

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**RETAIL ENERGY SUPPLY ASSOCIATION, DIRECT ENERGY BUSINESS, LLC,  
AND DIRECT ENERGY SERVICES, LLC'S  
REPLY BRIEF**

**July 9, 2012**

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## **I. Introduction**

Now comes the Retail Energy Supply Association (“RESA”), Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, the “Suppliers”)<sup>1</sup> and pursuant to the procedural schedule established by the Attorney Examiners, submit its Reply Brief in the above styled docket.

This Reply Brief will correct several misstatements and faulty analysis contained in the Initial Post-Hearing Brief the Ohio Power Company (“AEP Ohio”) and the Ohio Energy Group (“OEG”). Those issues are:

- 1) Proposed terms in the modified ESP which are not lawful and reasonable and do not advance the state energy policy including the Generation Resource Rider and the Retail Stability Rider as proposed by AEP Ohio.
- 2) The Application fails to correct unnecessary delays in the adoption of a full energy auction, retains anticompetitive tariff provisions, and does not provide for efficient consolidated billings or provide for necessary informational system upgrades.
- 3) The ESP IIA<sup>2</sup> does not advance Ohio’s energy policies;
- 4) Unless the proposed ESP IIA is modified in the manner suggested by the Suppliers, the ESP IIA does not meet the necessary statutory standards because it is not more favorable in the aggregate as compared to the expected results of an MRO.

## **II. ARGUMENT**

### **A. A Number of the Proposed Terms of the Modified ESP Are Not Lawful and Reasonable, and Do Not Advance the State Energy Policy.**

AEP Ohio argues that its proposed ESP IIA is lawful and reasonable and advances state policies.<sup>3</sup> Yet, AEP Ohio’s proposed ESP IIA seeks authorization for a non-bypassable rider without first fulfilling the statutory requirements before it can socialize the cost to all its

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<sup>1</sup> Teresa L. Ringenbach presented testimony jointly on behalf of both RESA and Direct Energy in this proceeding.

<sup>2</sup> The designation ESP IIA is used to differentiate the March 30, 2012 Application from the original application in the AEP Ohio ESP II case filed January 27, 2011.

<sup>3</sup> AEP Ohio Initial Brief, 25.

customers. Also contrary to Ohio law, AEP Ohio requests authorization to collect \$929 million in revenue regardless of its costs. Such an unprecedented rate arrangement would unduly shift risk to customers and result in revenues far in excess of its need for “financial stability.” Thus, AEP Ohio’s proposed modified ESP is not just and reasonable, and does not advance the state energy policy.

*i. AEP Ohio’s Proposed Generation Resource Rider (“GRR”) is unlawful, and is unreasonable.*

AEP Ohio has proposed the GRR as a “placeholder” rider “designed to recover renewable and alternative capacity additions, as well as more traditional capacity constructed or financed by [AEP Ohio] and approved by the Commission in accordance with R.C. 4928.143(B)(2)(c).”<sup>4</sup> AEP Ohio states that at this time only the costs associated with the Turning Point Solar (“TPS”) facility are to be collected under the GRR during the term of the ESP.<sup>5</sup> However, the project is to be approved and assessed in a separate proceeding.<sup>6</sup>

AEP Ohio attempts to dispel concerns about the GRR by stating that the GRR benefits all customers, including shopping customers, because many shopping customers at some point take service under AEP Ohio’s SSO.<sup>7</sup> First, there is no factual basis for the statement that many customers will use standard service in the future. In fact, AEP Ohio justifies the Rider RSR in large measure because it expects a mass migration from standard service to shopping. Even if many shopping customers do return to standard service, it would not justify charging the remaining shopping customers for power or renewable energy credits from a unit which the customer did not voluntarily sign up for. In fact, it would also be accurate to say that many standard service customers may in the future purchase energy or renewable energy credits from a

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<sup>4</sup> AEP Ohio Initial Brief, 29.

<sup>5</sup> AEP Ohio Initial Brief, 29.

<sup>6</sup> AEP Ohio Initial Brief, 29.

<sup>7</sup> AEP Ohio Initial Brief, 29-30.

CRES provider, but that would not authorize a payment today from standard service customers to CRES provider for renewable energy prior to the CRES provider actually providing the energy or renewable energy credits.

AEP Ohio also asserts that the GRR benefits all customers because the sales of energy produced from the TPS will offset the costs.<sup>8</sup> What AEP Ohio fails to state is whether the TPS revenue will offset all of the TPS costs. For example, if the TPS produces \$100 per MWh energy and AEP Ohio sells that energy for \$50 MWh, then AEP Ohio is demanding that the shortfall of \$50 MWh be socialized to all customers. Few shopping customers may view such a payment a “benefit”. This is especially true if a customer is taking all of their energy and renewable energy credits from a CRES provider and receiving nothing from the utility. Finally, AEP Ohio has failed to respond to the legal argument that before an electric distribution company can socialize the cost of a new generation unit pursuant to Section 4928.143(B) (2) (c), it has the burden of demonstrating to the Commission in this case that: 1) there is a need for the proposed generation; 2) the generation will be properly dedicated; and 3) the generation unit will be competitively bid.<sup>9</sup> Not only has AEP Ohio presented no evidence in the record to demonstrate that these statutory requirements are met, but the record shows that AEP Ohio has a surplus of capacity.<sup>10</sup> Further, there is no evidence of a shortage of renewable energy credits (“REC”) or Solar Renewable Energy Credits (“S-RECs”) which would necessitate AEP Ohio build and socialize the cost of the TPS. AEP Ohio has documented that currently it may not have enough S-RECs to meet its needs<sup>11</sup>, but there is no evidence that the missing S-RECs could

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<sup>8</sup> AEP Ohio Initial Brief, 30.

