

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

**INITIAL BRIEF OF
BUCKEYE ASSOCIATION OF SCHOOL ADMINISTRATORS, OHIO ASSOCIATION
OF SCHOOL BUSINESS OFFICIALS, OHIO SCHOOL BOARD ASSOCIATION,
AND OHIO SCHOOLS COUNCIL**

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I. STATEMENT OF OHIO SCHOOLS' POSITION

Due to budget cuts, Ohio's public school districts will receive nearly **\$2.8 billion less** in total state and federal funding during the 2012/2013 biennium than they would have received under a continuation of fiscal year 2011 funding levels. Ohio Schools Exhibit 101 (Frye), at 5; Ohio Schools Exhibit 102 (Fleeter), at 5.

Now is the worst possible time to increase Ohio public schools' electric rates and for the worst possible reason. AEP Ohio¹ is not seeking to increase rates in this proceeding because the cost to serve schools has increased. (To the contrary, the competitive price of electricity and capacity are decreasing to the point where AEP Ohio's customers, for the first time, have a meaningful opportunity to shop for cheaper electric supplies. AEP Ohio Exhibit 116 (Allen), at 4; Tr. V, at 1527. See, also, *Capacity Charge Case*, AEP Ohio's Motion for Relief (Filed February 27, 2012), at 2). Rather, AEP Ohio is seeking to increase its capacity charge to prevent schools from shopping in this favorable competitive environment – for the sole purpose of guaranteeing the Company's revenues during its tardy transition to a competitive marketplace. To make matters worse, AEP Ohio is asking schools economically prevented from shopping to subsidize the limited number of shopping customers, by paying a portion of those customers' capacity costs through the retail stability rider ("RSR").

AEP Ohio had long been content to charge for capacity under PJM's reliability pricing model ("RPM"). That charge currently is approximately \$20/MW-day. In this electric security plan ("ESP") proceeding, AEP seeks to increase this rate to a "cost-based" charge of approximately \$355/MW-day, and alternatively proposes to "discount" that charge to \$146/MW-day for the first 21% of each customer class in 2012 ("Tier 1"), and charge \$255/MW-day for the

¹ Ohio Power Company and Columbus Southern Power Company merged effective December 31, 2011. Ohio Power Company is the surviving entity and will be referred to as "AEP-Ohio" or "the Company."

remainder of each customer class (“Tier 2”). AEP Ohio Exhibit 116 (Allen), at 6, 15. AEP then seeks to recover the difference between the \$355 and the discounted levels, i.e., the stranded costs of its generating assets, through the non-bypassable RSR. *Id.*, at 13.

If the Commission grants AEP Ohio’s request to increase the capacity charge, competitive retail electric service (“CRES”) providers could pass the increase through to their shopping customers under existing contracts. Ohio Schools Exhibit 101 (Frye), at 16; Interstate Gas Supply Exhibit 101 (Parisi), at 7.² If CRES providers are unwilling to pass the costs through and believe the contract has become uneconomic, the CRES provider could terminate the contract and send the customer back to the Company’s standard service offer. Interstate Gas Supply Exhibit 101 (Parisi), at 7. If passed through, increased capacity charges could cost a single school BUILDING using 130,000 kWh of electricity \$2,990 per month, annualized to \$35,800 per year, under a \$355/MW-day charge. See pages 13-14, *infra*. Moreover, if the increased capacity charges make an existing competitive contract uneconomic and the contract is terminated, a school could be forced to forego savings from shopping of literally hundreds of thousands of dollars per year. (Dublin City School’s Director of Business Affairs, Annette Morud, testified that, since July 1, 2010, her district has saved \$700,000 by purchasing electricity from a CRES provider. Tr. Columbus Public Hearing, at 55.) In addition, because the availability of Tier 1 pricing has been exhausted for the commercial customer class (AEP Ohio Exhibit 114, at Exhibit WAA-1), many schools will be unable to enjoy these similar electric savings to control their costs. Finally, if the RSR is approved, it would cost a larger suburban school district using 1,200,000 kWh of electricity per month approximately \$2,000 per month, or approximately \$24,000 per year under the initial RSR rate. See pages 16-17, *infra*. However,

² Interstate Gas Supply witness Vincent Parisi, testified, “It is a common practice in the energy market for customer contracts to include a right to terminate a customer or pass through the cost to customers of unanticipated increases resulting from legislative or regulatory changes. Interstate Gas Supply Exhibit 101 (Parisi), at 7.

the RSR will increase as shopping increases. If shopping increases as projected by Company witness Allen, the RSR will nearly TRIPLE during the ESP, adding approximately \$75,000 to this school's electric bill. See AEP Ohio Exhibit 116 (Allen), Exhibit WAA-6. Approving this ESP, and particularly these provisions, could lead to a similar rate shock for the schools that the Commission sought to avoid in its Entry on Rehearing issued in this proceeding on February 23, 2012.

Clearly, in their current financial condition, Ohio's public schools simply cannot afford these rate increases, or the lost opportunity to save money through shopping, without jeopardizing their core mission to provide Ohio schoolchildren with a quality education. Seventy-two (72) school districts in AEP Ohio's service territory have represented as much through their testimony at local public hearings and in comments filed with the Commission in these proceedings.³

The Ohio Schools' primary position in this proceeding is that the RSR and two-tiered capacity charge are unlawful and must be rejected. The RSR is an unlawful generation transition charge and unlawfully subsidizes AEP Ohio's competitive services. The two tiered capacity charge unlawfully discriminates against customers who are assigned the higher Tier 2 capacity prices but receive the same capacity service as provided Tier 1 customers.

Alternatively, if the Commission approves the Company's application in some form, and retains the RSR and two tiered capacity charge, long-standing precedent supports the Commission modifying the ESP to exempt Ohio's public schools from the RSR and to ensure

³ These schools are listed in Attachment A to this Initial Brief.

that Tier 1 RPM⁴ pricing is available to all schools. The Ohio Legislature, the Ohio Supreme Court, and this Commission all have recognized the reasonableness and lawfulness of providing Ohio's public schools special rate treatment:

1. The Ohio Legislature provides public utilities the authority to provide political subdivisions, which would include school districts (Section 167.01, Ohio Rev. Code), free service or service at reduced rates. Section 4905.34, Ohio Rev. Code. See, also, *Ohio Edison Co. v. Pub. Util. Comm.* (1997), 78 Ohio St. 3d 466.
2. The Ohio Supreme Court and this Commission have found that public schools are entitled to special rate treatment based upon their:
 - a. cost of service differences (precipitated by their summer closure during an electric utility's peak demand) (*In Re: Toledo Edison Co.*, PUCO Case No. 90-717-EL-ATA (Finding and Order, August 2, 1990); *In Re: Cleveland Electric Illuminating Co.*, PUCO No. 95-300-EL-AIR (Opinion and Order, April 11, 1996)), and
 - b. non-cost-based unique characteristics (even compared with other public agencies) (*County Commissioners' Assn. of Ohio v. Pub. Util. Comm.* (1980), 63 Ohio St. 2d 243; *In the Matter of the Investigation into Ohio Bell Telephone Company Exchange Rate Tariff*, PUCO No. 3, PUCO Case No. 79-629-TP-COI (Opinion and Order, October 15, 1980), at 2) ("The circumstances perceived by this Commission to be unique to Ohio schools include, but are not limited to, [1] the public purpose served, [2] legal mandates vis-à-vis mandatory student attendance, [3] limited funding mechanisms available to school systems, [4] budgetary problems presently facing the schools, and [5] their inability to pass through the additional costs...").
3. Most recently the Commission has recognized the benefit of special rate treatment to Ohio's public schools in ESP proceedings.

⁴ The Ohio Schools have supported RPM pricing throughout this proceeding and the companion capacity charge case, PUCO No. 10-2929-EL-UNC ("Capacity Charge Case"). The Commission has yet to issue an order determining what pricing model will be adopted.

- a. The Commission approved the exemption of Ohio public schools from the market transition rider (“MTR”) in AEP-Ohio’s ESP approved December 14, 2011. *In Re: 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*, PUCO Case No. 11-346-EL-SSO, et al. (Opinion and Order, December 14, 2011).
- b. The Commission also discounted generation rates to schools in the FirstEnergy operating companies’ service territories. *In Re: 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*, PUCO Case No. 08-935-EL-SSO (Second Opinion and Order, March 25, 2009), at 10 and 18.

The common principle among these long-standing legal precedents is that special rate treatment for Ohio’s public schools benefits the public at large. This same principle is applicable to the standard of review for ESP proceedings. That standard is whether the ESP is more favorable in the aggregate than the alternative market rate option (“MRO”). In making its determination, the Commission is to compare not only whether the pricing proposed in the ESP is more favorable than the MRO, but also whether the ESP contains other “qualitative” terms and conditions that serve the public interest which are not available under an MRO. Section 4928.143(C)(1), Ohio Rev. Code; *In re Columbus S. Power Co.* (2011), 128 Ohio St.3d 402.

