BEFORE THE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

FIRSTENERGY SOLUTIONS CORP.'S REPLY BRIEF

TABLE OF CONTENTS

I. INTRODUCTION

AEP Ohio's proposed electric security plan (the "Modified ESP") cannot be approved. As established by FirstEnergy Solutions Corp.'s ("FES") Initial Brief, and echoed in briefs submitted by Staff and numerous other intervenors, the Modified ESP fails the standard set out in R.C. § 4928.143: it is not more favorable in the aggregate than the expected results of a market-rate offer ("MRO"). To the contrary, the Modified ESP will cost customers hundreds of millions of dollars more than an MRO and would preclude AEP Ohio's customers from fully accessing the benefits of the retail and wholesale competitive markets for another three years. As Staff succinctly summarized, the Modified ESP "is unacceptable."[1]

Most of AEP Ohio's Brief ignores the statutory test and attempts instead to convince the Commission that the Modified ESP is "lawful" and "reasonable" standing on its own. Yet the starting point for obtaining Commission approval of an ESP is the statutory test in R.C. § 4928.143(C), and AEP Ohio has failed to show that the Modified ESP satisfies that test. Instead, AEP Ohio devotes most of its brief to ancillary arguments that FES anticipated and rebutted in its Initial Brief. Thus, this Reply Brief will focus on certain aspects of AEP Ohio's misguided attempt to justify its costly ESP. First, under any reasonable set of assumptions, the Modified ESP is much more costly than the expected results of an MRO:

- AEP Ohio's MRO Price Test selectively excludes certain costs of the Modified ESP. Although the statutory test requires the Commission to consider all of the "terms and conditions" of the Modified ESP, AEP Ohio ignores the costly impact of the proposed Retail Stability Rider ("RSR") and the Generation Resource Rider ("GRR") when presenting its MRO Price Test.[2] When the cost of these two riders is included in AEP Ohio's MRO Price Test, the Modified ESP costs more than an MRO.

---

[1] Initial Post-Hearing Brief of the Staff of the Public Utilities Commission of Ohio ("Staff Brief"), p. 1.

[2] *See* Ohio Power Company's Initial Post-Hearing Brief ("AEP Ohio Brief"), p. 135. AEP Ohio refers to the RSR's estimated $284 million cost as a "non-price quantifiable benefit." AEP Ohio Brief, p. 137.

- AEP Ohio's alleged benefits of the Modified ESP depend upon an illusory $355/MW-day capacity price that is totally arbitrary and unrelated to the PJM Reliability Pricing Model ("RPM") market prices available to bidders in the competitive bid process expected from an MRO.[3] When actual market prices are used to develop AEP Ohio's expected MRO pricing, the Modified ESP costs hundreds of millions of dollars more than an MRO. (Even if a $188/MW-day price is included, the Modified ESP would remain significantly more expensive than an MRO.)

These two changes – (1) including the omitted riders in the MRO Price Test; and (2) using RPM market pricing for the CBP component of the MRO – independently eliminate any purported "benefit" of the Modified ESP as compared to an MRO. Thus, the Modified ESP fails the MRO Price Test if the costs of the RSR are included in the test, even if we erroneously use AEP Ohio's $355/MW-day capacity price on the MRO side of the equation. Similarly, the Modified ESP fails when RPM market pricing is used on the MRO side of the equation, even if the costs of the RSR and GRR erroneously are not taken into account. There is no rational basis on which the Modified ESP could be determined to cost SSO customers less than the expected results of an MRO.

Second, the Modified ESP's numerous provisions designed to limit competition and secure AEP Ohio's revenue streams are improper – including: (1) the Modified ESP's two-tiered, above-market capacity prices for competitive retail electric service ("CRES") providers; and (2) the nonbypassable generation-related charges found in the RSR, GRR and, potentially, the pool modification provision. These improper charges reflect AEP Ohio's attempts to limit competition, to recover improper subsidies, and to impose charges that are not authorized by law. AEP Ohio has failed to justify any of these provisions under Ohio law or policy. Strikingly,

[3] As the Commission concluded in its July 2, 2012 Opinion & Order in Case No. 10-2929-EL-UNC (the "10-2929 Order"), this $355/MW-day capacity price also is completely unrelated to AEP Ohio's capacity costs.

AEP Ohio's Brief provided no explanation or basis on which to justify funding its supposedly competitive generation affiliate with the proposed above-market generation and capacity prices *even after corporate separation*. As explained in FES' Brief, these blatant cross-subsidies violate AEP Ohio's own corporate separation plan, are not prudent as required by Ohio law, and are contrary to both Federal Energy Regulatory Commission ("FERC") and Ohio policy. The Modified ESP also denies customers access to the full benefits of wholesale competition until June 2015 based only on the excuse of the AEP Pool Agreement, which excuse was shown to have no merit. Indeed, AEP Ohio's proposed January 2015 energy-only auction, which includes capacity priced at $255/MW-day, would eliminate any benefits of the competitive process and impose additional costs on AEP Ohio's customers. FES' and Intervenors' briefs resoundingly confirmed that the qualitative aspects of the Modified ESP are insignificant and incapable of surmounting the high cost to customers of the Modified ESP. In short, the Modified ESP does not quantitatively or qualitatively meet the statutory test.