<sup>9</sup> RESA Exhibit 102, Direct Testimony of T. Ringenbach (“Ringenbach Direct”), 11-12.

<sup>10</sup> AEP Ohio Exhibit 103, Direct Testimony of P. Nelson (“Nelson Direct”), 12; cross-examination of AEP Ohio witness Graves, Tr. Vol. III, 775.

<sup>11</sup> In his testimony supporting the GRR and TPS, AEP Ohio witness Nelson does not mention any need for the capacity in order to fulfill S-REC or REC requirements. Nelson Direct, 20-21; see also AEP Ohio Exhibit 118, Direct Testimony of S. Dias (“Dias Direct”), 13-14. In fact, none of AEP Ohio’s witnesses have claimed that the

not be purchased. In fact, there is no evidence that AEP Ohio has made requests for proposals or even solicited bilateral agreements for the projected shortfall of S-RECs.

Thus, the Commission should reject the GRR as proposed by AEP Ohio as at best being premature, and at worst inappropriate. To the extent AEP Ohio can demonstrate that the TPS (or any other proposed generation resource) meets the statutory requirements under Section 4928.143(B)(2)(c), Revised Code, then and only then, can AEP Ohio legally seek to socialize the cost to all customers through a non-bypassable rider.

*ii. The Retail Stability Rider As Proposed By AEP Ohio, and OEG, is Unlawful and Unreasonable.*

AEP Ohio proposed in its ESP IIA to collect through the non-bypassable Retail Stability Rider (“RSR”) a variable fee per kWh designed to assure AEP Ohio an annual non-fuel generation revenue target of \$929 million.<sup>12</sup> Mechanically, AEP Ohio for the first year anticipates that it would charge all customers 2 mils per kWh in 2012 and that combined with its standard service sales, State Compensation Mechanism revenues from CRES and its off system sales would total \$929 million.<sup>13</sup> The RSR as proposed by AEP Ohio is a revenue shock absorber: if AEP Ohio’s on and off system sales falter<sup>14</sup>, then Rider RSR would be increased to all retail customers in order to assure the designed level of revenue. There is no paring of costs

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TPS project is needed for such a purpose. Although AEP Ohio witness Godfrey stated that the Ohio market for RECs and S-RECs is weak, and AEP Ohio is expected to have a shortfall for solar RECs in 2012. AEP Ohio Exhibit 118, Direct Testimony of J. Godfrey (“Godfrey Direct”), 7-9. However, on cross-examination, Mr. Godfrey admitted that for 2012 AEP Ohio will have enough in-state solar RECs banked to meet the in-state requirements, but will not have enough to meet the out-of-state requirements. Tr. Vol. III, 974-75.

<sup>12</sup> The revenue target is based on non-fuel generation revenues that would have led to a 10.5% ROE based on conditions present in 2011. AEP Ohio Initial Brief, 46.

<sup>13</sup> AEP Ohio Exhibit 116, Direct Testimony of W. Allen (“Allen Direct”), Exhibit WAA-6.

<sup>14</sup> Produce in the aggregate less than the targeted revenue of \$929 million.

to produce net revenue or return on assets or equity—the Rider RSR as proposed strictly assures AEP Ohio \$929 million in generation revenue plus all fuel expenses.<sup>15</sup>

AEP Ohio presents no case precedent for such a non-bypassable rider whose sole function is to assure a set level of gross generation revenue. As noted by RESA and Direct Energy in its initial brief, the RSR as proposed by AEP Ohio creates an unacceptable shifting of risk from AEP Ohio shareholders to its customers.<sup>16</sup> The \$929 million gross revenue figure is based on AEP’s actual experience in 2011<sup>17</sup> including its off system sales. Thus, for example, if in 2013 all the gross generation revenues are the same as in 2011, but AEP Ohio makes less off system sales, under the proposed RSR, retail customers will be called upon to make up the lost off system sales revenue. Ultimately, regardless of how AEP Ohio runs their business they are guaranteed gross revenues (in addition to fuel costs) of \$929 million. That is an unreasonable risk to place on the customers, and as such the proposed RSR as proposed should be rejected.

AEP Ohio asserts that the proposed non-bypassable RSR assures AEP Ohio financial stability during the period of the ESP IIA, and prevents adverse financial harm to AEP Ohio.<sup>18</sup> While AEP Ohio claims that the RSR is “tied” to a number of major features and provisions of the proposed ESP, AEP Ohio admits that RSR is proposed “...in order to provide some measure of financial stability to [AEP Ohio] in exchange for the rate stability and other benefits that customers will receive under the Modified ESP proposal.”<sup>19</sup> Thus, the ultimate goal of the proposed RSR is to “...ensure financial stability for the Company during a brief transition period and for customers in the long run.”<sup>20</sup>

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<sup>15</sup> Fuel expenses here include purchased power as well as fuel used to generate power Nelson Direct, 14-17, describing the Fuel Adjustment Clause.

<sup>16</sup> RESA and Direct Energy Initial Brief, 15-16.

