

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

POST HEARING BRIEF OF THE OMA ENERGY GROUP

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On behalf of the OMA Energy Group

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I. INTRODUCTION

The purpose of this case is to determine the default or Standard Service Offer (“SSO”) pricing for customers who do not shop in the service territory of the Ohio Power Company (formerly Columbus Southern Power Company and Ohio Power Company, collectively, “AEP-Ohio”) beginning upon Commission approval in 2012 through June 1, 2015.

AEP-Ohio is arguing that its proposed electric security plan (“ESP”) for SSO service complies with a directive from the Public Utilities Commission of Ohio (“Commission”) to move to market and AEP-Ohio is simply seeking a fair transition in the meantime. As part of that transition, AEP-Ohio is generously agreeing to provide its generation capacity to competitive retail electric service (“CRES”) providers at a price that is discounted by \$100 - \$200 per megawatt-day (“MW-D”) from AEP-Ohio’s cost of capacity to serve customers who shop with a CRES provider. At the same time, AEP-

Ohio will make up some, all, or more than the difference through the Retail Stability Rider (“RSR”) that is collected from all customers.

All of the other parties have found some fault with AEP-Ohio’s proposed ESP and most are essentially arguing that AEP-Ohio is attempting to unreasonably maintain revenue streams from all customers when, for both legal and economic reasons, those revenue streams are no longer available to AEP-Ohio.

There is little middle ground between these arguments and, thus, this case is going to be determined largely based upon what the Commission believes is the appropriate way to frame the issues.

The OMA Energy Group (“OMAEG”) intervened in this proceeding to protect the interests of manufacturers. However, the OMAEG believes that it is important to have healthy utilities. In fact, the OMAEG witnesses who testified all agreed that it is important that AEP-Ohio be fairly compensated for the services it provides. *See, for example*, Tr. Vol. XIII at 3576, 3601, 3632. It is not the goal of the OMAEG to put AEP-Ohio into a financial “death spiral” from which it cannot recover. Tr. Vol. XIII at 3522. However, fair compensation does not mean that AEP-Ohio should continue to receive the level of returns that the Commission found to be significantly excessive. It does not mean that AEP-Ohio will never have a bad year in the midst of a continuing recession when demand for AEP-Ohio’s product is down. It does not mean that, if the administration and the Commission and AEP-Ohio desire to move to a competitive business model, during the transition customers should compensate AEP-Ohio at its costs when the market is low and, after the transition, customers should compensate

AEP-Ohio at market when the market is high.¹ Fairness dictates that the Commission must strike a balance between AEP-Ohio's sole shareholder (AEP, Inc.) and its ratepayers.² The OMAEG does not believe that the ESP as proposed by AEP-Ohio strikes a reasonable balance. The ESP as proposed by AEP-Ohio also does not pass the legal hurdles that it must in order for the Commission to approve it. Accordingly, the OMAEG respectfully requests that the Commission reject AEP-Ohio's proposed ESP, or, in the alternative, modify and approve it, for the reasons set forth herein.

II. BACKGROUND

This case has a complex record dating back to January 27, 2011, when AEP-Ohio filed its initial application for an ESP set to begin on January 1, 2012. As the reaction to AEP-Ohio's initial 29 month plan was tepid at best, AEP-Ohio initiated settlement negotiations in the summer of 2011. After months of contentious negotiations, on September 7, 2011, numerous parties filed a Joint Stipulation and Recommendation ("ESP Stipulation"). As the ESP Stipulation was contested, a hearing was held and on December 14, 2011, the Commission issued an Opinion and Order ("December 14 Order") modifying and adopting the ESP Stipulation. However, on

¹ Through this process, AEP-Ohio has elected a new business model that is earnings driven rather than the old, cost of service/rate of return model. Without clear signals from the administration and AEP-Ohio's election to transition to a competitive business model, the OMAEG's position would not be the same. In fact, the OMAEG has made no secret of its serious reservations about an end state where all Ohio electric distribution utilities ("EDUs") are wires only utilities and all customers are subject to market pricing only. We are already seeing some of the risks associated with market-only pricing in other service territories. Nonetheless, and most importantly, regardless of the means to get there, the end should be just, reasonable and predictable prices.

² See, for example, *Dayton Power & Light Co. v. Pub. Util Comm.* (1983), 4 Ohio St.3d 91, 4 OBR 341, 447 N.E.2d 733. The OMA laid out the standard of review for the wholesale capacity pricing in its Post Hearing Brief in Case No. 10-2929 and incorporates those arguments herein by reference. *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Post Hearing Brief of the OMA Energy Group ("10-2929 Case").

February 23, 2012, the Commission reversed its December 14 Order and rejected the ESP Stipulation. The Commission directed AEP-Ohio to submit a new SSO filing.

On March 30, 2012, AEP-Ohio filed a revised ESP proposal and supporting witness testimony. AEP-Ohio's proposal is a complex plan that establishes the pricing for SSO customers, but also establishes the cost of capacity for non-shopping customers and changes the structure of AEP-Ohio in order to transition a "wires only" entity by 2015.