This concept of public benefit takes on added importance in this ESP proceeding in which the bulk of testimony, including Staff’s analysis, concludes that the proposed ESP pricing is NOT more favorable than the MRO. Staff Exhibit 110 (Fortney), at 6; Industrial Energy Users Ohio Exhibit 125 (Murray), at 82; Duke Energy Retail Sales Exhibit 102 (North), at 6; Office of Consumers Counsel Exhibit 114 (Hixon), at 22; FirstEnergy Solutions Exhibit 104 (Schnitzer), at 4. If these analyses are accepted, the Commission must reject the proposed ESP unless

significant other “qualitative” benefits operate to make the ESP more favorable than the MRO. As discussed in this brief, the qualitative benefits proposed by AEP Ohio range from marginal to non-existent, and the Commission must consider other benefits proposed in this proceeding, including the recognized benefits that special rate treatment provides to public schools. Indeed, Staff witness Fortney testified that special rate treatment for Ohio’s schools would be a “qualitative benefit” for the Commission’s consideration. Tr. XVI, at 4576.

As in *County Commissioners* and *Ohio Bell*, supra, any special rate treatment given the schools would not be blanket relief or controlling precedent in every succeeding Commission proceeding. Rather, it would be based upon the unique circumstances the schools find themselves in at this particular point in time – precipitated by the uncontroverted and unprecedented \$2.8 billion in funding losses the schools will receive in this biennium. Moreover, the special rate treatment would be limited in duration, as it necessarily would end upon the expiration of the ESP on May 31, 2015 – nearly coinciding with the difficult biennium the schools must navigate and from which they need time to emerge. Most importantly, it would permit school administrators to keep scarce taxpayer dollars in the classroom, where they belong, instead of expending them on increased electric bills not related to the cost to serve the schools, but related only to the utility’s desire have its revenues guaranteed while it transitions to a competitive market. Although AEP Ohio claims it will suffer severe financial harm if this ESP is not granted, rest assured that Ohio’s public schools already are suffering severe financial harm and simply cannot afford the increases proposed by the Company without jeopardizing their core mission to provide our school children a quality education. This public benefit is not lost on taxpayers who are only too aware that any increases to their schools’ electric bill ultimately will be borne by them through new operating levies. Public witness Bill Daugherty, Tr. Canton

Public Hearing, at 12; Public witness Brad Deleruyelle, Lima Public Hearing, at 21-22. Indeed, it is difficult to imagine a more ubiquitous benefit than relief to Ohio's public schools, which would affect all taxpayers, hundreds of thousands of schoolchildren, and the employers who will need their services in the future.

II. HISTORY OF THE PROCEEDINGS

This proceeding commenced on January 27, 2011. By Opinion and Order of December 14, 2011, the Commission approved a stipulation resolving the case; however, by subsequent Entry on Rehearing issued February 23, 2012, the Commission rejected the stipulation because of the significant and unexpected rate shock to rate classes GS-2 and GS-3, to which Ohio's schools primarily belong. See February 23, 2012 Entry on Rehearing, at 11 ("...the actual impacts suffered by a significant number of GS-2 customers appear to have vastly exceeded AEP-Ohio's representations at hearing. *** The disproportionate rate impacts indicated by these bills undermine the evidence presented by the signatory parties that the MTR and LFR provide rate certainty and stability pursuant to Section 4928.143(B)(2)(d), Revised Code.")

To protect their interests, the Ohio Schools⁵ moved to intervene in this proceeding on March 19, 2012, noting that during the brief period in which the stipulated ESP rates were in effect, hundreds of school districts in AEP Ohio's service territory experienced double digit percentage increases in their tariffed electricity rates – some in excess of fifty percent (50%). Ohio Schools' Motion to Intervene, at 6.

Hearing commenced on May 17, 2012, and the Ohio Schools presented two witnesses, Mark Frye and Dr. Howard B. Fleeter. Hearing concluded on June 15, 2012.

⁵ Joint Intervenors Buckeye Association of School Administrators ("BASA"), Ohio Association of School Business Officials ("OASBO"), Ohio School Boards Association ("OSBA") and Ohio Schools Council ("OSC") are collectively referred to as the "Ohio Schools."

III. BACKGROUND

BASA, OASBO, OSBA and OSC are non-profit groups of public school administrators who seek to share best practices and information concerning the operation of educational institutions. The Schools' members include all of Ohio's 612 public school districts, as well as 55 educational service centers and 49 career technical centers. Among their services, the Ohio Schools offer their members group purchasing programs for a host of goods and services, including an electricity purchasing program, which operates throughout the state, including AEP-Ohio's service territory. Ohio Schools Exhibit 101 (Frye), at 2-3.

BASA, OASBO and OSBA initiated an electricity purchasing program commonly referred to as "SchoolPool" that has had over 300 Ohio public school districts as participants at one point of time or another. Similarly, OSC has operated an electricity purchasing program since 1998 as a consortium of 161 school districts, educational service centers, joint vocational districts and boards of developmental disabilities in 28 northern Ohio counties. Ohio Schools Exhibit 101 (Frye), at 3.

The four organizations have combined their efforts to offer "Power4Schools" electricity purchasing programs to various school districts throughout Ohio, serving nearly 600,000 school children. The Power4Schools program is designed to reduce the Schools' cost of electricity. Electricity is purchased and delivery arranged through a third party CRES under a master contract and the savings are passed through to school district participants. To date, the Schools' electricity purchasing programs have saved participating schools an estimated \$20 million dollars since initiating third party power supplies. Ohio Schools Exhibit 101 (Frye), at 3.

IV. ARGUMENT

A. OHIO’S SCHOOLS HAVE SUFFERED SEVERE FINANCIAL HARM

It is ironic that AEP Ohio seeks guaranteed revenues from the schools to prevent “serious financial harm” (AEP Ohio Exhibit 101 (Powers), at 10), when Ohio’s schools are in the throes of such harm already. Indeed, during 2011, when the RPM was at approximately \$146 – much lower than what AEP Ohio is seeking in its second tier in this case – AEP Ohio enjoyed a return on equity of over 12%, as it did in 2010 and 2009. Tr. I (Powers), at 248-251; FirstEnergy Solutions, Exhibit 106. During that time, AEP Ohio was able to meet its statutory requirements to provide its core services (Tr. I (Powers), 254), and also had discretionary income to provide for a multitude of civic and philanthropic purposes, on which it spends “[a] lot of money.” AEP Ohio Exhibit 119 (Dias), at 8; Tr. VI (Dias), at 1844-1845. AEP Ohio seeks to preserve this discretionary income.

On the other hand, Ohio Schools presented uncontested evidence that they will receive nearly **\$2.8 billion less** in total state and federal funding over the 2012/2013 biennium than they would have received under a continuation of fiscal year 2011 funding levels. The consequences of the funding loss are drastic and affect the schools’ core operations. Seventy-two (72) school districts either testified at the public hearings held in these proceedings or accepted the Commission’s offer to file comments in this docket, generally stating that the recent funding cuts have caused them to reduce core teaching and staff positions, as well as funding for equipment and supplies.

As specific examples:

- (1) Dublin City School’s Director of Business Affairs, Annette Morud, testified that, in the past year, Dublin was forced to cut \$9 million dollars from its operating budget. It eliminated 46.5 teaching positions, 9 central office positions,

and made cuts to maintenance and busing. Tr. Columbus Public Hearing, at 54-55.

- (2) Athens City Schools has closed an elementary school, laid off 15 teachers and 20 support staff, and reduced its budget by over \$2,000,000. Comments filed of June 18, 2012.
- (3) Trumbull Career & Technical Center reduced staffing levels by 5 positions, cut three programs, and decreased funding for necessary materials, supplies, and equipment. Comments filed June 8, 2012.
- (4) Oregon City Schools reduced 50 teaching and non-teaching positions, and cut school budgets, including necessary instructional material and equipment. Comments filed June 18, 2012.
- (5) Barberton City Schools reports that its revenue trend from the 2009/2010 - 2013/2014 school years shows nearly a \$4 million revenue loss: \$1,562,767 in local revenues, \$1,173,938 in state revenues, and \$1,257,638 in federal revenues. Comments filed June 13, 2012.
- (6) Elmwood Local Schools has downsized over 8 teachers and 2 non-teaching positions. Comments filed June 13, 2012.
- (7) Elida Local Schools reports that it has lost \$700,000 in state funding alone, placing state funding revenues at 2003 levels. Comments filed June 12, 2012.

Significantly, these reductions of teachers, staff, materials and programs come in the midst of the schools doing their utmost to conserve electricity to reduce costs. Logan Hocking Local Schools' Treasurer, Paul Shaw, testified that schools are facing huge financial challenges. His district has implemented an aggressive energy conservation program, with the goal to keep valuable resources – teachers and staff – in the classroom. The district hired an internal energy specialist and its buildings and heating/cooling systems are monitored and audited daily. Buildings are closed on weekends. Computers, monitors, printers, lights and refrigerators are turned off. Tr. Columbus Public Hearing, at 102. Similarly, in order to retain teachers in its classrooms, Ohio Valley School District in Adams County has taken extraordinary steps to

reduce operating costs, many of which include reducing electricity costs, such as installing solar arrays on the roofs of three elementary buildings. Comments filed June 7, 2012.

B. APPLICATION OF THE RSR AND THE TWO TIERED CAPACITY CHARGE WILL CAUSE SCHOOLS FURTHER FINANCIAL HARM, RESULTING IN FURTHER REDUCTIONS TO STAFF, MATERIALS AND SUPPLIES.