<sup>17</sup> Allen Direct, 13-14.

<sup>18</sup> AEP Ohio Initial Brief, 36.

<sup>19</sup> AEP Ohio Initial Brief, 36; 46.

<sup>20</sup> AEP Ohio Initial Brief, 46.

RESA and Direct Energy have taken the position that AEP Ohio should be compensated if it would be financially harmed by charging RPM prices for capacity as it moves from FRR to RPM.<sup>21</sup> In the interim between the filing of the initial briefs and this reply, the Commission has addressed the issue of possible financial harm to AEP Ohio. The Commission has determined that AEP Ohio's embedded capacity cost is not \$356 MW-day, but \$188.88 per MW-day.<sup>22</sup> Further, the Commission has determined that the State Compensation Mechanism rate charged to CRES providers for capacity should be discounted from \$188.88 per MW-day to the then applicable RPM based price including line losses and zonal costs.<sup>23</sup> The Commission has permitted AEP Ohio to collect the difference between the two rates via a deferral mechanism.<sup>24</sup> The Commission's ruling in the Capacity Case obviates the need for the RSR proposed by AEP Ohio, and its related capacity proposals.

In light of the Commission's recent order, AEP Ohio should be limited to collecting the difference between the determined cost of capacity, and the RPM rate through a modified version of its proposed RSR.<sup>25</sup> The Commission specifically stated in its opinion and order that the \$188.88 MW-day capacity rate meets the goals AEP Ohio laid out in its testimony and its initial brief of ensuring financial stability and avoiding "adverse" financial harm.<sup>26</sup> First, the rate is a just and reasonable rate as determined by the Commission after a full hearing in its Opinion and Order.<sup>27</sup> Second, the rate reasonably and fairly compensates the Company for the

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<sup>21</sup> Ringenbach Direct, 8-9.

<sup>22</sup> July 2, 2012 Opinion and Order in Case No. 10-2929-EL-SSO, 33. 36.

<sup>23</sup> Id.

<sup>24</sup> Id. at 36.

<sup>25</sup> The outcome of the Capacity Charge case is a contingency that AEP Ohio recognized, and realized could affect the outcome of its proposal. AEP Ohio Initial Brief, 40.

<sup>26</sup> July 2, 2012 Opinion and Order in Case No. 10-2929-EL-SSO, 36.

<sup>27</sup> Id.



remainder of its FRR capacity obligations.<sup>28</sup> Finally, the rate allows AEP Ohio to earn an adequate return on its investment.<sup>29</sup>

Consistent with the Testimony of witness Ringenbach and Staff witnesses<sup>30</sup>, the rate collected by AEP Ohio for this shift to market should be limited to the difference between the Commission's determined cost for capacity, and the RPM price. This rate provides a compromise position that ensures a smooth path to the competitive market, while granting returns for AEP Ohio that are not confiscatory.

1. The RSR Must Be A Non-Bypassable Rider, Charged To Shopping and Non-Shopping Customers Equally.

The Ohio Energy Group ("OEG"), as was the case with all intervenors and Staff supported RPM as the capacity cost to be charged CRES providers for shopping customers in the AEP Ohio service area.<sup>31</sup> OEG, in the alternative, then presented an argument that to the extent the Commission approves any form of capacity compensation in excess of RPM; the Commission should allocate the costs of the additional compensation to shopping customers or CRES providers.<sup>32</sup> OEG supports this argument with several flawed assumptions and arguments. In response to OEG's argument, the Suppliers argue that the RSR, or whatever mechanism is used to collect the RPM deferral cost (the "Deferral Mechanism"), should apply to all customers, not just shopping customers.

OEG argues that additional compensation granted to AEP Ohio in excess of RPM should be allocated to CRES customers because "the threat to AEP Ohio's earnings comes not from

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<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> Tr. Vol. XIII, 3699-70, 3719; see Staff Exhibit 101, Direct Testimony of Choueiki ("Choueiki Direct") at 10.

<sup>31</sup> OEG Initial Brief, 3.

<sup>32</sup> OEG Initial Brief, 6.

SSO customers, but from customers who shop.”<sup>33</sup> However, this assumption misses the ultimate purpose of the \$188.88 MW-day charge and resulting deferral. The purpose of the deferral is to collect revenues that will give AEP Ohio stability as it fulfills its FRR status.<sup>34</sup> The Deferral Mechanism should be borne by all customers in the AEP Ohio service territory as all customers benefit from AEP Ohio’s leaving FRR status , and all customers benefit from the opportunities to shop.

ESP IIA changes how the standard service offer procures energy and capacity from the use of legacy generation to market based auctions. Similarly, the Commission in the Capacity Charge case reinstated the market based RPM as the State Compensation Mechanism for capacity.<sup>35</sup> To assure AEP Ohio is not financially harmed the Commission will provide a deferral of the difference between the State Compensation Mechanism and \$188.88 per MW-day.<sup>36</sup> The deferral is a charge to assist AEP Ohio to transfer regulatory generation assets which need capacity charges above what can be obtained in the market. AEP Ohio’s jurisdictional generation capacity did not become uneconomic just in 2012 or just for the period 2012-2015. Thus, it would inequitable to make just today’s shopping customers, or just today’s standard service customers pay for the adoption of lower priced market based capacity and energy prices for all customers in both the short and long term. Simply put, the deferral bridges the step from a legacy based standard service offer, and legacy based capacity under an FRR for shopping customers to market based services for both. Since that change from legacy based pricing to market based pricing are costs that accumulated over many years and the benefits will

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<sup>33</sup> OEG Initial Brief, 5.