The proposed ESP is linked to a related case regarding the state compensation mechanism that sets the price that AEP-Ohio may charge CRES providers for its capacity. *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company, Case No. 10-2929-EL-UNC* ("10-2929 Case"). In that case, on November 1, 2010, AEP Electric Power Service Corporation, on behalf of OP (and, at the time, CSP too), filed an application before the Federal Energy Regulatory Commission ("FERC") seeking authority to change the basis for compensation for capacity costs from the PJM Reliability Pricing Model ("RPM") auction result to a cost-based mechanism.³ In response to AEP-Ohio's FERC application, on December 8, 2010, the Commission issued an Entry preventing AEP-Ohio from changing the mechanism by expressly adopting as the state compensation mechanism for the Companies the current capacity charges established by the PJM RPM auction.

The ESP Stipulation filed on September 7, 2011, included a compromise regarding AEP-Ohio's capacity pricing. However, the Commission's rejection of the

³ See FERC Docket No. ER11-1995 et al. At the direction of FERC, AEP-Ohio refiled its application in FERC Docket No. ER11-2183 on November 24, 2010, (hereinafter, "*FERC Case*").

ESP Stipulation had the effect of continuing PJM's RPM price as the state compensation mechanism, rather than the compromise proposed. Nonetheless, the Commission has granted AEP-Ohio relief from the RPM pricing by allowing AEP-Ohio to charge CRES providers a price for capacity above the PJM RPM price until the Commission issues a decision on the merits of the case. The Commission's decision, which will likely definitively determine both AEP-Ohio's cost of capacity and the appropriate state compensation mechanism, will have a substantial impact on this ESP case.

The ESP proposal includes the following major components:

Non-Fuel Generation Rates: AEP-Ohio is proposing to freeze the non-fuel portion of the generation rates through 2014 and the Environmental Investment Carrying Charge Rider ("EICCR") would be bundled into the base generation rates. Company Ex. 100 at 7.

FAC: The Fuel Adjustment Clause ("FAC") rider will continue but will separate out the renewable energy credits ("RECs") for renewable fuel and recover those costs through a new Alternative Energy Rider ("AER"). Company Ex. 100 at 7-8. Further, bundled purchased power products will be divided into the REC and non-REC components. *Id.* at 7. The REC component will be recovered through the AER and the non-REC component will be recovered through the FAC. *Id.*

AEP-Ohio proposes to combine the FAC for the operating companies into one FAC as of June 1, 2013. Company Ex. 111 at 5. Combining the FAC would raise the fuel cost for OP customers and lower it for CSP customers. *Id.* However, AEP-Ohio is also seeking to delay the implementation of the Phase In Recovery Rider ("PIRR") to recover the costs of deferred fuel from 2009-2011 until June 1, 2012, and recover it as one rate, which would lower the cost for OP customers and raise the rate for CSP customers. *Id.* at 5-6.

Generation Resource Rider: The Generation Resource Rider ("GRR"), is a nonbypassable placeholder to recover the costs of renewable and alternative capacity additions approved by the PUCO. The Turning Point solar project is currently the only capacity resource anticipated to be recovered under the GRR if approved and if the Commission determines it is needed and approves the level of the cost recovery through a separate proceeding. Company Ex. 100 at 8.

Interruptible Service Rates: AEP-Ohio will continue the interruptible service but it will no longer be a rate schedule – it will be a rider (Rider IRP-D) that provides a credit to offset firm service rates. Company Ex. 100 at 9. As proposed, the IRP-D credit will be the base generation rate demand charge discount adjusted upward for the roll-in of the EICCR. *Id.* However, if the Retail Stability Rider (“RSR”, discussed below) is approved, AEP-Ohio will increase the credit to \$8.21 per KW-month. *Id.* The difference would be recovered through the RSR. *Id.*

Additionally, AEP-Ohio is modifying its other interruptible service offerings by permitting customers to participate in PJM demand response programs. *Id.* AEP-Ohio will eliminate the Rider Emergency Curtailable Service (“ECS”) and Rider Price Curtailable Service (“PCS”) from Case Nos. 10-343-EL-ATA and 10-344-EL-ATA. *Id.* However, customers with reasonable arrangements provide a demand response incentive and who’s demand response clears in the PJM auction must commit the demand response to AEP-Ohio at no extra cost. *Id.*

Capacity Costs: As the Commission is well aware, AEP-Ohio has a separate case before the Commission (the 10-2929 Case) wherein it is requesting a \$355/MW-day capacity rate for all shopping customers. However, AEP-Ohio states that if this total ESP package and the corporate separation case (Case No. 12-1126-EL-UNC) are adopted without modification, AEP-Ohio will implement a two-tiered capacity cost approach under the proposed ESP (even if the Commission adopts AEP-Ohio’s position in the 10-2929 Case). Alternatively, if the Commission modifies any aspect of AEP-Ohio’s proposals, AEP-Ohio will stand by its litigation position in the 10-2929 Case and will seek all legal recourse to implement a \$355/MW-D capacity charge for shopping customers. Company Ex. 101 at 4; *See also*, Tr. Vol. I at 51-53. Under the proposal, the capacity pricing will be:

Period	Tier 1	Rate	Tier 2	Rate
2012	21% of all load by customer class <i>PLUS</i> all governmental aggregation customers	\$146/MW-D	All others	\$255/MW-D
2013	31% of all load by customer class <i>including</i> all <i>NON-MERCANTILE</i> governmental aggregation customers	\$146/MW-D	All others	\$255/MW-D
2014-May 31, 2015	41% of all load by customer class <i>including</i> all <i>NON-MERCANTILE</i> governmental aggregation customers	\$146/MW-D	All others	\$255/MW-D

Under this proposal, a queuing process is still required, based upon a first-come, first-served process controlled by AEP-Ohio. Company Ex. 116 at WAA-3.