Ohio's schools are concerned that increases to their already sizable electric bills will lead to more staff reductions and compromise their ability to provide students with a quality education. See Tr. Columbus Public Hearing at 54-55, 102; School Comments filed in this proceeding on June 8, 11, 12, 13, 15, 18, 19 and 25. Jeff Gordon, Olentangy Local Schools' Director of Business Management, testified that any increase in expenses such as electric bills has a direct impact on the availability of resources in schools' classrooms, including teachers and textbooks. Tr. Columbus Public Hearing, at 102. These concerns are real considering that, unlike other businesses, schools cannot increase the price of their product to recover the increase in electricity costs. Id, at 103; Ohio Schools Exhibit 101 (Frye), at 5. Staff witness Fortney, Tr. XVI, at 4574. Accord: Brad Deleruyelle, Treasurer, Pandora-Gilboa Local School District Tr. Lima Public Hearing, at 24 ("We can't raise prices on school students."). Rather, schools must depend upon the public to approve new operating levies to replace lost state and federal funding. Noting the difficulty in voter approval of new operating levies (see testimony of Staff Witness Fortney, Tr. XVI at 4574; Jeff Gordon, Olentangy Local Schools' Director of Business Management, Tr. Columbus Public Hearing, at 103; Dublin City School's Director of Business Affairs, Annette Morud, Tr. Columbus Public Hearing, at 54), cuts in the schools' budget are often the only alternative, and those cuts are made to core operations in the classroom.

In its testimony, the Ohio Schools have focused on the harm that the RSR and the two-tiered capacity charge will cause if applied to them. AEP Ohio had long been content to charge

for capacity under PJM's RPM pricing model. That charge currently is approximately \$20/MW-day. In this proceeding, AEP seeks to increase this rate to a "cost-based" charge of \$355/MW-day, and alternatively proposes to "discount" that charge to \$146/MW-day for the first 21% of each customer class in 2012 ("Tier 1"), and charge \$255/MW-day for the remainder of each customer class ("Tier 2"). AEP Ohio Exhibit 116 (Allen), at 6, 15. AEP Ohio then seeks to recover the difference between the \$355 and the discounted levels, i.e., the stranded costs of its generating assets, through the non-bypassable RSR. *Id.*, at 13.

1. Application of the Two Tiered Capacity Charge

The two tiered capacity charge would be assessed to CRES providers who, under their service contracts, could pass through the entire costs to their customers. Ohio Schools Exhibit 101 (Frye), at 16; Interstate Gas Supply Exhibit 101 (Parisi), at 7. If a CRES provider could not absorb the capacity price increase, and chose not to pass it through to customers, the CRES provider could terminate the contract and send the customers back to AEP Ohio's standard service offer, preventing the schools from realizing savings from shopping. In either instance, schools would suffer considerably.

a. Schools Will Suffer Substantial Harm if the Capacity Charge is Passed Through.

The mechanism for setting the capacity charge is the subject of a separate companion case which has not been decided. See PUCO Case No. 10-2929-EL-UNC ("*Capacity Charge Case*"). Thus, it is unknown whether the Commission will maintain the current state mechanism of setting the charge at RPM (currently approximately \$20/MW-day), whether the Commission will adopt AEP-Ohio's proposal for a "cost-based" charge (\$355/MW-day), whether the Commission will adopt a charge somewhere in between (Commission Staff has recommended a charge of \$146.41/MW-day, if the Commission determines a cost-based capacity charge is

required. Staff Exhibit 110 (Fortney), at 2; Staff Exhibit 101 (Choueki), at 10), or whether the Commission ultimately will adopt AEP Ohio's proposed two tiered capacity charge of \$146 and \$255/MW-day.

To understand the harm the charge will cause to shopping schools, it is important to consider each of the possible scenarios. Crucial is that, in entering their contracts, CRES providers were relying on the continuation of the traditional RPM price, and were aware that the price was to fall to approximately \$20/MW-day on June 1, 2012. Ohio Schools Exhibit 101 (Frye), at 17. Thus, the current RPM price of approximately \$20/MW-day must be the baseline for this analysis. The following table shows the per kWh impact on schools from an increase in the capacity charge from \$20 to \$355/MW-day, from \$20 to \$255/MW-day, and from \$20 to \$146/MW-day, as well as from \$146 to \$255/MW-day.

	DIFFERENCE IN CAPACITY CHARGES/MW-DAY			
	\$355-\$20 ^a	\$255-\$20 ^b	\$146-\$20 ^c	\$255-\$146 ^d
High School	\$0.023/kWh	\$0.0164/kWh	\$0.0088/kWh	\$0.0076/kWh
Elementary School	\$0.028/kWh	\$0.0196/kWh	\$0.0105/kWh	\$0.0091/kWh

^a See Ohio Schools Exhibit 101 (Frye), at 15.

^b Combine price/kWh from columns c and d.

^c See Ohio Schools Exhibit 101 (Frye), at 17-18.

^d See Ohio Schools Exhibit 101 (Frye), at 16-17

Assuming a high school building that uses 130,000 kWh per month, and an elementary school building that uses 70,000 kWh per month, the increase by **building** (NOT on a district wide basis) would be as follows, by applying the rates from the above table:

	INCREASES <u>PER BUILDING</u> BASED UPON PASS THROUGH			
	\$355-\$20	\$255-\$20	\$146-\$20	\$255-\$146
High School	\$2,990/mo \$35,880/yr*	\$2,132/mo \$25,584/yr*	\$1,144/mo \$13,728/yr*	\$988/mo \$11,856/yr*
Elementary School	\$1,960/mo \$23,520/yr*	\$1,372/mo \$16,464/yr*	\$735/mo \$8,820/yr*	\$637/mo \$7,644/yr*

*Annualized for the June 1, 2012 to May 31, 2013 planning year.

Considering that most school districts have more than one building and service account, and that large suburban and city schools have many buildings and accounts (See, e.g., Ohio Schools Exhibit 101 (Frye) at 14), the potential increases to shopping schools are enormous. Indeed, although he performed bill analyses on shopping customers, AEP Ohio witness Roush admitted on cross examination that the Company did not consider the effect the capacity charge increase could have on shopping customers. Tr. IV (Roush), at 1222. The effect of the pass through would be in addition to any projected increases to shopping customers resulting from the ESP. AEP Ohio witness Roush testified the *average* rate increases for GS-2 and GS-3 customers in the Columbus Southern Power Rate Zone would be approximately 2 – 3%, and would be 4 – 5% in the Ohio Power Rate Zone. AEP Ohio Exhibit 111 (Roush), at 16. On cross examination, he stated that on an individual basis, most customers would see a 4-5% increase, while rate increases could range up to 10%, with very few customers experiencing over a 10% increase. Tr. IV (Roush), at 1219-1220.

By ignoring the effect of the capacity charge pass-through, AEP Ohio is asking the Commission to roll the dice and, unfortunately, set the stage for a repeat of the public outrage that accompanied the December 14, 2011 order, when customers were blindsided by the massive rate increases hidden within the approved stipulation, and not realized until they opened their January bills.

This risk is considerable considering that Tier I pricing (\$146/MW-day) is available only to 21% of the commercial customer class load in 2012, 31% in 2013, and 41% in 2014. All others would be assigned the Tier 2 price (\$255/MW-day). AEP Ohio Exhibit 116 (Allen), at 6. However, at least 41.44% commercial customers already have switched to a CRES provider, with at least another 2.26% switching pending. AEP Ohio Exhibit 116 (Allen), at Exhibit WAA-1; Tr. V, at 1391. That means that over 20% of the commercial class could be faced with the prospect of having the capacity charge increase passed through to them or, as discussed below, lose hundreds of thousands of dollars in electricity savings per year, if CRES customer contracts are terminated and customers are returned the Company's standard service offer.

b. Schools Will Suffer Substantial Harm if Their CRES Contracts Are Terminated and They Are Returned to AEP Ohio's Standard Service Offer.

If CRES providers are unwilling to absorb the proposed capacity cost increase and are unwilling to pass it though to the customer, the CRES customer contract can be terminated. Interstate Gas Supply Exhibit 101 (Parisi), at 7. If the contracts are terminated, the schools also lose, and lose big. Jeff Gordon, Olentangy Local Schools' Director of Business Management, testified that his district has saved hundreds of thousands of dollars by purchasing electricity from a CRES provider. Tr. Columbus Public Hearing, at 102. Similarly, Dublin City School's Director of Business Affairs, Annette Morud, testified that, since July 1, 2010, her district has saved \$700,000 by purchasing electricity from a CRES provider. Tr. Columbus Public Hearing, at 55. If the CRES contract is terminated because of the change in capacity prices, the schools would be returned to the standard service offer and would have to find hundreds of thousands of dollars to pay AEP Ohio's electric bills, money which the schools clearly don't have. As stated previously, over 20% of commercial class load may be faced with the prospect of contract termination and these devastating losses of savings.

c. Schools Will Suffer Substantial Harm if They Are Prevented from Shopping.