<sup>34</sup> July 2, 2012 Opinion and Order in Case No. 10-2929-EL-SSO, 24, 33 (noting that AEP Ohio may receive additional recovery above RPM for its FRR obligations until it shifts out of FRR status in 2015).

<sup>35</sup> July 2, 2012 Opinion and Order in Case No. 10-2929-EL-SSO, 24, 36.

<sup>36</sup> July 2, 2012 Opinion and Order in Case No. 10-2929-EL-SSO, 24, 36.

be of long duration, it seems appropriate for the costs associated with the adoption of market pricing also be spread out over a number of years and paid by all customers.

OEG additionally argues that costs above RPM should be allocated to CRES providers and/or shopping customers because AEP Ohio's SSO would be unfairly subsidizing shopping customers.<sup>37</sup> This argument makes the assumption that SSO customers are paying more than CRES customers for capacity. It has been noted numerous times in both this case and the Capacity Charge case that AEP Ohio cannot determine the amount its SSO customers pay for capacity.<sup>38</sup> Although AEP Ohio witness Allen opines that the amount SSO customers pay for capacity is equivalent to \$356 MW-day, no cost-of-service study has been done to support this conclusion.<sup>39</sup> Thus, it may be that charging CRES customers solely the capacity deferral, or even an unequal amount, may additionally result in CRES customers subsidizing SSO customers for capacity. There is no basis in the record to determine what AEP Ohio's customers are paying for capacity, and thus one cannot determine whether requiring shopping customers to pay the Deferral Mechanism (or a greater share of the Deferral Mechanism) will result in cross-subsidies.

OEG recognizes that the settlement in the Duke ESP II case also employed a multiyear non-bypassable rider (Rider ESSC).<sup>40</sup> Though the Duke ESP was a settlement and thus is not Commission precedent *per se*, OEG attempts to distinguish the deferral to be collected by AEP Ohio from the Duke non-bypassable deferral charge on factual grounds. OEG distinguishes Duke's ESP because its non-shopping customers were "the beneficiaries of the SSO Auction," and the accompanying rate reductions were considered as part of the ESSC charge.<sup>41</sup> The same,

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<sup>37</sup> OEG Initial Brief, 5-6.

<sup>38</sup> IEU Ohio Exhibit 125, Direct Testimony of K. Murray ("Murray Direct"), 50-51; FES Exhibit 102, Direct Testimony of J. Lesser ("Lesser Direct"), 11.

<sup>39</sup> Tr. Vol. V, 1437-38.

<sup>40</sup> OEG Initial Brief, 5.

<sup>41</sup> OEG Initial Brief, 5.

of course, can be said about AEP Ohio. AEP Ohio, by virtue of the ESP IIA Application, will have an SSO auction, the only difference is the number of months between approval of the ESP decision and the time of auction. The July 2, 2012 Opinion and Order in the Capacity Charge Case is consistent with the structure of the approved Duke ESP II, with the addition of the deferral.<sup>42</sup>

The key here is that Duke and AEP Ohio present the same dynamic: a universal, non-bypassable charge to all customers for the move from legacy capacity / FRR obligations and energy charges to market pricing. In neither case could there be discrete dollar calculations as to which class or type service benefited more or less by the transition. For while it is true that in Duke it was known when the auction power would flow at the time the deferral mechanism was approved, the outcome of the auction was unknown and unknowable. The same is true of the AEP Ohio proposal, only the time gap between Commission authorization and market pricing for standard service is delayed two years longer by AEP than Duke.

Finally, requiring CRES customers to bear the whole burden of the deferral rider alone, as recommended by OEG, will dampen shopping which is the purpose of the discount to \$188.88 State Compensation Mechanism authorized in the Capacity Charge case. In fact, especially if the full capacity and energy auction for standard service offer customers is moved up to 2014, there could be reverse migration if only shopping customers paid the deferral rider.

The bottom line is that the Commission should continue the move from legacy pricing to market pricing by AEP Ohio. For shopping customers the capacity charge should return to RPM in August. As for the standard service customers, RESA and Direct suggest that the full capacity

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<sup>42</sup> It should be noted, as argued by RESA and Direct Energy in their initial brief, that AEP Ohio should have completed its transfer of the jurisdictional generation assets in plenty of time for auction energy and capacity to flow by the June 2014 PJM planning year. See RESA and Direct Energy Initial Brief, 16-18.

and energy auction be moved up to June 2014. At that time the winning bidders would purchase capacity at the State Compensation Mechanism the same as shopping customers. The difference then between the \$188.88 MW-day which the Commission determined was AEP Ohio's cost and RPM capacity charge would be deferred. The deferral would be paid back by a universal, non-bypassable charge.

iii. *GridSMART Rider, Energy Efficiency/Peak Reduction Rider, Economic Development Rider are all reasonable only if the benefits are shared among all customers.*

AEP Ohio states that the GridSMART Rider, Energy Efficiency/Peak Reduction Rider, Economic Development Rider are all lawful and reasonable.<sup>43</sup> The Suppliers agree that these riders are lawful and reasonable *only if* the benefits of these riders are made available to all customers on a non-discriminatory basis. To be non-discriminatory, these programs must be open to all retail customers whether they shop or take SSO service. AEP Ohio has not stated otherwise in its application and brief, and thus the Commission should ensure and clarify that the benefits of these riders are available to all consumers.

