further, adopting a POR program would cause unnecessary expenditures by the EDUs, which is unneeded in Ohio's highly-developed competitive market for retail generation.³⁵⁶

For all of the foregoing reasons, including the creation of anticompetitive subsidies that contradict state policy, the creation of unneeded costs that would be imposed upon the Companies and its customers, the disconnection of a customer's electric service for nonpayment of CRES charges, and given the highly competitive market already existing in Ohio, the Commission should reject the proposal to mandate a purchase of receivables program.

Intervening parties Direct Energy and RESA also contended that the Commission should require the Companies to implement supplier consolidated billing.³⁵⁷ But rather than working out the details of this plan, their witness Teresa Ringenbach simply suggested that the Commission hold a workshop to determine them.³⁵⁸

³⁵³ Tr. Vol. III, p. 70.

³⁵⁴ Tr. Vol. II, p. 211; Tr. Vol. III, p. 70.

³⁵⁵ Mr. Ridmann noted that there are 30 to 35 CRES providers currently registered to provide services in the Companies' territories. Tr. Vol. I, pp. 38-39.

³⁵⁶ Parisi Testimony, Exhibit 3.

³⁵⁷ Ringenbach Testimony, pp. 14-15; Tr. Vol. III, p. 75; Bennett Testimony, pp. 7-9.

³⁵⁸ *Id.*, pp. 14-15; Tr. Vol. III, p. 75.

The details that Ms. Ringenbach was able to provide, however, demonstrate Direct Energy and RESA's motive for their request. Under supplier consolidated billing, a supplier would take responsibility for billing, including billing the regulated utility charges on the utility portion of the bill.³⁵⁹ The supplier then could use the bill to market its products and gain business advantages and brand loyalty.³⁶⁰ Ms. Ringenbach explained that this is one of the "primary benefits" for implementing supplier consolidated billing.³⁶¹ Yet Direct Energy and RESA can accomplish this goal without an order from the Commission. Ms. Ringenbach admitted that, even without supplier consolidated billing, a CRES provider could bill directly its customers.³⁶² The CRES provider also could design the bill format.³⁶³

Indeed, only one state, Texas, has adopted supplier consolidated billing.³⁶⁴ The differences between Texas's utility model and Ohio's model, however, are striking.³⁶⁵ Unlike Ohio, Texas does not designate a utility as the default service provider.³⁶⁶ In Texas, the RTO serves as a "middleman that you don't have in Ohio today."³⁶⁷ In addition, there are "smart meters all across Texas . . . so some these things wouldn't apply in Ohio because we don't have the meter structure for it."³⁶⁸

Moreover, supplier consolidated billing is inefficient and costly. It would require the Commission to change the current system and allow CRES providers to shut off a customer's

³⁵⁹ Tr. Vol. III, pp. 75-76.

³⁶⁰ *Id.*, p. 76.

³⁶¹ *Id.*, p. 77.

³⁶² Tr. Vol. III, p. 78.

³⁶³ *Id.*

³⁶⁴ *Id.*, p. 77.

³⁶⁵ *Id.*, pp. 77-78.

³⁶⁶ *Id.*, p. 85.

³⁶⁷ *Id.*, p. 86.

³⁶⁸ *Id.*

electric service.³⁶⁹ Because a supplier could choose whether to provide supplier consolidated billing, the Companies also would need to maintain their current billing system for those CRES providers who do not opt to participate in the program.³⁷⁰ And the Companies would need to maintain the current system for those suppliers who change their minds and decide not to continue to undertake the responsibility of providing billing services. Indeed, Ms. Ringenbach acknowledged that Direct Energy could opt to shift billing responsibilities back to the Companies once a customer's contract expired, which may be as often as every other year.³⁷¹ The Companies thus would need to maintain a billing system even for Direct Energy, effectively requiring the Companies to stand by as the biller of last resort.

Supplier consolidated billing should not be compelled by the Commission. The Companies already have in place a highly developed and well-functioning billing system that serves millions of customers, including over a million shopping customers and numerous suppliers. Supplier consolidated billing would cause significant costs for the purpose of creating duplicative billing systems and would give CRES providers the right to disconnect customers, all for the purpose of giving certain CRES providers a business advantage by providing them a better avenue to sell their non-electric products.³⁷² The Commission should reject supplier consolidated billing.