The ESP proposal also includes an alternative proposal where all shopping customers are charged \$355/MW-D for capacity, there would be no non-generation base rate increase, no RSR, and AEP-Ohio would provide a shopping credit. *Id.* at 15-17.

Retail Stability Rider (“RSR”): The RSR is a nonbypassable rider that is intended to stabilize AEP-Ohio’s earnings by replacing a portion of AEP-Ohio’s lost generation revenues resulting from customers shopping at “discounted” capacity pricing. The rider is designed to collect \$284.1 million over the ESP period. However, the rider amount will fluctuate and may increase or decrease depending on a number of other factors, like the price that AEP-Ohio is permitted to recover for its capacity costs. Company Ex. 116 at 13. The RSR will be first allocated to customer classes based upon the class average contribution to peak and then on a kWh basis. This results in the following rates:

Residential	Commercial (GS-1)	GS-2, GS-3 and GS-4
\$0.0026578/kWh	\$0.001707/kWh	\$0.0016948/kWh

Transition to Market: AEP-Ohio plans to be fully separated into a wires company and spin off its generating assets by June 1, 2015. Company Ex. 103 at 4. If AEP-Ohio’s Interconnection Agreement (aka the “AEP Pool”) can be terminated and its corporate separation plan are approved early, AEP-Ohio will conduct an auction for 100% of its SSO load for service beginning on January 1, 2015. Company Ex. 101 at 10-12. AEP-Ohio also stated that it is willing to conduct an energy-only auction for 5% of its SSO load before January 2015 on the express condition that it is made whole. *Id.* The energy only auction could be for service beginning six months after the Commission approves its ESP and corporate separation cases without modification through December 2014. *Id.*

Corporate Separation: AEP-Ohio filed a separate application in Case No. 12-1126-EL-UNC to spin off its generating assets at net book value. *In the Matter of the Application of Ohio Power Company for Approval of Full Legal Corporate Separation and Amendment to Its Corporate Separation Plan, Case No. 12-1126-EL-UNC.* AEP-Ohio made clear that two of its generating units will be transferred to affiliated distribution companies who will put them in rate base, rather than bid them into the PJM RPM market. *Id.* at 1-3.

Also, AEP-Ohio will dissolve the AEP East Pooling Agreement with an estimated termination date of January 1, 2015. Company Ex. 103 at 4.

Transmission Rates: AEP-Ohio proposes to unify the OP and CSP transmission cost recovery rider (“TCRR”) but otherwise maintain it as is. Company Ex. 100 at 12.

Distribution Investment Rider (“DIR”): This rider is intended to provide capital funding for distribution assets for increased capacity and continued implementation of advanced technologies. Company Ex. 100 at 12. The amount of revenue the DIR is scheduled to collect is \$86 million in 2012; \$104 million in 2013; \$124 million in 2014;

and \$51.7 million in 2015 (1/2 year). Company Ex. 116 at 11. It would expire on May 31, 2015. *Id.*

Phase In Recovery Rider (“PIRR”): As noted above, AEP-Ohio will defer recovery of the PIRR until June 1, 2013 with the end date remaining as of December 31, 2018, while continuing to accrue a weighted average cost of capital carrying charge during the continued deferral period (from now until May 31, 2013). Company Ex. 100 at 13.

GridSmart, Energy Efficiency/Peak Demand Reduction Rider, Economic Development Rider and Enhanced Service Reliability Riders: These rider rates will be unified but otherwise remain the same. Company Ex. 100 at 13-14.

Rate design: In order to avoid the pitfalls of the prior ESP, AEP-Ohio will maintain the current rate structure with only the modifications to the IRP described above. Company Ex. 111 at 8. Also, there will be neither a load factor provision nor a market transition rider. However, AEP-Ohio indicated that it may need to examine and modify the rate design prior to going to a competitive bidding process for SSO load in 2015. *Id.* at 14.

Tariff, Terms and Conditions of Service: AEP-Ohio will add customers’ peak load contribution (“PLC”) and network service peak load (“NSPL”) to the Master Customer List provided to CRES providers. Company Ex. 111 at 4. The 90-day notice requirement to shop will be eliminated. *Id.* On January 1, 2015, AEP-Ohio will eliminate the 12-month stay for customers who shop and return to SSO service. *Id.* Additionally, customers who shop and return to AEP-Ohio will pay the SSO rate, rather than a market rate. *Id.*

Clearly, with such a complex and multifaceted proposal, there are aspects that the OMAEG finds reasonable and in the public interest. Nonetheless, the OMAEG’s failure to address every component specifically should not be taken as support for that provision. As a package, the ESP proposal does not pass the MRO test and, thus, should not be approved without modification.

III. STANDARD OF REVIEW

Section 4928.141, Revised Code, provides that “an electric distribution utility shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of

electric generation service.” Section 4928.143, Revised Code, and Rule 4901:1-35-03, Ohio Administrative Code (“O.A.C.”), govern an ESP application.

Section 4928.143, Revised Code, requires an electric distribution utility (“EDU”) to include in an ESP provisions relating to the supply and pricing of electric generation service. The same section also sets forth a number of provisions that the ESP may include.