As discussed above, the availability of Tier 1 pricing for additional members of the commercial class is effectively over. AEP Ohio has limited such availability in 2012 to 21% of load, 31% in 2012, and 41% in 2014. Switching and pending switches already exceed 43% of load. AEP Ohio Exhibit 116 (Allen), at Exhibit WAA-1; Tr. V, at 1391. Thus, the prospect for schools that have not considered shopping, to enter the market to realize massive savings enjoyed by other school districts, is prevented by AEP's plan, diverting potentially hundreds of thousands of dollars from the classroom. Moreover, the exhaustion of Tier 1 capacity shows that AEP Ohio's ESP offers no benefit to the commercial class.

The Ohio Schools' position in the *Capacity Charge Case* is that the Commission should continue to adopt RPM as the state mechanism for setting the capacity charge. If a second tier is imposed in this proceeding, the schools should be exempted from it, and be subject only to the Tier 1 RPM pricing.

2. Application of the RSR

AEP Ohio proposes to apply the RSR to shopping and non-shopping customers alike, based on a per-kWh charge. AEP Ohio considers schools to be commercial customers, and school accounts fall primarily in the commercial GS-2 and GS-3 rate classes (Tr. IV (Roush), at 1213), which would be INITIALLY charged an RSR of 0.16948 cents per kWh. See AEP Ohio Exhibit 111 (Roush), Exhibit DMR-3. However, the RSR will increase as shopping increasing during the ESP. If shopping increases as projected by Company witness Allen, the RSR could TRIPLE during the ESP. See AEP Ohio Exhibit 116 (Allen), Exhibit WAA-6. A large sized suburban school district using 1,200,000 kWh per month INITIALLY would be charged approximately \$2,000 per month, or approximately \$24,000 per year, under the RSR. Under the

Company's projections, that amount could rise to approximately \$6,000 per month and approximately \$75,000 per year. A medium sized school district using 600,000 kWh per month would be charged approximately \$1,000 per month, or approximately \$12,000 per year, under the RSR. Under the Company's projections, that amount could rise to approximately \$3,000 per month and approximately \$36,000 per year. A small sized school district using 400,000 kWh per month would be charged about \$680 per month, or approximately \$8,100 per year, under the RSR. Under the Company's projections, that amount could rise to about \$2,040 per month and approximately \$24,300 per year. These are significant increases for each type of district.

The Ohio Schools ask the Commission to reject the RSR, or to exempt them from its application.

C. THE SCHOOLS' PRIMARY POSITION IS THAT THE RSR AND TWO-TIERED CAPACITY CHARGE ARE UNLAWFUL AND MUST BE REJECTED.

The Ohio Schools' primary position in this proceeding is that the RSR and two-tiered capacity charge are unlawful and must be rejected. The RSR is an unlawful generation transition charge and unlawfully subsidizes AEP Ohio's competitive services. The two-tiered capacity charge unlawfully discriminates against customers who are assigned higher Tier 2 capacity prices for the same capacity service provided Tier 1 customers.

1. The RSR is an Unlawful Generation Transition Charge.

AEP-Ohio witness Allen characterizes the RSR as a "transitional rider" designed to recover the portion of the Company's capacity costs not otherwise recovered from customers or CRES providers during the ESP's transition to market prices, i.e., the discounted capacity costs associated with its generating assets, or stranded costs, as described above (AEP Ohio Exhibit 116 (Allen) at 13; Ohio Schools Exhibit 101 (Frye), at 8. Staff witness Fortney concurs with

this intended purpose of the rider, and further agrees that it is a generation rider. Tr. XVI (Fortney), at 4557-4558.

While the Ohio Legislature permitted electric utilities to recover such stranded costs through generation transition charges under its initial restructuring legislation enacted in 1999 (Senate Bill 3), the recovery of transition costs is no longer permitted. Electric retail competition began in Ohio on January 1, 2001 (see Section 4928.01(A)(2), Ohio Rev. Code),⁶ and AEP-Ohio was permitted to begin recovering transition costs on that date. Section 4928.38, Ohio Rev. Code.⁷ Two types of transition costs could have been recovered: generation transition costs and regulatory transition costs. Ohio Schools Exhibit 101 (Frye), at 8. The costs for each were required to be collected by a date certain. AEP-Ohio was entitled to recover any generation transition costs by the end of the market development period, which was December 31, 2005. Sections 4928.38 and 4928.40, Ohio Rev. Code.⁸ AEP-Ohio's operating companies were entitled

⁶ Section 4928.02(A)(28), Ohio Rev. Code, provides:

(A) As used in this Chapter:

(28) Starting date of competitive retail electric service' means January 1, 2001.

⁷ Section 4928.38, Ohio Rev. Code, provides:

Pursuant to a transition plan approved under section 4928.33 of the Revised Code, an electric utility in this state may receive transition revenues under sections 4928.31 to 4928.40 of the Revised Code, beginning on the starting date of competitive retail electric service. Except as provided in sections 4905.33 to 4905.35 of the Revised Code and this chapter, an electric utility that receives such transition revenues shall be wholly responsible for how to use those revenues and wholly responsible for whether it is in a competitive position after the market development period. The utility's receipt of transition revenues shall terminate at the end of the market development period. With the termination of that approved revenue source, the utility shall be fully on its own in the competitive market. The commission shall not authorize the receipt of transition revenues or any equivalent revenues by an electric utility except as expressly authorized in sections 4928.31 to 4928.40 of the Revised Code.

⁸ Section 4928.40(A), Ohio Rev. Code, provides:

(A) Upon determining under section 4928.39 of the Revised Code the allowable transition costs of an electric utility authorized for collection as transition

to recover regulatory transition costs by December 31, 2007, for Columbus Southern Power and December 31, 2008, for Ohio Power. *In Re AEP-Ohio's Application for Approval of an Electric Transition Plan*, Case Nos. 99-1729-EL-ETP and 99-1730-EL-ETP (Order, September 20, 2000; Stipulation, May 8, 2000) (“*ETP Case*”); Section 4928.40, Ohio Rev. Code. The Commission allowed the Company to collect over \$616 million in regulatory transition charges. *ETP Case*, at 47, Finding No. 8. Although AEP-Ohio initially sought to recover its alleged generation transition costs in the *ETP Case*, it waived that right when stipulating a resolution to the proceeding. See *ETP Case*, Stipulation, May 8, 2000, Section IV (“Neither [Columbus Southern Power Company nor Ohio Power Company] will impose any lost revenue charges (generation transition charges) on any switching customer.”)

It is settled that the Commission, as a creature of statute, has and can exercise only the authority conferred upon it by the General Assembly. *Tongren v. Pub. Util. Comm.* (1999), 85 Ohio St. 3d 87; *Columbus S. Power Co. v. Pub. Util. Comm.* (1993), 67 Ohio St. 3d 535; *Pike Natural Gas Co. v. Pub. Util. Comm.* (1981), 68 Ohio St. 2d 181; *Consumers' Counsel v. Pub. Util. Comm.* (1981), 67 Ohio St. 2d 153; and *Dayton Communications Corp. v. Pub. Util. Comm.* (1980), 64 Ohio St. 2d 302. Because the statutory period for collecting generation transition charges has expired, the Commission lacks authority to approve the RSR, which admittedly is

revenues under sections 4928.31 to 4928.40 of the Revised Code, the public utilities commission, by order under section 4928.33 of the Revised Code, shall establish the transition charge for each customer class of the electric utility and, to the extent possible, each rate schedule within each such customer class, with all such transition charges being collected as provided in division (A)(1)(b) of section 4928.37 of the Revised Code during a market development period for the utility, ending on such date as the commission shall reasonably prescribe. The market development period shall end on December 31, 2005, unless otherwise authorized under division (B)(2) of this section. However, the commission may set the utility's recovery of the revenue requirements associated with regulatory assets, as established pursuant to section 4928.39 of the Revised Code, to end not later than December 31, 2010...

designed to recover the stranded generation costs of AEP Ohio. Moreover, having waived the right to collect the charges, the Company cannot attempt to do so now.

2. The RSR Unlawfully Subsidizes AEP Ohio's Competitive Services.

Section 4928.02, Ohio Rev. Code, provides that it is the policy of this state to:

(H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates;

Retail electric generation is a competitive retail electric service. Section 4928.03, Ohio Rev. Code.⁹ In his testimony, AEP Ohio witness Allen acknowledges that the RSR is meant to recover the discounted portion of AEP-Ohio's capacity costs related to its generating assets. AEP-Ohio Exhibit 116 (Allen), at 13. AEP-Ohio sells this competitive service to CRES providers, which bundle it in retail electric products for their customers. In paying the non-bypassable RSR, customers of the non-competitive distribution side of the Company's operations would be paying AEP Ohio for the discounted portion of shopping customers' capacity, thus subsidizing AEP-Ohio's competitive service, in violation of Section 4928.02, Ohio Rev. Code. Requiring distribution customers to do so is unlawful, requiring that the RSR be rejected.

3. The Two Tiered Capacity Charge is Unlawful.

Section 4928.02(A), Ohio Rev. Code, provides that it is the policy of this state to:

⁹ Section 4928.03, Ohio Rev. Code, provides in part:

Beginning on the starting date of competitive retail electric service, retail electric generation, aggregation, power marketing, and power brokerage services supplied to consumers within the certified territory of an electric utility are competitive retail electric services that the consumers may obtain subject to this chapter from any supplier or suppliers.