The Commission's recent 10-2929 Order confirms that the Modified ESP fails to satisfy the requirements of R.C. § 4928.143. In the 10-2929 Order, the Commission: (1) required AEP Ohio to charge CRES providers RPM prices for capacity, as opposed to the proposed $355/MW-day charge;[4] and (2) established a deferral for recovery of the difference between the RPM prices and AEP Ohio's "costs," which were found not to exceed $188.88/MW-day.[5] Together, these two directives constitute the state compensation mechanism. The Commission recognized in the

---

[4] 10-2929 Order, p. 23. Without waiving any right to appeal or conceding that the Commission has jurisdiction to set a state compensation mechanism, this Reply Brief will to the extent possible address the impact of the 10-2929 Order, as currently in place, on the Modified ESP.

[5] 10-2929 Order, pp. 33.

10-2929 Order that RPM prices must be charged in order to promote competition.[6] Such promotion of competition would also require that the deferral component of the state compensation mechanism be recovered from all of AEP Ohio's customers. The 10-2929 Order obviously impacts the Modified ESP. Most significantly, it confirms that AEP Ohio's proposed above-market capacity charges are <u>not</u> a $989 million "benefit" of the Modified ESP and that under no reasonable scenario would an MRO CBP incorporate AEP Ohio's suggested $355/MW-day price for capacity (as modeled by AEP Ohio witness Thomas). Thus, the 10-2929 Order only reinforces the fact that the Modified ESP fails the statutory test.

Because the Modified ESP is less favorable in the aggregate than the expected results of an MRO – with or without the impact of the 10-2929 Order – it cannot be approved as proposed. Therefore, at a minimum, the Commission must institute modifications so that the Modified ESP would be more favorable. The Modified ESP is so far afield, however, that either: (1) a number of *significant* modifications must be made; or (2) it must be rejected outright. The two-tiered above-market capacity prices must be eliminated and replaced with RPM market pricing, as the 10-2929 Order anticipates. The nonbypassable RSR must be eliminated because it lacks legal justification, is no longer justified by AEP Ohio's provision of capacity "discounted" off the claimed $355/MW-day price, and represents a significant additional cost of the Modified ESP (and, although it is not relevant, AEP Ohio also has not submitted probative evidence proving the rider is necessary for its financial stability). The nonbypassable GRR must be eliminated because it also lacks legal justification and its sole purpose – the recovery of future costs incurred to meet renewable resource benchmarks – directly conflicts with the mandate in Ohio law that all such costs be recovered through a *bypassable* charge. AEP Ohio should be

[6] 10-2929 Order, p. 23.

precluded from coming back later to recover any purported "costs" incurred in connection with the Pool Agreement, which could be significant and which are not authorized for recovery through an ESP. The Modified ESP also should be modified to incorporate a wholesale energy-only CBP to serve SSO load starting June 1, 2013. AEP Ohio can achieve corporate separation and termination of the Pool Agreement by then, and AEP Ohio's customers deserve to receive the benefits of the competitive market as soon as possible. As Staff stated, "the staff certainly submits that the quickest possible orderly transition to full market is in the best interests of all parties and the State of Ohio as a whole."[7] With these modifications, the ESP would be more favorable in the aggregate than the expected results of an MRO and could be approved by the Commission.

II. ARGUMENT

A. The Modified ESP Must Satisfy The Explicit Statutory Test.

1. The Commission does not have the authority to approve an ESP that does not meet the statutory test.

After reading AEP Ohio's Brief, one might have the understanding that the Commission could use its discretion to approve an ESP if the plan provides a balance of the utility's interests and customers' interests, or if the plan was proposed by a utility that historically had favorable rates. Neither understanding would be true. The Commission is a creature of statute and has no authority beyond that given to it by the General Assembly.[8] The General Assembly limited the Commission's authority to approve an ESP. The Commission may approve an ESP if, and only if, the ESP satisfies the statutory test set forth in R.C. § 4928.143(C)(1):

---

[7] Staff Brief, p. 2.

[8] *Tongren v. Pub. Util. Comm.*, 85 Ohio St. 3d 87, 88 (1999).

> [T]he 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**.[9]

The Commission's authority to use its discretion in approving an ESP is limited to proposing modifications that would ensure that the ESP "as approved" would be more favorable in the aggregate. But, the test must be met under any and all circumstances; an ESP that does not satisfy the test cannot be approved.