Further, in order to approve an ESP, Section 4928.143(C)(1), Revised Code, requires the Commission to find that the ESP “including its pricing and all other terms and conditions, including any deferrals and any future recovery deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply” under a market rate offer (“MRO”) plan. AEP-Ohio has the burden of proving that its proposal passes the statutory test. *Id.*

For the reasons set forth herein, the Commission should find that AEP-Ohio has not met its burden of demonstrating that the ESP proposal is more favorable in the aggregate than the expected results of an MRO and reject the proposal altogether or significantly modify and approve the ESP.

IV. ARGUMENT

A. The proposed ESP is not more favorable in the aggregate than the expected results of an MRO.

AEP-Ohio’s ESP proposal fails on cost alone compared to the expected results of an MRO (the quantitative analysis) and does not include any clear benefits for customers that would otherwise tip the scale in favor of the ESP through a qualitative analysis. Accordingly, the Commission should reject, or modify and accept, the proposed ESP as described herein.

1. The proposed ESP is more expensive than the expected result of an MRO.

AEP-Ohio argues that the ESP is more favorable in the aggregate than the expected results of an MRO by \$961 million before even including benefits that are not readily quantifiable. Company Ex. 114 at LJT-1. However, there are numerous flaws in AEP-Ohio's MRO price test. By correcting the flaws in the inputs, the record demonstrates that the proposed ESP is not more favorable than the expected results of an MRO on price alone.

a. It is not just or reasonable to consider AEP-Ohio's two-tiered capacity proposal as a benefit of the ESP.

The single largest benefit of the ESP proposal asserted by AEP-Ohio is the "discount" on capacity through the two-tiered capacity pricing structure. AEP-Ohio asserts that the value of the "discounted" capacity is \$989 million. Tr. Vol. IV at 1261. In order reach that number, AEP witness Allen calculated the revenue from CRES providers based on his own estimates of projected shopping levels at the two-tiered pricing. Company Ex. 116 at WAA-4. Mr. Allen also included the capacity revenue that would result from an auction for SSO load using \$255/MW-D as the capacity price from January 1, 2015 through May 31, 2015. *Id.* Then, both AEP-Ohio witnesses Allen and Thomas used the fully embedded cost of \$355.72/MW-D after losses as the capacity component from which they subtracted the CRES and auction revenue to determine the value of the discount value of \$989 million over the term of the ESP. Company Ex. 116 at WAA-4 and Company Ex. 114 at 15.

The Commission should not accept \$989 million as the value of a benefit of the two-tiered capacity pricing for several reasons.

First, in the Commission's December 14 Order that initially modified and approved the ESP Stipulation, the Commission held that, "the Signatory Parties and AEP-Ohio cannot claim the discounted capacity price to CRES providers as a benefit. As Mr. Fortney appropriately stated in his testimony, AEP-Ohio's requested capacity price in its application was never certain, and therefore, it cannot be considered as either a benefit or meaningful number for the purposes of conducting the statutory test." Opinion and Order at 30-31 (December 14, 2011)(internal citations omitted)(hereinafter "December 14 Order"). While the Commission ultimately rejected the ESP Stipulation and, thus, the December 14 Order is moot, the facts that underlie the Commission's conclusion remain the same. The cost of AEP-Ohio's capacity remains an open question that has not yet been determined by the Commission in the 10-2929 case or by FERC. Accordingly, as Staff witness Fortney testified, without knowing the actual cost of AEP-Ohio's capacity, we cannot know whether the two tiered capacity pricing proposal offered by AEP-Ohio is a benefit or a detriment. Tr. Vol. XVI at 4611. Accordingly, the \$989 million benefit should be removed from the equation. There is no argument that without this "benefit", the ESP fails the MRO cost test. *See, for example,* Tr. Vol. IV at 1264-1265. On this basis alone, the Commission should reject the ESP proposal.

Notwithstanding the fact that without more information, it is unknowable whether the capacity proposal is a benefit or detriment, it is both unreasonable and inconsistent for AEP-Ohio to use the fully embedded cost of capacity in developing a retail MRO for comparison. As Staff witness Choueiki stated, "to the extent there is a transparent forward capacity price available in the market, that price should be used in the

derivation of a capacity component charge that would then be included in a proposed retail MRO.” As the Commission knows, there is a transparent forward capacity price available in the market called the PJM RPM price. Moreover, the PJM RPM prices for the entirety of the period at issue are already known and part of the record. The capacity clearing prices in the region in which AEP-Ohio is located for the 2012/2013, 2013/2014, and 2014/2015 delivery years are \$16.73/MW-Day, \$27.86/MW-Day, and \$125.99/MW-day, respectively, without accounting for scaling factors.

Using something other than the transparent forward capacity price to derive the capacity component charge for a retail MRO is also inconsistent with AEP-Ohio's derivation of the energy component charge in the retail MRO. See Staff Ex. 101 at 5. AEP-Ohio used transparent forward prices for energy by using the simple swap. Company Ex. 114 at 12-13. As Staff witness Choueiki stated, using the PJM RPM prices “is no different than the use of the Simple Swap proposed by Ms. Thomas in the determination of an energy component charge in AEP-Ohio's proposed retail MRO.” Staff Ex. 101 at 5.