(A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service.

Moreover, Section 4905.33(A), Ohio Rev. Code,¹⁰ prohibits discriminatory pricing for "like and contemporaneous service" rendered "under substantially the same circumstances and conditions." If the utility services rendered to customers are different or if they are rendered under different circumstances or conditions, differences in the prices charged and collected are not proscribed by Section 4905.33, Ohio Rev. Code. *Weiss v. Pub. Util. Comm.* (2000), 90 Ohio St. 3d 15, 16. Accord: *Allnet Communications Serv., Inc. v. Pub. Util. Comm.* (1994), 70 Ohio St. 3d 202, (for there to be a violation of Section 4905.33, Ohio Rev. Code, there must be a showing that an entity similarly situated to the complainant is charged rates different from those charged the complainant for the same service).

Ohio Schools' witness Frye testified that the capacity charge AEP Ohio charges CRES providers are ultimately reflected in the CRES providers' power supply prices. Ohio Schools Exhibit 101 (Frye), at 16. Indeed, if the two-tiered capacity charge proposal is approved, customers will be assigned the Tier 1 (\$146) charge on a first-come, first served basis (up to the 21% maximum in 2012), and the Tier 1 distinction will follow the customer even when moving between suppliers. AEP Ohio Exhibit 116 (Allen), at Exhibit WAA-3, p. 2; Tr V, at 1527. Customers not securing the Tier 1 distinction will be charged the Tier 2 (\$255) price, and the

¹⁰ Section 4905.33, Ohio Rev. Code, provides:

(A) No public utility shall directly or indirectly, or by any special rate, rebate, drawback, or other device or method, charge, demand, collect, or receive from any person, firm, or corporation a greater or lesser compensation for any services rendered, or to be rendered, except as provided in Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923. of the Revised Code, than it charges, demands, collects, or receives from any other person, firm, or corporation for doing a like and contemporaneous service under substantially the same circumstances and conditions.

Tier 2 distinction will follow the customer even when moving between suppliers. *Id.* There is no question that the same capacity service is being contemporaneously provided to both Tier 1 and Tier 2 customers and that they are being charged different prices for the same service. Tr. XVI, at 4602-4603. This discriminatory practice significantly harms Tier 2 customers, is unlawful and requires that the two-tiered pricing proposal be rejected.

D. IF THE COMMISSION RETAINS THE RSR AND TWO TIERED CAPACITY PRICING, THE OHIO SCHOOL'S ALTERNATIVE POSITION IS THAT, UNDER EXISTING LEGAL PRECEDENT, THE SCHOOLS BE EXEMPTED FROM THE RSR AND THAT TIER 1 RPM CAPACITY BE APPLIED TO ALL SCHOOLS.

If the Commission retains the RSR and two tiered capacity charge in some form, the Ohio Schools ask that primary and secondary public schools be exempted from the RSR and that Tier 1 RPM capacity pricing be applied to them. Long-standing precedent provides the Commission with the authority to provide the schools the relief they seek.

1. The Ohio Legislature Permits Utilities to Provide Schools Free Service or Service at Reduced Rates. Section 4905.34, Ohio Rev. Code.

The Ohio Legislature provides public utilities with the authority to provide political subdivisions, which include public school districts (section 167.01, Ohio Rev. Code), free service or service at reduced rates. Section 4905.34, Ohio Rev. Code. The Ohio Supreme Court recognized this ability, as it pertained to another political subdivision, in *Ohio Edison Co. v. Pub. Util. Comm.* (1997), 78 Ohio St. 3d 466, 1997 Ohio 196.

2. **The Ohio Supreme Court's and this Commission's Precedent Recognize Schools as a Distinct Customer Class Entitled to Special Rate Treatment, Based on Both Cost-of-Service Factors and Non-Cost-Based Unique Characteristics.**

In the seminal case *Cleveland Elec. Illuminating Co. v. Pub. Util. Comm.* (1975), 42 Ohio 2d 403, paragraph 10 of the syllabus (“*Cleveland Elec. Illuminating*”), the Ohio Supreme Court held:

Different rates for various classes of customers may be charged by a utility where the classifications are based upon the quantity used, the time when used, the purpose for which used, the duration of use, and other reasonable considerations which essentially distinguish the service required to meet the various demands.

Based upon this principle, the Court and this Commission have recognized separate customer classification for public schools based upon (1) cost of service differences and (2) schools’ unique characteristics.

a. **Separate Classification Based upon Cost of Service Distinctions.**

i. History

This Commission has found that schools’ unique cost-of-service characteristics (precipitated by the summer recess during an electric utility’s peak demand) entitle them to reduced rates. In *Toledo Edison Co.*, PUCO Case No. 90-717-EL-ATA (Finding and Order, August 2, 1990) (“*Toledo Edison*”), the utility proposed special school rates to recognize the low contributions that primary and secondary schools make to summer peak loads. The Commission’s order approving the special rates recognized that it is less expensive to serve schools than other commercial customers.

In *Cleveland Electric Illuminating Co.*, PUCO No. 95-300-EL-AIR (Opinion and Order, April 11, 1996) (“*CEI*”) the Commission found that school rates should reflect that most school buildings are not fully in use for at least two months of the utility’s peak summer period and are

less likely than other non-residential facilities to be operating during summer afternoons, when the system experiences its maximum demand. The Commission concluded schools should be assigned less revenue responsibility than other commercial customers. Indeed, AEP Ohio witness Roush agreed that customers who made less contributions to peak demand should be assigned less costs in developing the RSR. Tr. IV, at 1215.

Neither AEP Ohio nor Staff conducted a class cost of service study in this proceeding and likely will claim that such studies are unnecessary in setting rates in this case. However, the Ohio Supreme Court has found that the Commission can consider costs and modify an ESP based upon cost considerations. *In re Columbus S. Power Co.* (2011), 128 Ohio St.3d 402, 406-407 (“[Columbus Southern Power cites no authority that expressly prohibits the commission from considering cost of service or adequacy of revenue when reviewing an electric security plan...The electric-security-plan statute...does not prohibit modifications based on the utility’s cost of service. R.C. 4928.143(C)(1)”).

ii. Application to this Proceeding and the RSR

In developing the price for the RSR, AEP Ohio witness Roush used traditional cost-of-service principles and “allocate[d] the costs to customer classes based upon the class’s average contribution to AEP Ohio’s load during PJM’s five highest peak loads.” AEP Ohio Exhibit 111 (Roush), at 12. Emphasis supplied. AEP Ohio included schools in the commercial class of customers (generally rate schedules GS-2 and GS-3). Tr. IV (Roush), at 1213.

Based upon a review of representative school calendars (Ohio Schools’ Exhibit 101(Frye), Exhibit MF-1), the five peak hours in 2011 occurred during schools’ summer recess, as in the *Toledo Edison* and *CEI* cases. See Ohio Schools Exhibit 101(Frye), at 12 (PJM’s peak hours

occurred on July 22 at 3:00 p.m.; July 21 at 5:00 p.m.; July 20, at 5:00 p.m.; July 19 at 5:00 p.m., and June 8 at 5:00 p.m.).

The Ohio Schools requested information from AEP Ohio through discovery to confirm that schools were making a lower contribution to the peak load on those days; however, AEP Ohio responded that the requested information was unavailable. Ohio Schools Exhibit 101(Frye), at 13; Tr. IV, at 1214. Without such data, School witness Frye examined monthly peak demand and usage data from a mixture of 24 school buildings and found that representative schools' demand peaked during September at 9,529 kW, versus the July demand of only 7,042 kW. This, coupled with maximum usage data (1,959,340 kWh in September versus 1,164,880 in July), led Ohio Schools witness Frye to conclude that demand and consumption are lower for schools on peak summer days than a more typical commercial office building or some other commercial customer. Ohio Schools Exhibit 101(Frye), at 14. Mr. Frye concluded that schools are being charged for peak costs which they did not cause and that they should not be subject to the RSR should the Commission approve it. Ohio Schools Exhibit 101(Frye), at 12-13; Tr. X, p. 2903-2904.

b. Separate Classifications Based upon Unique Circumstances.