#### **B. The Modified ESP Does Not Reflect Significant Pro-Competitive Proposals**

AEP Ohio argues that the ESP IIA contains "significant pro-competitive proposals" because the proposed ESP moves to a competitive auction faster than an MRO.<sup>44</sup> AEP Ohio also points to the now-rejected "discounted capacity pricing" as a "significant pro-competitive proposal."<sup>45</sup> While a comparison to the MRO may be appropriate in the context of the statutory MRO v. ESP test, the fact that the ESP may potentially result in an SSO auction faster than an MRO does not in and of itself make AEP Ohio's proposed ESP "pro-competitive." In fact, as

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<sup>43</sup> AEP Ohio Initial Brief, 95-102.

<sup>44</sup> AEP Ohio Initial Brief, 54-56.

<sup>45</sup> AEP Ohio Initial Brief, 56.

discussed in the Suppliers' initial brief, AEP Ohio's proposal is not "pro-competitive" because it unnecessarily delays the implementation of a full energy auction by 7 to 12 months after such could be accomplished.<sup>46</sup> Further, a number of anti-competitive tariff provisions remain in AEP Ohio's tariffs, and AEP Ohio's ESP fails to include a number of provisions that would simplify billing options and increase CRES providers' access to information. Thus, the fact that AEP Ohio will conduct a full energy auction in January or offer capacity for less than \$356 MW-day does not excuse AEP Ohio from lifting the existence of high switching fees, minimum stay periods, poor billing options, and poor provision of information. The Commission should direct AEP Ohio to include these provisions (or remove or reduce existing provisions) in order to create an ESP IIA that truly reflects "significant pro-competitive proposals."<sup>47</sup>

### **C. The Proposed Modified ESP Does Not Advance Ohio Energy Policies.**

AEP Ohio argues that its proposed ESP IIA "...achieves the proper balance of state policy and the Commission's own mission..."<sup>48</sup> While AEP Ohio's proposed ESP contains a number of provisions that do advance Ohio's energy policies, AEP Ohio proposed ESP also retains a number of provisions, and fails to include certain provisions, that unnecessarily stifle Ohio's energy policies.

AEP Ohio argues that the proposed ESP IIA meets the Ohio's energy policy under Section 4928.02(B), Revised Code, to "ensure availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs." AEP Ohio argues that the proposed ESP

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<sup>46</sup> RESA and Direct Energy Initial Brief, 16-18.

<sup>47</sup> Ringenbach Direct, 4-7.

<sup>48</sup> AEP Ohio Initial Brief, 111.

“...provides the path needed to meet [this] goal without any unnecessary negative consequences.”<sup>49</sup>

AEP Ohio additionally argues that the proposed ESP IIA meets Ohio’s energy policy under Section 4928.02(G), Revised Code, to “recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment.” AEP Ohio points to its SSO auction being implemented in less time than under an MRO as providing for the “flexible regulatory treatment” considered by the General Assembly.<sup>50</sup> AEP Ohio also argues that the proposed ESP meets Ohio’s energy policy under Section 4928.02(H), Revised Code, to avoid anticompetitive cross-subsidies, and prohibiting the recovery of any generation-related costs through distribution or transmission rates.

While AEP Ohio maintains that its proposed ESP IIA meets these energy policies, it is clear that a number of provisions of AEP Ohio’s proposed ESP IIA fly in the face of these policies. As discussed in the Suppliers’ initial brief<sup>51</sup>, AEP Ohio currently retains switching fees that are double that of other utilities, as well as minimum stay periods for all classes of customers. Further, AEP Ohio has refused to entertain flexibly billing options, such as supplier consolidated billing with utility shut-off and a purchase of receivables program which would provide for flexible regulatory treatment that will encourage innovative products and lower energy prices. Finally, AEP Ohio fails to provide CRES providers with necessary information in readable formats that would allow CRES providers to provide more efficient service. Each of these changes would allow for increased regulatory flexibility, ensure availability of unbundled

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<sup>49</sup> AEP Ohio Initial Brief, 114.

<sup>50</sup> AEP Ohio Initial Brief, 119-120.

<sup>51</sup> RESA and Direct Energy Initial Brief, 27-29.

and comparable retail electric service with quality options to meet customers' need, consistent with Ohio's state energy policy.

Thus, AEP Ohio's proposed ESP violates Sections 4928.02(B), (G) and (H), Revised Code as it does not adopt flexible tariff provisions to allow CRES providers to offer unique and efficient service options, and the Commission should direct AEP Ohio to change its plan accordingly.