Additionally, to reach the \$989 million benefit, AEP-Ohio assumed a shopping percentage that is unreasonably high. AEP-Ohio witness Allen assumed that the shopping percentages would reach 65% of the residential load, 80% of the commercial load and 90% of industrial load excluding Ormet by the end of 2012 and remain at those levels through May of 2015. Company Ex. 116 at 5. Mr. Allen developed the shopping estimates by comparing the levels of shopping in other Ohio EDU service territories and selecting values that he believes are consistent with the levels of shopping in other EDUs of Ohio. Tr. Vol. V at 1380. Mr. Allen did not account for any differences

between AEP-Ohio and other Ohio EDUs, like the unique governmental aggregators in FirstEnergy's service territory. Tr. Vol. V at 1381. Mr. Allen also did not account for customer confusion caused by the advertising campaigns of AEP or the queuing process. Tr. Vol. V at 1534; Tr. Vol. XIII at 3729-3730. Notwithstanding the RSR, if Mr. Allen's shopping estimates are incorrect, it has the effect of further reducing the value of the ESP. Tr. Vol. V at 1467. Additionally, the percentages estimated by Mr. Allen are at or above the highest levels of shopping in other service territories while AEP-Ohio's actual shopping levels are at or near the lowest levels. While there is always some degree of error in forward estimates, Mr. Allen's shopping estimates are simply one person's best guess. For a component upon which much of the ESP proposal is built on, a conservative estimate, rather than the highest end, is more reasonable and appropriate.

Most importantly, when this issue is properly framed, it defies logic and reason to consider as a benefit a proposal to charge CRES providers serving shopping customers an amount that is significantly higher than the PJM RPM level, but not as high as the amount that AEP-Ohio claims is its fully embedded cost of capacity. No regulatory authority has ever authorized a capacity charge as high as \$355/MW-D. IEU Ex. 126. AEP-Ohio has never charged CRES providers a capacity charge as high as \$355/MW-D. *Id.* at 51. Since the PJM RPM structure was created, although AEP-Ohio made its FRR election, AEP-Ohio has charged CRES providers the PJM RPM price for capacity. Thus, for AEP-Ohio to assume that \$355/MW-D is the price that should be used for comparison purposes is unreasonable at best. Customers are not fooled by this tactic and the Commission should not be either.

In fact, customers, many of whom are longtime AEP-Ohio customers who consider themselves loyal partners with AEP-Ohio, have also testified that they do not believe that the “discounted” capacity is a benefit. *See, for example*, OMAEG Ex. 104A at 7. Customers have entered into shopping arrangements, some at higher than tariff rates, in order to obtain rate stability and certainty and, in most cases, to try to save money. OMAEG Exs. 101-106, Tr. Vol. XIII at 3590, 3610-3611, 3626, Tr. Vol. XV at 4198, 4221. Most CRES contracts are entered into using a number of assumptions, including an assumption about the capacity costs. For example, FirstEnergy Solutions (“FES”) witness Banks stated that “the known increases and decreases [in PJM RPM capacity prices] were considered in costing the service to those customers. So whatever the price is in RPM, that would be the price that we use when we price those customers.” Tr. Vol. XVI at 4529, 4621. However, AEP-Ohio’s proposal would have the effect of impacting the very contracts sought out by customers to avoid rate uncertainty, volatility and unexpected increases. Some of the increases are dramatic and all frustrate the intent of customers and CRES providers and chill the competitive market. Tr. Vol. XIII at 3590, 3610-3611, 3626, Tr. Vol. XV at 4198, 4221. “Discounted” capacity is not a benefit to shopping customers.

Finally, AEP-Ohio has not made any showing that its capacity charges for shopping and non-shopping customers are comparable and nondiscriminatory in accordance with Ohio law. AEP-Ohio is obligated to provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer of all competitive retail electric services necessary to maintain essential electric

service to consumers, including a firm supply of electric generation service. Section 4928.141, Revised Code.

There is no explicit capacity charge in the SSO rates. IEU Ex. 125 at KMM-14. Rather than even attempt to provide the capacity component in SSO rates, AEP-Ohio simply responded that it has not done a cost of service study that would identify the costs since the base rates were last established by the Commission in Case Nos. 91-418-EL-AIR and 94-996-EL-AIR. *Id.*, see also, Tr. Vol. V at 1438-1439. Thus, it is impossible to identify whether the proposed capacity charges for shopping and non-shopping customers are comparable and nondiscriminatory.

AEP-Ohio has the burden of proof and could have conducted a new cost of service study to prove up its claims. AEP-Ohio did not. Rather, AEP-Ohio witness Allen attempted to make a comparison of the revenue received from CRES providers for capacity priced at \$355/MW-D with the revenue received from SSO customers for base generation rates and concluded that the price that AEP-Ohio is charging SSO customers for capacity is equivalent to \$355/MW-D. Tr. Vol. V at 1438. Clearly, this is not the same as a cost of service study and it is not even an apples to apples comparison. As Mr. Allen acknowledged, base generation rates include components other than capacity. Tr. Vol. V at 1438-1439. Thus, AEP-Ohio cannot say that the rates are actually the same, only that the revenue using apples and oranges is similar. That simply is not enough to meet the burden of proof necessary to demonstrate that the capacity charge for shopping customers (which is nearly 20 times the otherwise applicable rate for capacity) is comparable and nondiscriminatory with the rate charged to SSO customers.

b. The Retail Stability Rider is unjust and unreasonable and proper inclusion of the RSR in the MRO test causes the ESP to fail.