The Ohio Supreme Court and this Commission have found that public schools are entitled to special rate treatment, even compared with other political subdivisions, due to unique characteristics which are not based upon cost of service factors. *County Commissioners' Assn. of Ohio v. Pub. Util. Comm.* (1980), 63 Ohio St. 2d 243 (“*County Commissioners*”); *In the Matter of the Investigation into Ohio Bell Telephone Company Exchange Rate Tariff*, PUCO No. 3, PUCO Case No. 79-629-TP-COI (Opinion and Order, October 15, 1980) (“*Ohio Bell*”). Staff

witness Fortney concurs that the reasons for providing this special treatment remain valid today. Tr. XVI (Fortney), at 4572-4574.

i. *The Ohio Supreme Court's Precedent in County Commissioners*

County Commissioners involved an appeal from an order in which the Commission had approved a tariff provision filed by The Ohio Bell Telephone Company (“Ohio Bell”). The new tariff provision provided a special rate for primary and secondary schools by placing a cap on their charges for measured rate service. The cap was not available to the remainder of the “business” class of customers, including other political subdivisions. Tr. XVI, at 4567. The County Commissioners’ Association ultimately appealed the order, asking to be provided the same special rate. The Court rejected the appeal, relying on *Cleveland Elec. Illuminating*, and finding a reasonable basis for distinguishing schools from county agencies. Specifically, the Court noted:

The schools were given special treatment because of (1) their unique status, (2) their unique needs, (3) their inability to pass on costs, and (4) their financial plight. Although there are similarities between the counties and the schools, the differences justify the differential in treatment both under the statutes and the Ohio and United States Constitutions. It is true that schools and counties are experiencing financial difficulties and both do rely on tax levies to pay their costs. Schools, however, have a relatively inflexible small number of services they are expected to provide the public at large. As a consequence their inability to pass on costs is a highly significant factor herein. On the other hand, counties perform a multitude of services. Some of these, of course, are essential. Financial problems, however, are much more easily handled by the counties without a drop in essential services. Thus, the schools, *vis a vis* the counties, are uniquely in need of special treatment. Because of this uniqueness, we must hold that the commission’s refusal to order that the counties be treated the same as the school is not unlawful, unreasonable, or unconstitutional.

63 Ohio St. 2d, at 246-247.

ii. *This Commission's Precedent in Ohio Bell*

While *County Commissioners* was pending before the Ohio Supreme Court, the Commission conducted a hearing in *Ohio Bell* on the issue of whether the special school rates should be retained. In its order, issued after the decision in *County Commissioners* was released, the Commission upheld the special rates, again citing public schools' unique characteristics and expanding upon the Court's indicia. The Commission found:

The circumstances perceived by this Commission to be unique to Ohio schools include, but are not limited to, [1] the public purpose served, [2] legal mandates vis-à-vis mandatory student attendance, [3] limited funding mechanisms available to school systems, [4] budgetary problems presently facing the schools, and [5] their inability to pass through the additional costs...

Ohio Bell, at 2.

iii. *Application to this Proceeding*

Ohio Schools' witnesses Frye and Fleeter confirmed the presence of these same indicia of "uniqueness" at the hearing in this proceeding. Ohio Schools Exhibit 101(Frye), at 5-6, 18-20; Ohio Schools Exhibit 102 (Fleeter), at 4-5. Indeed, on cross-examination, Staff witness Fortney agreed that all of factors exist today. Tr. XVI, at 4573-4574.

1. *Public Purpose Served.* For over 150 years, Ohio's Constitution has required the State to fund a "thorough and efficient system of common [public] schools throughout the state." Ohio Constitution, Article VI, Section 2. Ohio's public and primary schools are open to all children, and are supported by all residents' taxes. The public school system affects the interests of all Ohioans, and serves the public purpose by providing a well-educated work-force for the state and its employers to compete nationally and globally in the

21st Century economy. Ohio Schools Exhibit 101(Frye), at 6, 20.
Tr. XVI, at 4573.

2. Mandatory Student Attendance. In keeping with the intent to benefit Ohio by providing an educated work force, the state has enacted compulsory attendance laws. See Section 3321.01, et seq., Ohio Rev. Code. Tr. XVI, at 4573.
3. Limited Funding Mechanisms. Schools rely on scarce taxpayer funds for their operations, including personal property taxes, income taxes in some instances, state taxpayer revenues and federal taxpayer revenues. Ohio Schools Exhibit 101 (Frye), at 5, 18. Tr. XVI (Fortney), at 4573. Indeed, Mr. Fortney acknowledged the difficulty that schools have in passing operating levies and raising revenues (Tr. XVI, at 4574), a difficulty expressed as well in the testimony of Jeff Gordon, Olentangy Local Schools' Director of Business Management (Tr. Columbus Public Hearing, at 103) and Dublin City School's Director of Business Affairs, Annette Morud, (Tr. Columbus Public Hearing, at 54).
4. Budgetary Problems Presently Facing the Schools. Ohio Schools' witness Dr. Howard Fleeter gave uncontroverted testimony that, because of recent unprecedented budget cuts, Ohio's public school districts will receive nearly **\$2.8 billion less** in total state and federal funding over the 2012/2013 biennium than they would have

received under a continuation of fiscal year 2011 funding levels. Ohio Schools Exhibit 102 (Fleeter), at 5. Staff witness Fortney concurred that schools currently are facing budgetary problems, and several schools districts have provided the Commission with the effect of the recent budget cuts on their operations. As specific examples:

- a. Dublin City School's Director of Business Affairs, Annette Morud, testified that, in the past year, Dublin was forced to cut \$9 million dollars from its operating budget. It eliminated 46.5 teaching positions, 9 central office positions, and made cuts to maintenance and busing. Tr. Columbus Public Hearing, at 54-55.
- b. Athens City Schools has closed an elementary school, laid off 15 teachers and 20 support staff, and reduced its budget by over \$2,000,000. Comments filed of June 18, 2012.
- c. Trumbull Career & Technical Center to reduced staffing levels by 5 positions, cut three programs, and decreased funding for necessary materials, supplies, and equipment. Comments filed June 8, 2012.
- d. Oregon City Schools reduced 50 teaching and non-teaching positions, and cut school budgets, including necessary instructional material and equipment. Comments filed June 18, 2012.
- e. Barberton City Schools reports that its revenue trend from the 2009/2010 - 2013/2014 school years shows nearly a \$4 million revenue loss: \$1,562,767 in local revenues, \$1,173,938 in state revenues, and \$1,257,638 in federal revenues. Comments filed June 13, 2012.
- f. Elmwood Local Schools has downsized over 8 teachers and 2 non-teaching positions. Comments filed June 13, 2012.
- g. Elida Local Schools reports that it has lost \$700,000 in state funding alone, placing state funding revenues at 2003 levels. Comments filed June 12, 2012.

5. The Inability to Pass Through the Additional Costs. Ohio Schools’ witness Frye testified that schools, unlike private business enterprises, cannot voluntarily increase the price of their product to pass through electric rate increases, but must obtain scarce taxpayer funds to replace revenues lost, which is difficult under current school funding processes. Ohio Schools Exhibit 101(Frye), at 5, 18. Accord: Staff witness Fortney (Tr. XVI, at 4574), public witnesses Jeff Gordon, Olentangy Local Schools’ Director of Business Management (Tr. Columbus Public Hearing, at 102) and Brad Deleruyelle, Treasurer, Pandora-Gilboa Local School District Tr. Lima Public Hearing, at 24 (“We can’t raise prices on school students.”)

It is uncontroverted in this proceeding that the Ohio’s public schools’ budgetary crises, coupled with all the indicia of “uniqueness” in the Ohio Supreme Court’s and this Commission’s long-standing precedent, support special rate treatment for the Ohio’s public schools in this proceeding.

3. **The Commission’s Precedent of Providing Special Rate Treatment to Ohio’s Schools Extends to Current-Day Electric Security Plan Proceedings.**

Most recently in ESP proceedings, the Commission has recognized the benefit of special rate treatment for Ohio’s public schools. It approved the exemption of Ohio public schools from the market transition rider (“MTR”) in AEP-Ohio’s ESP approved December 14, 2011. *In Re: 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 , PUCO Case No. 11-346-EL-SSO, et al. (Opinion and Order, December 14, 2011), at 36. The Commission also discounted generation rates to schools in the FirstEnergy operating companies' service territories. *In Re: 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*, PUCO Case No. 08-935-EL-SSO (Second Opinion and Order, March 25, 2009), at 10 and 18.

The applicable standard of review in ESP proceedings is whether the ESP is more favorable in the aggregate than the alternative MRO. Section 4928.143(C), Ohio Rev. Code, provides in part:

...the commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing *and all other terms and conditions*, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code.

Emphasis supplied. The Ohio Supreme Court has emphasized that this standard of review is not limited to a strict price comparison, but that the Commission may consider a wide range of benefits in determining if the ESP is more favorable in the aggregate than the MRO. *In re Columbus S. Power Co.* (2011), 128 Ohio St.3d 402. In this regard, Staff witness Fortney distinguishes between the “quantitative” price comparison to be made and other “qualitative” terms and conditions that provide a benefit in an ESP but cannot be offered through the MRO. He states, “[A]lthough either an electric security plan or a market rate option would fulfill the obligation under R.C. 4928.141, the electric security plan can offer advantages for the ratepayers of the applicant, the applicant, *and the public at large.*” Staff Exhibit 110 (Fortney), at 6 (emphasis added). On cross examination, Mr. Fortney concurred that special rate treatment for

schools would benefit the public at large, and specifically that a strong, financially-sound education system would benefit the public at large. Staff witness Fortney, Tr. XVI, at 4576.

E. UNDER THE APPROPRIATE STANDARD OF REVIEW, AEP OHIO'S PROPOSED ESP PRICE AND OTHER PROPOSED PUBLIC BENEFITS ARE NOT MORE FAVORABLE IN THE AGGREGATE THAN THE MRO.

As stated previously, the applicable standard of review in this proceeding is whether the ESP's pricing and all other terms and conditions of AEP Ohio's proposed plan are more favorable in the aggregate than the MRO. Section 4928.143(C)(1), Ohio Rev. Code. The bulk of the analyses performed in this proceeding on the quantitative pricing shows that the ESP is not more favorable than the MRO. Further, the qualitative benefits proposed by AEP Ohio do not operate to make the ESP more favorable in the aggregate than the MRO.