**D. Unless the proposed ESP IIA is modified in the manner suggested by the Suppliers, AEP Ohio's ESP is not more favorable in the aggregate as compared to the expected results of an MRO.**

AEP Ohio argues that the MRO v. ESP test must consider both quantitative and qualitative factors. However, the qualitative analysis performed by AEP Ohio fails to consider the structural barriers of not having a POR program or consolidated supplier billing option, not providing information to CRES providers, and retaining excessive switching fees and minimum stay periods. Further, in the context of a quantitative analysis, AEP Ohio argues that the MRO v. ESP test "may not be applied in a manner that injures the EDU" and "...the message of § 4928.142(D) is that the Commission should make adjustments necessary to avoid causing financial injury to the EDU."<sup>52</sup> It should be noted that the Commission, in the Capacity Charge case, has allowed AEP Ohio to collect a capacity rate, through a deferral that will avoid the adverse financial impact feared by AEP Ohio.<sup>53</sup>

To the extent the Commission determines that AEP Ohio's above-market rates pass the quantitative aspects of the ESP v. MRO test, in order to approve an ESP is that is more expensive than the results under an MRO based on the qualitative benefits of the approved ESP, the

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<sup>52</sup> AEP Ohio Initial Brief, 140.

<sup>53</sup> July 2, 2012 Opinion and Order in Case No. 10-2929-EL-SSO, 24, 33-36.



Commission must require AEP Ohio to include provisions to promote competition and give customers effective options to shop.

### **III. CONCLUSION**

For the above stated reasons, the Public Utilities Commission of Ohio (“Commission”) should reject arguments made by AEP Ohio and OEG, and direct AEP Ohio to make the following changes to its proposed electric security place (“ESP IIA”):

- Reject or modify proposed terms that are unlawful or unreasonable:
  - Reject AEP Ohio’s proposed non-bypassable GRR, If the Commission adopts the GRR, then at a minimum it should make clear that it is not approving the Turning Point Project and that the GRR may only be assessed against SSO customers.
  - Implement the Retail Stability Rider as a deferral mechanism to collect the difference between the \$188.88 per MW-day capacity charge approved by the Commission and the RPM based price from all customers.
  - Direct AEP Ohio to provide the benefits of programs such as the economic development incentives, GridSMART, and energy efficiency programs that are funded through non-bypassable riders to all customers, shopping or non-shopping.
  - Direct AEP Ohio to conduct full competitive procurement for energy beginning with the June 2014 PJM planning year, a full six months after the expected termination of the AEP Federal Energy Regulatory authorized Pool and after transfer of the jurisdictional assets.
- Modify AEP Ohio’s proposed ESP IIA to contain significant pro-competitive proposals, including:
  - Reduction or removal of switching fees, which currently are double those charged by the other Ohio Utilities, and reduce or remove the minimum stay periods for all customer classes.
  - Implementation of new programs that will allow CRES providers to offer low cost service to customers, and provide an opportunity to create innovative productions, including a Purchase of Receivables program, supplier consolidated billing with utility shut off, bill-ready and rate-ready billing.

- Direct AEP Ohio to implement EDI and web based information systems so that CRES can obtain both customer usage history and account information and provide regular “sync” lists to CRES providers.

Respectfully submitted,



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M. Howard Petricoff  
Lija Kaleps-Clark  
Vorys, Sater, Seymour and Pease LLP  
52 E. Gay Street  
Columbus, OH 43215  
614-464-5414  
[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)

Attorneys for Retail Energy Supply  
Association, Direct Energy Business, LLC,  
and Direct Energy Services, LLC

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 9<sup>th</sup> day of July, 2012 by electronic mail, upon the persons listed below.



M. Howard Petricoff

Steven T. Nourse  
Anne M. Vogel  
American Electric Power  
1 Riverside Plaza, 29th Floor  
Columbus, OH 43215  
[stnourse@aep.com](mailto:stnourse@aep.com)  
[amvogel@aep.com](mailto:amvogel@aep.com)

Matthew Satterwhite  
Jay E. Jadwin  
American Electric Power Service Corporation  
1 Riverside Plaza, 29th Floor  
Columbus, OH 43215  
[mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com)  
[jejadwin@aep.com](mailto:jejadwin@aep.com)

M. Howard Petricoff  
Stephen M. Howard  
Lija Kaleps-Clark  
Vorys, Sater, Seymour and Pease LLP  
52 E. Gay Street  
Columbus, OH 43215  
[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)  
[smhoward@vorys.com](mailto:smhoward@vorys.com)  
[lkalepsclark@vorys.com](mailto:lkalepsclark@vorys.com)

Samuel C. Randazzo  
Frank P. Darr  
Joseph E. Olier  
McNees Wallace & Nurick LLC  
21 E. State Street, 17th Floor  
Columbus, OH 43215  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)  
[joliker@mwncmh.com](mailto:joliker@mwncmh.com)

David C. Rinebolt  
Colleen L. Mooney  
Ohio Partners for Affordable Energy  
231 W. Lima St.  
P.O. Box 1793  
Findlay, OH 45840-1793  
[drinebolt@ohiopartners.org](mailto:drinebolt@ohiopartners.org)  
[cmooney2@columbus.rr.com](mailto:cmooney2@columbus.rr.com)

David F. Boehm  
Michael L. Kurtz / Kurt J. Boehm  
Boehm, Kurtz & Lowry  
36 E. Seventh Street, Suite 1510  
Cincinnati, OH 45202  
[dboehm@bkllawfirm.com](mailto:dboehm@bkllawfirm.com)  
[mkurtz@bkllawfirm.com](mailto:mkurtz@bkllawfirm.com)  
[kboehm@bkllawfirm.com](mailto:kboehm@bkllawfirm.com)

Holly Rachel Smith  
Holly Rachel Smith, PLLC  
Hitt Business Center  
3803 Rectortown Road  
Marshall, VA 20115  
[holly@raysmithlaw.com](mailto:holly@raysmithlaw.com)