6. Enhanced EDI is unnecessary.

Intervening party RESA, through the testimony of Stephen Bennett, contended that the Commission should require the Companies to implement additional provisions for supplier

³⁶⁹ *Id.*, p. 78.

³⁷⁰ *Id.*, pp. 79-80.

³⁷¹ Tr. Vol. III, p. 80.

³⁷² Direct Energy has only three employees who are dedicated to compliance, including billing issues, for Ohio, Illinois, Michigan, Pennsylvania, Indiana and Kentucky. Tr. Vol. III, p. 82.

EDI.³⁷³ The Companies, however, have reached an agreement with Constellation and Exelon to provide nearly all of the additional provisions requested by RESA.³⁷⁴ The Companies will provide loss factor, service voltage and special meter configuration, support supplier drop rescission requests via supplier initiated EDI 814 Reinstatement, adopt EDI standards for special meter configuration (“REFKY”) and provide supplier bill messaging on utility consolidated bills.³⁷⁵ Under the terms of this agreement, the Companies also will provide other EDI enhancements to suppliers that Mr. Bennett did not request in his testimony.³⁷⁶

Mr. Bennett testified that the only EDI enhancement that he still requests that the Companies implement is web-based data enhancements. Although Mr. Bennett admitted that the Companies have already installed a web-based EDI system,³⁷⁷ he acknowledged that he was not familiar with this system before he requested that the Commission order the Companies to improve it.³⁷⁸ In fact, Mr. Bennett admitted that he has only one-year of experience in this area.³⁷⁹ He admitted that he has no familiarity with the Ohio Administrative Code or the Commission’s rules regarding confidentiality of customer information.³⁸⁰ And Mr. Bennett admitted that he is not aware of the Ohio Administrative Code or the Commission’s rules regarding information that must be given to suppliers relating to eligible customers.³⁸¹ Mr. Bennett was thus unable to represent whether his requested order would comply with Ohio law.

³⁷³ Bennett Testimony, p. 5.

³⁷⁴ Company Exhibit 7.

³⁷⁵ Tr. Vol. II, pp. 73-76.

³⁷⁶ *Id.*, p. 75.

³⁷⁷ *Id.*, pp. 76-77.

³⁷⁸ *Id.*, p. 63.

³⁷⁹ *Id.*, p. 62.

³⁸⁰ *Id.*, p. 70.

³⁸¹ *Id.*

Mr. Bennett's lack of knowledge perhaps explains why he complained that the Companies' web-based data system is inadequate because it does not provide account numbers.³⁸² He failed to recognize that the Companies are prohibited under Rule 4901:1-10-24(E)(1), Ohio Administrative Code, from providing account numbers on the eligibility lists. Specifically, that rule proscribes the disclosure of "customer specific information" without the written consent of the customer except in very limited circumstances.

In any event, the additional enhancements requested by Mr. Bennett are unnecessary. Mr. Bennett admitted that the Companies' web-based system includes account numbers on interval lists and that this information is helpful.³⁸³ Indeed, he acknowledged that Exelon uses the Companies' web-based system to compete as a CRES provider in the Companies' service territories.³⁸⁴ Therefore, Mr. Bennett's arguments for additional web-based enhancements should be disregarded.

7. The Companies have acted reasonably in bidding EE into the BRA.

In the Stipulation, the Companies agreed to bid up to 65 Megawatts of energy efficiency credits into the PJM May 2012 Base Residual Auction ("BRA").³⁸⁵ This commitment was contingent on: (1) PJM's approval of the Companies' Evaluation, Measurement and Verification ("EM&V") plan; and (2) the Companies' ability to obtain the ownership rights in the energy

³⁸² Tr. Vol. II, p. 84. Mr. Bennett uses the term "account number" and "customer number" interchangeably. Even though these two numbers are different numbers, they both can be used to identify a customer and therefore privacy concerns contemplated by Rule 4901:1-10-24(E)(1) are the same for both numbers.

³⁸³ *Id.*, pp. 85-87.

³⁸⁴ *Id.*, pp. 85-86.