1. The Bulk of the Analyses Performed in this Proceeding Show that, Based on the Quantitative Analysis of Pricing Alone, the ESP is Not More Favorable than the MRO.

The Ohio Schools did not present a pricing witness, but notes that neither the intervening parties' expert witnesses, nor Staff witness Fortney, found that AEP Ohio's proposed ESP price was more favorable than the MRO. Staff Exhibit 110 (Fortney), at 6; Industrial Energy Users Ohio Exhibit 125 (Murray), at 82; Duke Energy Retail Sales Exhibit 102 (North), at 6; Office of Consumers Counsel Exhibit 114 (Hixon), at 22; FirstEnergy Solutions Exhibit 104 (Schnitzer), at 4. Indeed, Staff witness Fortney performed a "quantitative" comparison of ESP versus MRO prices under three possible capacity charges that ultimately will be determined by the Commission (e.g., \$20/MW-day; \$146/MW-day; and \$355/MW-day) and concluded that under any of the three alternatives the ESP price would be less favorable than the MRO. Staff Exhibit 110 (Fortney), at 6. Thus, under Mr. Fortney's analysis, the Commission must reject the proposed ESP unless significant other "qualitative" benefits operate to make the ESP more

favorable than the MRO in the aggregate. The qualitative benefits proposed by AEP Ohio do not make the ESP more favorable.

2. AEP-Ohio's Proposed "Qualitative" Benefits Do Not make the ESP More Favorable in the Aggregate than the MRO.

In its application, AEP Ohio identified the following qualitative benefits that should be considered as part of the "in the aggregate" test:

- a. Earlier transition to market than under an MRO.
- b. Elimination of the Environmental Investment Carrying Charge Rider ("EICCR").
- c. No base generation rate increase.
- d. Tempered rate increase.
- e. Merger of the Phase In Recovery Rider ("PIRR") and Fuel Adjustment Clause ("FAC").
- f. Distribution related riders (DIR, ESSR, gridSmart).
- g. Interruptible Service and Credit; Economic Development Cost Recovery Rider.
- h. Advancement of state policies.
- i. Generation Resource Rider ("GRR").
- j. RSR and Discounted Capacity Costs.

See AEP Ohio Exhibit 114 (Thomas), at Exhibit LJT-1, page 1 of 3, AEP Ohio Exhibits 118 and 119 (Dias). Of these ten qualitative benefits claimed by AEP Ohio, Staff suggests that the Commission weigh the possible benefits of only three.

a. The Three Qualitative Benefits Identified by Staff Provide Marginal or No Public Benefit.

Staff does not argue that adoption of the three potentially qualitative benefits would make the ESP more favorable than the MRO; rather, it asks only that the Commission consider them

and apply the weight it believes appropriate to them. Tr. XVI (Fortney), at 4617. These three benefits are (1) the earlier transition to market, (2) rate stability and certainty, and (3) the GRR. Any weight to be given these three qualitative benefits is marginal at best.

i. Early Transition to Market

Staff notes the ESP will provide an earlier transition to the competitive bid process in 2015, as opposed to a six year transition under an MRO. Staff Exhibit 110 (Fortney), at 7. See, also, AEP Ohio Exhibit 114 (Thomas), at Exhibit LJT-1, page 1 of 3; AEP Ohio Exhibit 119 (Dias), at 1. However, Staff also acknowledges that this potential benefit is mitigated by the Company's refusal to initiate a competitive bid process immediately upon the ESP becoming effective. In this regard, Staff cites the Duke Energy ESP stipulation, to which it was a signatory party, and in which Duke immediately conducted an auction that led to a 17% reduction in standard service offer rates. Staff Exhibit 110 (Fortney), at 4556, 4598. The result is that Duke customers received immediate rate relief to their standard service offer, whereas in AEP Ohio's ESP customers are held captive to higher standard service offer rates. As such, AEP Ohio's transition to market in 3 years, as opposed to immediately, is only a marginal benefit at best.

ii. Rate Certainty and Stability

Staff also suggests that the ESP provides a benefit of rate certainty and stability, as the market is subject to fluctuations and may be unpredictable, while the proposed ESP would provide a transition to market with rate certainty and stability such that customers and the utility know what to expect. Staff Exhibit 110 (Fortney), at 7. As a threshold matter, Staff's claim of rate certainty and stability contradicts the preference that the Company proceed to a competitive bid process immediately upon approval of the ESP, as noted above. Moreover, Staff acknowledged that any "uncertainty" surrounding a competitive bid process is of limited

duration – until the competitive auction is completed and rates are determined. Indeed, Staff acknowledged that the uncertainty is the same for an auction conducted within an ESP and an MRO auction. Tr. XVI (Fortney), at 4599. Thus, rate certainty during this narrow window provides little or no benefit over the MRO.

iii. Generation Resource Rider

In claiming that the GRR may have some qualitative benefits, Staff states that “**if** there is an established need for additional generation in the future, the GRR provides a mechanism to enable the Commission to allow for the construction of generation facilities, while committing to the diversity of state supply, and allowing the applicant to fulfill its REC obligation.” Staff Exhibit 110 (Fortney), at 7 (emphasis supplied). Noticeably, Staff has qualified its recommendation by stating “if” there is an established need for additional generation. Staff acknowledges that, at this time, it is not aware of the need for any generation facilities in Ohio. Tr. XVI (Fortney), at 4599. Thus, the benefit of the GRR is speculative, at best, as additional generation may never be built. The GRR should not be considered a qualitative benefit at all.

b. The Remaining Qualitative Benefits Identified by the Company Offer No Benefit Over an MRO.

The remaining qualitative benefits identified by the Company offer no benefit over an MRO.

i. Elimination of the EICCR

AEP Ohio proposes to eliminate the EICCR and recover its cost in base generation rates. It reasons that such treatment provides price certainty for standard service offer customers and gives the company the risk of making any generation related investments, including environmental retrofit investments and expenses required by EPA rules. Ohio Exhibit 114 (Thomas), at Exhibit LJT-1, page 1 of 3; AEP Ohio Exhibit 119 (Diaz), at 4. If any additional

risk is borne by AEP from elimination of the EICCR, it is appropriate, considering that the Company will transfer its generation assets to a non-regulated competitive generation company by 2014. AEP Ohio Exhibit 102 (Nelson), at 6. AEP Ohio should bear these risks. For this reason, and for the reasons discussed under Rate Certainty and Stability, above, this proposal has no qualitative benefit.

ii. No Base Generation Rate Increase

The Company claims rate certainty is also achieved by not raising base generation rates and again claims a benefit in that the company will assume the risk of making any generation related investments. *Id.* For the reasons discussed under the EICCR and Rate Certainty/Stability sections of this brief, above, this proposal has no qualitative benefit. The Ohio Schools also note that failure to increase base generation rates is not a benefit, considering the lengths AEP Ohio has gone to raise other rates in this proceeding, notably the RSR and capacity charges that will be passed through to shopping customers.

iii. Tempered Rate Increase

In its attempt to justify its application, AEP Ohio claims that a benefit of its ESP is that it offers a “tempered rate increase.” AEP Ohio Exhibit 119 (Dias), at 4. AEP Ohio witness Roush testified the *average* rate increases for GS-2 and GS-3 customers in the Columbus Southern Power Rate Zone would be approximately 2 – 3%, and would be 4 – 5% in the Ohio Power Rate Zone. AEP Ohio Exhibit 111 (Roush), at 16. On cross examination, he stated that on an individual basis, rate increases could range up to 10%, with very few customers experiencing over a 10% increase. Notwithstanding that a 10% increase would be sizeable to a school that spends up to \$20,000 per month on electricity, Mr. Roush stated that the Company did not analyze the rate impact that the increased capacity charges could have on shopping customers. When passed through from CRES providers to their customers, this potential increase could rival

the rate shock that caused the stipulation initially approved in this proceeding on December 14, 2011 to be overturned by Entry on Rehearing of February 23, 2012.

iv. Merger of the PIRR and FAC

AEP Ohio states that merging the FACs of the Ohio Power (“OP”) and Columbus Southern Power (“CSP”) rate zones, increases rates for OP Rate Zone customers and reduces rates for CSP Rate Zone Customers. AEP Ohio Exhibit 111 (Roush), at 5. Conversely, merging the PIRR reduces rates for OP Rate Zone customers and increase rates for CSP Rate Zone customers. Id. AEP Ohio claims that the delay in merging the FAC, and a delay in collection of the previously approved FAC costs through the PIRR, is a benefit of the ESP as it limits the bill impact to customers. Id. p 6; AEP Ohio Exhibit 119 (Dias), at 3, 4. However, the delay in merging the FAC and collection of the PIRR until June 2013 cannot be considered a qualitative benefit because it will create \$71 million in additional carrying charges for Rider PIRR. Customers will pay less carrying costs if collections begin sooner. Staff Exhibit 109 (Turkenton), at 4-5.

v. Distribution-Related Riders (DIR, ESSR, gridSmart)