Daniel R. Conway  
Porter, Wright, Morris & Arthur  
Huntington Center  
41 S. High Street  
Columbus, OH 43215  
[dconway@porterwright.com](mailto:dconway@porterwright.com)

Thomas J. O'Brien  
Lisa G. McAlister  
Matthew W. Warnock  
Terrence O'Donnell  
Christopher Montgomery  
Bricker & Eckler LLP  
100 S. Third Street  
Columbus, OH 43215-4291  
[tobrien@bricker.com](mailto:tobrien@bricker.com)  
[lmcalister@bricker.com](mailto:lmcalister@bricker.com)  
[mwarnock@bricker.com](mailto:mwarnock@bricker.com)  
[cmontgomery@bricker.com](mailto:cmontgomery@bricker.com)  
[todonnell@bricker.com](mailto:todonnell@bricker.com)

Grant W. Garber  
Allison E. Haedt / David A. Kutik  
Jones Day  
P.O. Box 165017  
325 John H. McConnell Blvd., Ste. 600  
Columbus, OH 43215-2673  
[gwgarber@jonesday.com](mailto:gwgarber@jonesday.com)  
[aehaedte@jonesday.com](mailto:aehaedte@jonesday.com)  
[dakutik@jonesday.com](mailto:dakutik@jonesday.com)

Mark A. Hayden  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308  
[haydenm@firstenergycorp.com](mailto:haydenm@firstenergycorp.com)

Michael R. Smalz  
Joseph V. Maskovyak  
Ohio Poverty Law Center  
555 Buttlers Avenue  
Columbus, OH 43215  
[msmalz@ohiopovertylaw.org](mailto:msmalz@ohiopovertylaw.org)  
[jmaskovyak@ohiopovertylaw.org](mailto:jmaskovyak@ohiopovertylaw.org)

Clinton A. Vince  
Douglas G. Bonner  
Daniel D. Bamowski / Emma F. Hand  
SNR Denton US LLP  
1301 K St., NW Suite 600 East Tower  
Washington, DC 20005  
[Doug.bonner@snrdenton.com](mailto:Doug.bonner@snrdenton.com)  
[Emma.hand@snrdenton.com](mailto:Emma.hand@snrdenton.com)  
[dbamowski@sonnenschein.com](mailto:dbamowski@sonnenschein.com)  
[cvince@sonnenschein.com](mailto:cvince@sonnenschein.com)

John W. Bentine  
Mark S. Yurick  
Zachary D. Kravitz  
Chester Willcox & Saxbe LLP  
65 E. State Street, Suite 1000  
Columbus, OH 43215  
[jbentine@cwsllaw.com](mailto:jbentine@cwsllaw.com)  
[myurick@cwsllaw.com](mailto:myurick@cwsllaw.com)  
[zkravitz@cwsllaw.com](mailto:zkravitz@cwsllaw.com)

Carolyn Flahive  
Philip Sineneng  
Thompson Hine  
41 S. High Street, Suite 1700  
Columbus, OH 43215-6103  
[Carolyn.flahive@thompsonhine.com](mailto:Carolyn.flahive@thompsonhine.com)  
[Philip.sineneng@thompsonhine.com](mailto:Philip.sineneng@thompsonhine.com)

David I. Fein  
Cynthia Brady  
Constellation Energy Group, Inc.  
550 W. Washington Street, Suite 300  
Chicago, IL 60661  
[David.fein@constellation.com](mailto:David.fein@constellation.com)  
[Cynthia.brady@constellation.com](mailto:Cynthia.brady@constellation.com)

Kenneth P. Kreider  
David A. Meyer  
Keating Muething & Klekamp PLL  
One East Fourth Street, Suite 1400  
Cincinnati, OH 45202  
[kpkreider@kmklaw.com](mailto:kpkreider@kmklaw.com)  
[dameyer@kmklaw.com](mailto:dameyer@kmklaw.com)

James F. Lang  
Laura C. McBride / N. Trevor Alexander  
Calfee, Halter & Griswold LLP  
1400 KeyBank Center  
800 Superior Avenue  
Cleveland, OH 44114  
[jlang@calfee.com](mailto:jl原因@calfee.com)  
[lmcbride@calfee.com](mailto:lmcbride@calfee.com) /  
[talexander@calfee.com](mailto:talexander@calfee.com)

Henry W. Eckhart, Esq.  
Eckhart Law Offices  
1200 Chambers Road, Suite 106  
Columbus, OH 43212  
[henryeckhart@aol.com](mailto:henryeckhart@aol.com)

Tara Santarelli  
Environmental Law & Policy Center  
1207 Grandview Ave., Suite 201  
Columbus, OH 43212  
[TSantarelli@elpc.org](mailto:TSantarelli@elpc.org)

Sandy Grace  
Marianne M. Alvarez  
Exelon Generation Company, LLC  
101 Constitution Avenue, Suite 400 East  
Washington, DC 20001  
[sandy.grace@exeloncorp.com](mailto:sandy.grace@exeloncorp.com)

Jesse Rodriguez  
Exelon Generation Company, LLC  
300 Exelon Way  
Kennett Square, PA 19348  
[jesse.rodriguez@exeloncorp.com](mailto:jesse.rodriguez@exeloncorp.com)