AEP-Ohio's ESP proposal includes a Retail Stability Rider ("RSR") to stabilize AEP-Ohio's earnings essentially by replacing a portion of AEP-Ohio's lost generation revenues resulting from customers shopping at "discounted" capacity pricing. Company Ex. 116 at 13, Tr. Vol. XVII at 4583. Specifically, AEP witness Allen started with AEP-Ohio's 2011 return on equity ("ROE") of 12.06% and then determined that a ROE target of 10.5% is reasonable for the ESP period. Company Ex. 116 at 14. AEP witness Allen then backed into an earnings number that would produce the target ROE of 10.5%. To do this, Mr. Allen totaled the base generation revenue, the Environmental Investment Carrying cost Rider ("EICCR") revenue, the revenue AEP-Ohio receives from CRES providers for capacity, and a \$3/MWh credit for shopped load related to possible energy margins for 2011. Then, Mr. Allen estimated the projected revenue over the ESP period from the same categories used to develop the 2011 baseline. The difference between the anticipated revenue and the total revenue that would produce a 10.5% ROE is the RSR amount. The RSR is designed to collect \$284.1 million over the ESP period. Company Ex. 116 at WAA-6. While the RSR does not guarantee that AEP-Ohio will hit its ROE target of 10.5%, the goal of the RSR is to stabilize earnings by adjusting up or down depending on movement of other components of the ESP regardless of sales. For example, if the Commission adjusts the second tier capacity price from AEP-Ohio's proposed \$255/MW-D to \$245/MW-D, the RSR would increase by \$33 million to make up the difference. Company Ex. 116 at 14-15. Additionally, if AEP-Ohio's load goes down, for any reason, the RSR goes up. Tr. Vol. V at 1427. AEP-Ohio's inclusion of

the RSR in the ESP is both unreasonable and has not been properly accounted for in the MRO test.

AEP-Ohio witness Thomas included the RSR as a detriment in the aggregate demonstration in Company Ex. 114 at LJT-1. However, she did not include the impact of the RSR in the MRO test. Tr. Vol. IV at 1296. Ms. Thomas did acknowledge that if the RSR were included in the MRO test, the ESP would fail to be more favorable in the aggregate than the expected results of an MRO. *Id.* Again, for this reason alone, the Commission should deny the ESP proposal.

Notwithstanding the fact that the RSR makes the ESP less favorable than the expected results of an MRO, it is also unreasonable for other reasons.

First, the RSR is intended to stabilize non-fuel generation revenue for AEP-Ohio. There is no argument that generation is a competitive service in Ohio. Tr. Vol. XVII at 4854.⁴ It is simply unreasonable and unlawful for the Commission to authorize a generation subsidy to AEP-Ohio from shopping and non-shopping customers alike that makes up for revenue lost as a result of shopping.

Additionally, if part of the purpose of the RSR is to protect AEP-Ohio from lost generation revenue resulting from shopping, as with the two-tiered capacity cost proposal, without more information, it is impossible to know whether the RSR will achieve that goal, or overcompensate AEP-Ohio (AEP-Ohio already claims that it is under-compensating the company but at a level it can live with). Tr. Vol. I at 291. Specifically, the RSR is based on unknown and very high shopping estimates, a capacity price that assumes the \$355/MW-D price that has never been charged or

⁴ AEP witness Allen, among other AEP-Ohio witnesses, takes issue with whether AEP-Ohio's generation service and assets are regulated by the Commission but does not argue that generation is a competitive service in Ohio. Tr. Vol. XVII at 4854.

approved by a regulatory agency for AEP-Ohio, and AEP-Ohio's capacity costs have not yet been determined by the Commission. IEU Ex. 126 at 51.

However, like Staff, the OMAEG is not arguing that some assistance to maintain stability is never appropriate. The OMA signed on to a settlement in the Duke Energy Ohio ESP that gave Duke some support. *In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO, Opinion and Order (November 22, 2011). However, the Duke support was part of a larger settlement package and Duke agreed to use the PJM RPM prices for capacity immediately for all customers, which had the effect of providing benefits to shopping and non-shopping customers alike. Unlike the Duke ESP, AEP-Ohio's transition will not capture the historic low PJM RPM prices. Thus, the RSR is essentially designed to ensure that AEP-Ohio "doesn't have a bad year." Tr. Vol. XIII at 3615. Such a design is flawed and the Commission should not adopt the RSR.

Finally, the RSR will have a negative impact on all customers. OMAEG Exs. 101-106. This is a double-edged sword as charging SSO customers the RSR requires those customers to subsidize shopping and pay for costs they did not necessarily cause. On the other hand, charging shopping customers is yet another example of an unforeseen charge exacted by AEP-Ohio that serves to interfere with existing contracts between customers and CRES providers entered into for the purpose of avoiding such charges and volatility.

For these reasons, the Commission should reject the RSR proposal.

By simply addressing these two major components of the ESP proposal (the two-tiered capacity proposal and the RSR), it is evident that the ESP is not more favorable than the expected results of an MRO. Accordingly, it is not necessary to address each of the other flaws in AEP-Ohio's ESP versus MRO test. The lack of attention to each individual point is more a consequence of the lack of necessity combined with the time and resources required to do such and should not be construed as agreement by the OMAEG with the balance of AEP-Ohio's proposal.