AEP Ohio argues that these distribution-related riders provide various benefits by inclusion in this ESP. For example, the Company claims the DIR provides a streamlined approach to cost recovery to support reliability improvements, the ESSR provides increased spending for vegetation management to support reliability, and the gridSmart provides opportunities for customers to create and realize efficiency gains. Ohio Exhibit 114 (Thomas), at Exhibit LJT-1, page 1 of 3. However, the services provided by each of these riders could be offered independently of an ESP in a distribution rate proceeding. Therefore, they provide no benefit over an MRO. AEP Ohio’s claim that the DIR will mitigate rate case expenses, and that

AEP Ohio will commit not to bring a distribution rate case before June 1, 2015, is meaningless, as it just completed a rate case on December 14, 2011 in PUCO Case No. 11-352-EL-AIR.

vi. *Interruptible Service and Credit; Economic Development Cost Recovery Rider*

AEP Ohio claims that the continuation of its interruptible service under rider IRP-D, and enhancement of the credit thereunder, as well as continuation of the Economic Development Cost Recovery Rider (“EDCRR”), are benefits provided by the ESP as both riders promote economic development. AEP Ohio Exhibit 119 (Dias), at 7-8. More specifically, AEP Ohio claims that enhancement of the IRP-D credit will benefit existing interruptible customers, which are major employers in the state, and also benefit all customers by attracting more low cost capacity load to its system. *Id.*, at 7. The Company also claims that continuation of the EDCRR will assist mercantile customers and the retention and creation of jobs in the state. *Id.*, at 8. The Company reasons that these riders will increase business activity in Ohio and will have a substantial economic impact in the state, including providing “taxes that provide critical funding for Ohio schools.” *Id.*

AEP Ohio’s claims should be rejected out of hand. Even the Company agrees that energy prices have decreased remarkably in Ohio. AEP Ohio Exhibit 116 (Allen), at 4; Tr. V, at 1415. In fact, energy prices have decreased so dramatically that, if the Company did not erect artificial barriers to shopping (e.g., the two tiered capacity charge), it would lose most of its customers to shopping and suffer financial harm. See *Capacity Charge Case*, AEP Ohio’s Motion for Relief (Filed February 27, 2012), at 2; *Capacity Charge Case* (Entry March 7, 2012), at 5. Thus, the preferred method to spur economic development is to move to a competitive bid process immediately in this ESP. The Ohio Schools believe that market prices will lead to greater economic incentives for businesses to locate in Ohio, reduce costs, increase employment, and

grow the tax base for the benefit of Ohio's public schools, rather than AEP Ohio's selectively applied piece meal riders.

vii. *Advancement of State Policies/The RSR and Discounted Capacity Charges*

In his direct and supplemental testimony, AEP Ohio witness Dias went to extraordinary lengths to portray compliance with the State of Ohio's policies in Section 4928.02, Ohio Rev. Code, as a qualitative benefit of the proposed ESP. AEP Ohio Exhibits 118 and 119 (Dias). Because AEP Ohio, and this Commission, already are bound by law to honor these policies, adoption of provisions in an ESP that satisfy the state policies can hardly be claimed as a benefit of the proposed ESP. AEP Ohio would be bound to follow the policies regardless. In any event, as discussed above, the provisions of the ESP which AEP Ohio claims satisfy state policy have individually been found to be of very marginal or no benefit when comparing an ESP to an MRO.

viii. *RSR and Discounted Capacity Costs*

In his supplemental testimony, AEP Ohio witness Dias states that the RSR also should be considered a benefit of the ESP in its own right because it permits the Company to provide the nonexistent or marginal benefits discussed above. AEP Ohio Exhibit 119 (Dias), at 3. The Company's claim should be rejected for the reasons stated above.

AEP Ohio also claims that the RSR permits it to provide a substantially discounted capacity charge that (1) promotes robust shopping for customers and (2) mitigates the financial harm to the Company caused by discounting capacity charges to CRES providers. *Id.*

To be clear, as stated previously, faced with declining energy prices and increased shopping, AEP Ohio (perfectly content with charging RPM prices since 2007) sought to increase its capacity charge from the traditional RPM rate (currently \$20/MW-day) to a highly

controversial cost-based rate (\$355/MW-day). The Company did so to prevent its customers from leaving its generation service in order to protect its revenues. The Company's claim that a discount of the \$355 capacity charge to \$255/MW-days promotes shopping is absurd, considering that AEP Ohio's Motion for Relief filed in the companion Capacity Charge Case on February 27, 2012, asked the Commission for an interim two-tiered capacity charge, with a Tier 2 price at \$255, to prevent losing a majority of its customers to shopping. See *Capacity Charge Case*, AEP Ohio's Motion for Relief (Filed February 27, 2012), at 2; *Capacity Charge Case* (Entry March 7, 2012), at 5. It is clear, the \$255/MW-day charge is intended as a barrier to shopping, not to promote it. Tr. XVI (Fortney), at 4603; Ohio Schools Exhibit 101 (Frye), at 16.

The concept of financial harm to the Company as a result of its decision to discount the \$355 capacity charge is illusory. AEP Ohio's presumption in this case, and the companion Capacity Charge case, is that it is entitled to a cost-based capacity charge of \$355/MW-day. However, as discussed previously, the Commission has not determined what the capacity charge should be, and Staff and other intervenors have presented analyses that demonstrate the charge, even if the Commission determines that a cost based capacity charge is permissible, should be far below the \$355/MW-day level. As Staff witness Fortney explained, if the capacity charge is set low enough, no discount would be necessary and, thus, there would be no need for the RSR, at all. Tr. XVI, at 4558. Under the Company's own theory, if the Commission determines that the capacity costs are at a level from which no discount need be taken, the Company will incur no financial harm.

V. CONCLUSION

For the foregoing reasons, the Ohio Schools respectfully request the Commission to disapprove the ESP. Alternatively, if the Commission were to modify and approve the ESP,

retaining the RSR and/or two tiered capacity charge in some form, the Ohio Schools ask, under the Commission's long-standing precedent, to be exempted from the RSR and to make Tier 1 RPM capacity available to the public primary and secondary schools in AEP Ohio's service territory.

Respectfully submitted,

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Appendix A

Dublin City Schools, Testimony, Testimony April 30, 2012.
Olentangy Local Schools, Testimony April 30, 2012.
Logan Hocking Local Schools, Testimony April 30, 2012.
Pandora Gilboa Local Schools, Testimony May 3, 2012
Trumbull Career & Technical Center, Comments filed June 8, 2012.
Ottawa-Glandorf Local Schools, Comments filed June 11, 2012.
Hicksville Exempted Village Schools, Comments filed June 11, 2012.
Monroeville Local Schools, Comments filed June 11, 2012.
Wellsville Local Schools, Comments filed June 11, 2012.
Spencerville Local Schools, Comments filed June 11, 2012.
Elida Local Schools, Comments filed June 12, 2012.
Louisville City Schools, Comments filed June 13, 2012.
Cleveland Heights-University Heights City Schools, Comments filed June 13, 2012.
Toronto City Schools, Comments filed June 13, 2012.
Upper Arlington City Schools, Comments filed June 13, 2012.
Van Buren Local Schools, Comments filed June 13, 2012.
Jackson City Schools, Comments filed June 13, 2012.
New Richmond Exempted Village Schools, Comments filed June 13, 2012.
Barberton City Schools, Comments filed June 13, 2012.
Ohio Valley Schools, Comments filed June 13, 2012. [See – CRES and Green stuff]
Washington Local Schools, Comments filed June 13, 2012.
Oak Hills Local Schools, Comments filed June 13, 2012.
Groveport Madison Schools, Comments filed June 13, 2012.
Bucyrus City Schools, Comments filed June 13, 2012.
Elmwood Local Schools, Comments filed June 13, 2012.
Wellston City Schools, Comments filed June 13, 2012.
Metropolitan Educational Council, on behalf of 29 schools, Comments filed June 13, 2012.
Spencerville Local Schools, Comments filed June 13, 2012.
Vantage Career Center School District, Comments filed June 13, 2012.
Lincolnview Local Schools, Comments filed June 13, 2012.
Alexander Local Schools, Comments filed June 13, 2012.
Warren Local Schools, Comments filed June 15, 2012.
Hilliard City Schools, Comments filed June 18, 2012.
Athens City Schools, Comments filed June 18, 2012.*
Fort Frye, Comments filed of June 18, 2012.
Xenia Community Schools, Comments filed June 18, 2012.
Perry Local Schools, Comments filed June 18, 2012.
Norwayne Local Schools, Comments filed June 18, 2012.
Hardin-Houston Local Schools, Comments filed June 18, 2012.
Oregon City Schools, Comments filed June 18, 2012.
Gallipolis City Schools, Comments filed June 19, 2012.
Winton City Schools, Comments filed June 19, 2012.
Waverly City Schools, Comments filed June 19, 2012.
Findlay City Schools, Comments filed June 25, 2012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing the *Ohio Schools' Initial Brief* was served by electronic mail this 29th day of June 2012, upon the following.

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Summary: Brief of Ohio Schools electronically filed by Mr. Dane Stinson on behalf of Buckeye Association of School Administrators and Ohio Association of School Business Officials and Ohio School Board Association and Ohio Schools Council