William T. Reisinger  
Nolan Moser / Trent Dougherty  
Ohio Environmental Council  
1207 Grandview Avenue, Suite 201  
Columbus, OH 43212-3449  
[will@theoec.org](mailto:will@theoec.org)  
[Nolan@theoec.org](mailto:Nolan@theoec.org)  
[trent@theoec.org](mailto:trent@theoec.org)

Amy B. Spiller  
Deputy General Counsel  
Dorothy K. Corbett  
Duke Energy Business Services, LLC  
139 E. Fourth St., 1303 Main  
Cincinnati, OH 45202  
[Amy.spiller@duke-energy.com](mailto:Amy.spiller@duke-energy.com)  
[Dorothy.corbett@duke-energy.com](mailto:Dorothy.corbett@duke-energy.com)

J. Kennedy and Associates  
570 Colonial Park Drive, Suite 305  
Roswell, GA 30075

Christopher Allwein  
Williams, Allwein & Moser, LLC  
1373 Grandview Avenue, Suite 212  
Columbus, OH 43212  
[callwein@williamsandmoser.com](mailto:callwein@williamsandmoser.com)

Barth Royer  
Bell & Royer Co. LPA  
33 South Grant Avenue  
Columbus, OH 43215-3927  
[barthroyer@aol.com](mailto:barthroyer@aol.com)

Shannon Fisk  
2 North Riverside Plaza, Suite 2250  
Chicago, IL 60606  
[sfisk@nrdc.org](mailto:sfisk@nrdc.org)

Christopher L. Miller  
C. Todd Jones  
Schottenstein Zox and Dunn Co. LPA  
250 West Street  
Columbus, OH 43215  
[cmiller@szd.com](mailto:cmiller@szd.com)

William L. Massey  
Covington & Burling LLP  
1201 Pennsylvania Avenue, NW  
Washington DC 20004-2401  
[wmassey@cov.com](mailto:wmassey@cov.com)

John N. Estes III  
Paul F. Wight  
Skadden, Arps, Slate, Meagher & Flom LLP  
1440 New York Avenue, N.W.  
Washington DC 20005  
[John.estes@skadden.com](mailto:John.estes@skadden.com)  
[Paul.wight@skadden.com](mailto:Paul.wight@skadden.com)

Greg Poulos  
Jacqueline Lake Roberts  
101 Federal Street, Suite 1100  
Boston, MA 02110  
[gpoulos@enernoc.com](mailto:gpoulos@enernoc.com)  
[jroberts@enernoc.com](mailto:jroberts@enernoc.com)

Robert Korandovich  
KOREnergy  
P.O. Box 148  
Sunbury, Ohio 43074  
[korenergy@insight.rr.com](mailto:korenergy@insight.rr.com)

Asim Z. Haque  
250 West Street  
Columbus, OH 43215  
[asim.haque@icemiller.com](mailto:asim.haque@icemiller.com)

Richard L. Sites, General Counsel  
Senior Director of Health Policy  
Ohio Hospital Association  
155 E. Broad St., 15th Floor  
Columbus, OH 43215-3620  
[ricks@ohanet.com](mailto:ricks@ohanet.com)

Steve W. Chriss  
Manager, State Rate Proceedings  
Wal-Mart Stores, Inc.  
2001 SE 10th Street  
Bentonville, AR 72716-0550  
[Stephen.chriss@wal-mart.com](mailto:Stephen.chriss@wal-mart.com)

William Wright  
Werner Margard  
Thomas Lindgren  
Stephen A. Reilly  
Assistant Attorneys' General  
Public Utilities Section  
180 East Broad Street, 6th Floor  
Columbus, OH 43215  
[William.wright@puc.state.oh.us](mailto:William.wright@puc.state.oh.us)  
[Stephen.reilly@puc.state.oh.us](mailto:Stephen.reilly@puc.state.oh.us)  
[Werner.margard@puc.state.oh.us](mailto:Werner.margard@puc.state.oh.us)  
[Thomas.lindgren@puc.state.oh.us](mailto:Thomas.lindgren@puc.state.oh.us)

Bruce Weston  
Consumers Counsel  
Terry L. Etter / Maureen R. Grady  
Michael E. Idzkowski  
Jody Kyler / Deb J. Bingham / Patti Mallarnee  
Office of the Ohio Consumers' Counsel  
10 W. Broad Street, Suite 1800  
Columbus, OH 43215-3485  
[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us)  
[etter@occ.state.oh.us/idzkowski@occ.state.oh.us](mailto:etter@occ.state.oh.us/idzkowski@occ.state.oh.us)  
[kyler@occ.state.oh.us](mailto:kyler@occ.state.oh.us)  
[bingham@occ.state.oh.us/mallarnee@occ.state.oh.us](mailto:bingham@occ.state.oh.us/mallarnee@occ.state.oh.us)  
[e.oh.us](mailto:e.oh.us)

Allen Freifeld  
Samuel A. Wolfe  
Viridity Energy, Inc.  
100 West Elm Street, Suite 410  
Conshohocken, PA 19428  
[afreifeld@viridityenergy.com](mailto:afreifeld@viridityenergy.com)  
[swolfe@viridityenergy.com](mailto:swolfe@viridityenergy.com)

Jay L. Kooper  
Katherine Guerri  
Hess Corporation  
One Hess Plaza  
Woodbridge, NJ 07095  
[jkooper@hess.com](mailto:jkooper@hess.com)  
[kguerri@hess.com](mailto:kguerri@hess.com)

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