³⁸⁵ Stip., § E.9.

efficiency credits generated through customer projects.³⁸⁶ The Companies EM&V Plan was approved and the Companies bid 36 MWs into the BRA.³⁸⁷

Sierra Club witness Chris Neme did not believe that the Companies bid sufficient resources into the BRA, claiming that the Companies should have bid 339 MWs,³⁸⁸ instead of the 36 MWs the Companies' actually bid.³⁸⁹ Yet, as Mr. Neme explained, his estimate was simply a "ball park number" – a number which was based on assumptions and incomplete information.³⁹⁰ In fact, he admitted that he was not making any recommendations in this case regarding the Companies' accountability in the most recent BRA.³⁹¹

That Mr. Neme could only provide "ball park" numbers and no recommendations is not surprising. As Mr. Neme explained, he has never been an employee of an investor-owned utility.³⁹² Nor has he ever been involved in the development of a capacity auction bidding strategy by an investor-owned utility.³⁹³ He acknowledged that he did not know all of the factors that had to be considered by an investor-owned utility when developing their bidding strategy, and did not know the mechanics of the PJM auction.³⁹⁴

³⁸⁶ *Id.*

³⁸⁷ Tr. Vol. I, pp. 301-302.

³⁸⁸ Sierra Club Witness Neme originally estimated the amount that should have been bid at 361 MWs, Neme Testimony, p. 9, but modified his estimate after counsel pointed out during Mr. Neme's deposition that his estimate failed to factor in realization rates and modifications to federal standards -- both of which caused his estimate to be overstated. Tr. Vol. I, pp. 342-343.

³⁸⁹ Tr. Vol. I, pp. 353-354.

³⁹⁰ *Id.*, p. 357.

³⁹¹ *Id.*, pp. 357-358.

³⁹² *Id.*, pp. 343-344.

³⁹³ *Id.*, p. 344.

³⁹⁴ *Id.*, pp. 343-344.

Prior to developing his testimony, Mr. Neme failed to review the Companies' current energy efficiency portfolio plans approved in Case No. 09-1947-EL-POR,³⁹⁵ the Ohio Revised Code or the Ohio Administrative Code.³⁹⁶ He was incorrect in his assumptions as to how many MWs the Companies committed to bid into the BRA.³⁹⁷ Only after submitting his testimony did he review the bids made by American Electric Power, and never bothered to determine if either Duke Energy Ohio or Dayton Power & Light bid into the BRA and, if so, how much their bids were.³⁹⁸

Similarly, when developing his bid estimate, he based it on numbers provided in the Companies' 2010 and 2011 energy efficiency portfolio status reports filed in Case Nos. 11-2956-EL-EEC and 12-1533-EL-EEC,³⁹⁹ even though he was not sure as to how the numbers were derived, or if they were based on estimated or actual program results.⁴⁰⁰ As Mr. Neme acknowledged, there are a number of variables that must be considered when determining the amount to be bid into the PJM auction, many of which were not available to him.⁴⁰¹

Mr. Neme suggested that the Companies should bid energy credits that it may obtain in the future, arguing that the rewards of doing so, outweigh the risks.⁴⁰² Yet when drawing this conclusion, Mr. Neme did so without even knowing the level of penalties the Companies would

³⁹⁵ *Id.*, p. 363.

³⁹⁶ *Id.*, pp. 345-346.

³⁹⁷ *Id.*, pp. 342-343. Mr. Neme omitted an adjustment to savings from CFLs and failed to realize that the Companies' numbers in its 2011 annual report did not fully reflect adjustments from evaluations of the programs. *Id.*

³⁹⁸ *Id.*, pp. 348-349.

³⁹⁹ *Energy Efficiency and Peak Demand Reduction Program Portfolio Status Report to the Public Utilities Commission of Ohio*, Case No. 11-2956-EL-LEC (May 23, 2011) and *Energy Efficiency and Peak Demand Reduction Program Portfolio Status Report to the Public Utilities Commission of Ohio*, Case No. 12-1533-EL-EEC (May 15, 2012).

⁴⁰⁰ Tr. Vol. I, pp. 350-352.

⁴⁰¹ *Id.*, pp. 355-357.

⁴⁰² *Id.*, pp. 347-348.

incur should the Companies not be able to deliver these future resources.⁴⁰³ As Mr. Ridmann explained, the Companies are not inclined to take on unnecessary risk, especially when there is no financial benefit to the Companies for doing so.⁴⁰⁴

In sum, the amount suggested by Mr. Neme that the Companies should have bid into the BRA is based on assumptions on top of estimates, which reflect a “ball park number” based on incomplete information. In light of the fact that Sierra Club’s witness indicated that he was making no recommendations in this proceeding as to the Companies’ accountability in the BRA, the suggestions of Sierra Club should be rejected.