2. The proposed ESP does not contain enough other non-quantifiable benefits to tip the scales in favor of the ESP over the expected results of an MRO.

AEP-Ohio argues that in addition to the quantifiable benefits (which are not actual benefits) there are non-quantifiable benefits that make the ESP in the aggregate superior to an MRO. Specifically, AEP-Ohio identifies the following benefits: 1) delivering a market price faster than what is permitted under an MRO; 2) rolling the EICCR into base generation rates; 3) no non-fuel base generation rate increases; 4) unification of the PIRR and FAC; 5) advancement of state policies set forth in Section 4928.02, Revised Code; and, 6) distribution riders not otherwise available under an MRO. However, AEP-Ohio has failed to meet its burden of demonstrating that each of the other listed items are actually benefits.⁵

AEP-Ohio has missed the mark on capturing value in going to market faster than what is otherwise permitted under an MRO. There is no argument that PJM RPM prices are very low for the ESP period. The whole benefit of going to market faster than what is otherwise allowed under an MRO is to provide customers the opportunity to take advantage of the historically low prices. AEP-Ohio's ESP proposal does not capture the

⁵ The OMAEG takes no position on whether the distribution riders and the EICCR change are benefits.

value of the low capacity prices. The proposal would still only move to full market based rates in the 2015 time frame, which happens to be the period that PJM RPM prices begin escalating. Tr. Vol. III at 763. Moreover, there are risks associated with market only rates. For example, as Staff witness Fortney noted, there is volatility and uncertainty associated with market rates. Tr. Vol. XVI at 4640. Thus, it is not clear that moving to market faster than permitted under an MRO but without capturing the value of low PJM RPM prices is a benefit.

While frozen non-fuel base generation rates appear to be a benefit on its face, under the ESP versus MRO test, it is not clear that AEP-Ohio could include a base generation rate increase and still pass the statutory test. Staff Ex. 110. Thus, AEP-Ohio has not demonstrated that freezing non-fuel base generation rates is a benefit.

AEP-Ohio's proposal to unify and delay implementation of the PIRR and the FAC is not necessarily a benefit either. As Staff witness Turkenton explained, delaying the implementation of the PIRR results in additional carrying charges. Tr. XVI at 4548-4550. Thus, AEP-Ohio's proposal is not a clear benefit.

AEP-Ohio's arguments that its ESP proposal advances the state's policies largely rely on its assumption that its two-tiered capacity proposal is a discount from its cost-based proposal and that the base generation rate freeze is contingent upon the RSR. Company Ex. Again, without knowing AEP-Ohio's capacity cost and the state compensation mechanism, AEP-Ohio cannot assert that the two-tiered capacity proposal or the RSR are benefits at all. As this issue has already been discussed, there is no need to revisit the flaws in this logic. Additionally, there are no specific economic

development benefits or protections for at risk populations in the proposed ESP – just generalized “benefits” that apply to all customers. Tr. Vol. VI at 1916.

In other words, there are no obvious and overwhelming non-quantifiable benefits of the proposed ESP that would tip the scales and make it more favorable in the aggregate than the expected results of an MRO.

B. Recommendations

The OMAEG recommends that the Commission reject AEP-Ohio’s proposed ESP for the reasons set forth above. However, if the Commission elects to approve the ESP, it should not do so without, at a minimum, requiring AEP-Ohio to charge the PJM RPM prices for capacity to CRES providers and eliminating the RSR. Of course, these recommendations are dependent on the outcome of the 10-2929 case. Accordingly, the OMAEG is not inflexible on its recommendations and reserves its opportunity to modify its recommendations when the outcome of that case is known.

The Commission should also approve AEP-Ohio’s Rider IRP-D with a credit level of \$8.21 per kW-month without it being contingent upon approval of the RSR. Company Ex. 111 at 9. There is no good reason to make the IRP-D credit contingent on the approval of the RSR except to hold it hostage. This is unreasonable and could be avoided by recovering the incremental difference in the credit amount through either the energy efficiency rider or even the economic development rider. OEG Ex. 102 at 9-10.

While OMAEG and the Ohio Consumers’ Counsel (“OCC”) agree that the RSR should be rejected, OCC’s alternative recommendation should also be rejected. OCC witness Ibrahim argues that if the Commission approves the RSR, it should allocate the cost of the rider based upon the customer class’ share of switched load in kilowatt hours

("kWhs"). Tr. Vol. VII at 2264; OCC Ex. 110 at 4, 9-10. . This has the effect of dramatically and unreasonably shifting the cost responsibility for the RSR to commercial and industrial customers. In fact, as Dr. Ibrahim explains, as AEP-Ohio has proposed the RSR, residential customers would be responsible for 41.55% of the RSR with commercial and industrial customers responsible for the balance of 57%. OCC Ex. 110 at 7. If AEP-Ohio allocated the RSR based upon Dr. Ibrahim's recommendation, residential customers would be responsible for only 8% of the RSR with commercial and industrial customers being responsible for 92%. *Id.* at 10. Dr. Ibrahim's alternative recommendation would increase industrial customers' RSR by approximately 70 percent. Tr. Vol. VII at 2258. Additionally, under Dr. Ibrahim's recommendation, the RSR allocation may not be updated to reflect what could be a dramatic change in the shopping percentages resulting from governmental aggregation programs in a timely manner. Tr. Vol. VII at 2267-2268.