CONCLUSION

The Companies’ Application and the Signatory Parties’ Stipulation proposes an ESP that meets the requirements of R.C. § 4928.143, benefits customers and continues most of the provisions under the Companies’ current and successful ESP. Further, the evidence establishes that the Stipulation is reasonable and the Companies’ proposed ESP 3 is more favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO. It is the result of serious bargaining among capable and knowledge parties; it benefits ratepayers and promotes the public interest; and it violates no regulatory principle or practice. Accordingly, the Commission should approve the Stipulation and the ESP 3 proposed therein as filed.

⁴⁰³ *Id.*, p. 354.

⁴⁰⁴ *Id.*, pp. 321-322.

Respectfully submitted,

/s/ James W. Burk

James W. Burk, Counsel of Record

Arthur E. Korkosz

Kathy J. Kolich

Carrie M. Dunn

FIRSTENERGY SERVICE COMPANY

76 South Main Street

Akron, OH 44308

(330) 384-5861

(330) 384-3875 (fax)

burkj@firstenergycorp.com

korkosza@firstenergycorp.com

kjkolich@firstenergycorp.com

cdunn@firstenergycorp.com

David A. Kutik (0006418)

JONES DAY

901 Lakeside Avenue

Cleveland, OH 44114

(216) 586-3939

(216) 579-0212 (fax)

dakutik@jonesday.com

Attorneys for Applicants, Ohio Edison
Company, The Cleveland Electric Illuminating
Company, and The Toledo Edison Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Initial Post-Hearing Brief of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company was sent to the following by e-mail this 22nd day of June, 2012:

“Amy.Spiller@Duke-Energy.com” <Amy.Spiller@Duke-Energy.com>,
“cynthia.brady@constellation.com” <cynthia.brady@constellation.com>,
“dakutik@JonesDay.com” <dakutik@JonesDay.com>, “dane.stinson@baileycavalieri.com”
<dane.stinson@baileycavalieri.com>, “david.fein@constellation.com”
<david.fein@constellation.com>, “DBoehm@bkllawfirm.com” <DBoehm@bkllawfirm.com>,
“drinebolt@ohiopartners.org” <drinebolt@ohiopartners.org>, “dryan@mwncmh.com”
<dryan@mwncmh.com>, “ehess@mwncmh.com” <ehess@mwncmh.com>,
“Garrett.Stone@bbrslaw.com” <Garrett.Stone@bbrslaw.com>, “gregory.dunn@icemiller.com”
<gregory.dunn@icemiller.com>, “GKrassen@Bricker.com” <GKrassen@Bricker.com>,
“jbowser@mwncmh.com” <jbowser@mwncmh.com>, “Lang, Jim” <JLang@Calfee.com>,
“korkosza@firstenergycorp.com” <korkosza@firstenergycorp.com>, “mhpeticoff@vorys.com”
<mhpeticoff@vorys.com>, “Mike.Lavanga@bbrslaw.com” <Mike.Lavanga@bbrslaw.com>,
“MKurtz@bkllawfirm.com” <MKurtz@bkllawfirm.com>, “mparke@firstenergycorp.com”
<mparke@firstenergycorp.com>, “murraykm@mwncmh.com” <murraykm@mwncmh.com>,
“MWarnock@Bricker.com” <MWarnock@Bricker.com>, “Ray.Strom@puc.state.oh.us”
<Ray.Strom@puc.state.oh.us>, “ricks@ohanet.org” <ricks@ohanet.org>,
“TOBrien@Bricker.com” <TOBrien@Bricker.com>, “trent@theOEC.org”
<trent@theOEC.org>, “VLeach-Payne@mwncmh.com” <VLeach-Payne@mwncmh.com>,
“burkj@firstenergycorp.com” <burkj@firstenergycorp.com>, “jpmeissn@lasclev.org”
<jpmeissn@lasclev.org>, “robert.fortney@puc.state.oh.us” <robert.fortney@puc.state.oh.us>,
“McBride, Laura” <LMcBride@Calfee.com>, “doris.mccarter@puc.state.oh.us”
<doris.mccarter@puc.state.oh.us>, “Ccunningham@Akronohio.Gov”
<Ccunningham@Akronohio.Gov>, “rkelter@elpc.org” <rkelter@elpc.org>,
“joliker@mwncmh.com” <joliker@mwncmh.com>, “dsullivan@nrdc.org”
<dsullivan@nrdc.org>, “callwein@wamenergylaw.com” <callwein@wamenergylaw.com>,
“lmcaster@bricker.com” <lmcaster@bricker.com>, “matt@matthewcoxlaw.com”
<matt@matthewcoxlaw.com>, “greg.lawrence@cwt.com” <greg.lawrence@cwt.com>,
“cathy@theoec.org” <cathy@theoec.org>, “Tammy.Turkenton@puc.state.oh.us”
<Tammy.Turkenton@puc.state.oh.us>, “teresa.ringenbach@directenergy.com”
<teresa.ringenbach@directenergy.com>, “ray.strom@puc.state.oh.us”
<ray.strom@puc.state.oh.us>, “robinson@citizenpower.com” <robinson@citizenpower.com>,
“ricks@ohanet.org” <ricks@ohanet.org>, “myurick@taftlaw.com” <myurick@taftlaw.com>,
“nolan@theOEC.org” <nolan@theOEC.org>, “sam@mwncmh.com” <sam@mwncmh.com>,
“smhoward@vorys.com” <smhoward@vorys.com>, “steven.huhman@morganstanley.com”
<steven.huhman@morganstanley.com>, “Thomas.McNamee@puc.state.oh.us”
<Thomas.McNamee@puc.state.oh.us>, “jmclark@vectren.com” <jmclark@vectren.com>,
“gpoulos@enernoc.com” <gpoulos@enernoc.com>, “cmooney2@columbus.rr.com”
<cmooney2@columbus.rr.com>, “RHorvath@city.cleveland.oh.us”
<RHorvath@city.cleveland.oh.us>, “christopher.miller@icemiller.com”
<christopher.miller@icemiller.com>, “asim.haque@icemiller.com”

<asim.haque@icemiller.com>, “vparisi@igsenergy.com” <vparisi@igsenergy.com>, “sauer@occ.state.oh.us” <sauer@occ.state.oh.us>, “etter@occ.state.oh.us” <etter@occ.state.oh.us>, “yost@occ.state.oh.us” <yost@occ.state.oh.us>, “leslie.kovacik@toledo.oh.gov” <leslie.kovacik@toledo.oh.gov>, “trhayslaw@gmail.com” <trhayslaw@gmail.com>, “Judi.sobecki@dplinc.com” <Judi.sobecki@dplinc.com>, “Randall.Griffin@dplinc.com” <Randall.Griffin@dplinc.com>, “Jkyler@bkllawfirm.com” <Jkyler@bkllawfirm.com>, “tsiwo@bricker.com” <tsiwo@bricker.com>, “jeanne.kingery@duke-energy.com” <jeanne.kingery@duke-energy.com>, “dorothy.corbett@duke-energy.com” <dorothy.corbett@duke-energy.com>, “jejadwin@aep.com” <jejadwin@aep.com>, “mdortch@kravitzllc.com” <mdortch@kravitzllc.com>, “mjsatterwhite@aep.com” <mjsatterwhite@aep.com>, “stnourse@aep.com” <stnourse@aep.com>, “sandy.grace@exeloncorp.com” <sandy.grace@exeloncorp.com>, “stephen.bennett@exeloncorp.com” <stephen.bennett@exeloncorp.com>, “lkalepsclark@vorys.com” <lkalepsclark@vorys.com>, “wtppmlc@aol.com” <wtppmlc@aol.com>, “BarthRoyer@aol.com” <BarthRoyer@aol.com>, “robb.kapla@sierraclub.org” <robb.kapla@sierraclub.org>, jvickers@elpc.org, dstahl@eimerstahl.com

/s/ David A. Kutik

An Attorney for Ohio Edison Company, The
Cleveland Electric Illuminating Company, and
The Toledo Edison Company

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Summary: Text Initial Post-Hearing Brief electronically filed by Ms. Carrie M Dunn on behalf of The Cleveland Electric Illuminating Company and Ohio Edison Company and The Toledo Edison Company