In addition, OCC's alternative recommendation to allocate the costs of the RSR on a kWh basis is unreasonable. OCC witness Ibrahim acknowledged that the RSR is essentially recovering capacity related costs, which are demand related. Tr. Vol. VII at 2266. Demand related charges for capacity costs are typically recovered based upon demand, not energy as Dr. Ibrahim recommends. In fact, the reference upon which the Dr. Ibrahim relies, the Cost Allocation Manual from NARUC advises that production costs be allocated on a demand basis and not solely on the basis of energy sales. See *Electric Utility Cost Allocation Manual, National Association of Regulatory Utility Commissioners*, "Embedded Cost Methods for Allocating Production Costs." Finally, OCC's alternative proposal is anticompetitive in that the more a class shops, the more

that class' relative share of the switched kWh will be. Therefore, the higher a class' relative share of switched kWh sales, the higher the RSR will be for that class, which as a result, will discourage customers from shopping. Dr. Ibrahim's alternative recommendation is unreasonable and should be rejected.

Finally, the OMAEG cautions the Commission against buying into the extreme language used by AEP-Ohio during the course of this proceeding without examining the underlying facts. While it is clear that AEP-Ohio is earnest in its belief of the grave financial impacts that could befall AEP-Ohio, the language used by AEP-Ohio sometimes does not reflect the facts.

For example, AEP-Ohio argues that it will suffer serious financial harm if the Commission does not adopt either a capacity price for shopping customers of \$355/MW-D or a two-tiered capacity cost plus the RSR. In fact, AEP-Ohio witness Powers stated that AEP-Ohio began seeing serious financial harm in late 2010 when shopping increased. Tr. Vol. I at 246. As a result of the confluence of increased shopping and using the PJM RPM price for AEP-Ohio's capacity charge, Mr. Powers argued that AEP-Ohio suffered serious financial harm in 2010 and 2011. However, in reality, in 2009, 2010 and 2011, AEP-Ohio's combined return on equity ("ROE") exceeded 12 percent. Tr. Vol. 1 at 248-250; FES Ex. 106. In reality, the serious financial harm AEP-Ohio claims did not result in an inability to provide reliable service, did not result in any credit rating agencies downgrading AEP-Ohio or any affiliates and did not result in the cost of capital increasing for AEP-Ohio. Tr. Vol. I at 250-255. Even going forward, the reality is, by AEP-Ohio's own projections, if approved as proposed, the ESP would allow AEP-Ohio to upstream over \$300 million in dividends in 2012 and

2013 to its parent AEP, Inc. Tr. Vol. I at 321, Tr. Vol. III at 952, Company Ex. 108 at OJS-2. Those facts are not reflective of serious financial harm.

AEP-Ohio's claims regarding the impact of the capacity pricing issue on AEP-Ohio jobs should also be tested. First, it is important to note that when AEP-Ohio is talking about a loss of jobs, it is talking about AEP jobs. While no one wants Ohioans laid off, AEP-Ohio has claimed that if it is compelled to charge the PJM RPM capacity price for its generating capacity, it will be forced to reduce its operating and maintenance expenses, including labor, which would have the impact of eliminating "thousands" of jobs. Tr. Vol. I at 257-258. However, the "thousands" estimate is based upon AEP-Ohio witness Powers' assertion that the impact of the capacity pricing difference on AEP-Ohio is approximately \$650 million and each employee costs roughly \$100,000. *Id.* 258. In other words, to mitigate a \$100 million impact, AEP-Ohio would have to eliminate 1000 jobs. So, with a \$650 million impact, AEP-Ohio would have to eliminate over 6000 jobs. Tr. Vol. I at 258. AEP employs just over 6000 Ohioans.

Finally, when describing the serious financial harm that would result from a lower ROE than what AEP-Ohio determines is acceptable to it, Mr. Allen stated that without an AEP-Ohio determined reasonable ROE, AEP-Ohio may not have the financial wherewithal to make investments in its transmission and distribution to create a robust system. Mr. Allen argued that the lack of investment in AEP-Ohio infrastructure produces an "unacceptable and dangerous" result whereby AEP-Ohio may not be able to keep the lights on in the event of a blackout like what occurred in August 2003. Tr. Vol. XVII at 4877-4878, 4725. However, when pressed on whether AEP-Ohio could not keep the lights on during the ESP period if the Commission order resulted in a 4.6

percent ROE, Mr. Allen backtracked. He stated that, while he was not saying the lights would go out, such a result would provide a “clear indication that this Commission is *hostile and unpredictable* and, as such, things such as bond issuances that the company would make would come with a much higher cost...” and can have a long term impact. Tr. Vol. XVII at 4887-4888. More expensive bond issuances, while not good for customers, are very different from an inability to keep the lights on.

The Commission must examine the facts and not be distracted by language that sometimes does not reflect those facts.

V. CONCLUSION

For the reasons set forth herein, the OMAEG respectfully requests that the Commission deny AEP-Ohio’s proposed ESP. In the alternative, the Commission should require AEP-Ohio to charge the PJM RPM price for capacity from CRES providers, eliminate the RSR, and approve the IRP-D with a credit of \$8.21 per kW-month without it being contingent upon the approval of the RSR.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Post Hearing Brief of the OMA Energy Group was served upon the parties of record listed below this 29th day of June 2012 *via* electronic mail.



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