As a result, although relevant for a consideration of AEP Ohio's capacity charges, the history of AEP Ohio's rates is not relevant to whether the Modified ESP is more favorable to customers in the aggregate than the expected results of an MRO.[10] As set forth in FES' Initial Brief and as confirmed by the Commission's 10-2929 Order, it is not. Therefore, the Commission must either reject the Modified ESP or make significant modifications that would make the Modified ESP more favorable than an MRO.

2. The test for an ESP is found in R.C. § 4928.143, not § 4928.142.

AEP Ohio misrepresents the applicable statutory test by arguing that the Commission "has the responsibility and the means" to draw on language found in R.C. § 4928.142 in considering its Modified ESP.[11] The Commission has no such authority. Section 4928.142 sets forth the scope of an *MRO*, the alternative to an ESP. The General Assembly specifically authorized the Commission to adjust the price of an *MRO* for certain utilities "to address any emergency that threatens the utility's financial integrity or to ensure that the resulting revenue . .

---

[9] R.C. § 4928.143(C)(1) (emphasis added).

[10] *See, e.g.,* AEP Ohio Brief, pp. 8-14.

[11] AEP Ohio Brief, pp. 140-141.

. is not so inadequate as to result, directly or indirectly, in a taking of property without compensation pursuant to Section 19 of Article I, Ohio Constitution."[12] The General Assembly did not include any such language in the separate statute pertaining to an ESP and, thus, did not grant any such authority to the Commission in considering the Modified ESP.[13] If the General Assembly intended to grant the Commission that "responsibility" or "means," it could have done so, but it did not.

In fact, the confiscatory and takings analyses are appropriate for an MRO, but not for the Commission's consideration of an ESP. As opposed to an MRO, an ESP represents an EDU's offer to provide SSO service at a certain price and under certain terms and conditions. An MRO, on the other hand, represents an EDU's pass-through of the results of the CBP. If the EDU previously owned generation assets as of January 2008, the CBP price would be blended with the EDU's previous SSO price.[14] If the blended price the EDU would receive from customers is less than the price the EDU is obligated to pay to the winning bidders, it logically follows that "the commission may adjust the [EDU's] most recent [SSO] price by such just and reasonable amount that the commission determines necessary to address any emergency that threatens the utility's financial integrity or to ensure that the resulting revenue available to the utility [would not constitute a taking of property without compensation]."[15] Under an ESP, however, the EDU is voluntarily proposing the SSO price, which must be more favorable than the results that would be expected under an MRO. An EDU would not logically be expected to propose a price that it could not sustain. (If circumstances later changed, other provisions of Ohio law would allow the

---

[12] R.C. § 4928.142(D)(4).

[13] *Compare* R.C. § 4928.142(D)(4) *with* § 4928.143.

[14] R.C. § 4928.142(D).

[15] R.C. § 4928.142(D).

Commission to step in.) If AEP Ohio seeks the benefits of R.C. § 4928.142(D), it should initiate an MRO proceeding. However, there is no basis on which to suggest – as AEP Ohio does – that it could be authorized in this ESP proceeding to charge an ESP price that is higher than the expected results of an MRO based on the provisions of the MRO statute.

3. The Commission's disapproval of the Modified ESP does not amount to confiscatory ratemaking.

AEP Ohio's argument that a reduction of its rate of return for one year would constitute confiscatory rate making is invalid.[16] The test to determine if rate regulation amounts to confiscation in violation of AEP Ohio's substantive due process rights is whether the total effect of the rate order *viewed in its entirety* is just and reasonable.[17] To determine whether the ESP falls outside the "broad zone of reasonableness"[18] — the burden of which falls on AEP Ohio[19] — the U.S. Supreme Court in *Hope* required a balancing of investor and consumer interests. With respect to the investor's interest, the court stated: "[The rate of return] should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital."[20] The Ohio Supreme Court has characterized the U.S. Supreme Court's line of utility confiscation cases as "recogniz[ing] investor concerns as only one factor that the commission is to consider in setting just and reasonable (i.e., constitutional) rates. Once these

---

[16] *See* AEP Ohio Brief, pp. 40-50, 140.

[17] *FPC v. Hope Natural Gas Co*., 320 U.S. 591, 602 (1944) ("If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry . . . is at an end.").

[18] *Permian Basin Area Rate Cases*, 390 U.S. 747, 770 (1968).

[19] *Hope Natural Gas Co*., 320 U.S. at 602.

[20] *Hope Natural Gas Co*., 320 U.S. at 603.

interests are appropriately balanced, the rates' effect on the company . . . is but another of the risks which a utility as any other unregulated enterprise, must bear."[21]

AEP Ohio contends that modification of the Modified ESP in a manner that would cause it to receive earnings lower than it would prefer in 2013 would constitute confiscatory rate regulation. However, AEP Ohio's myopic focus on one year of a multi-year plan does not carry its burden of showing that the total effect of a Commission-modified ESP would be unjust and unreasonable. The attraction of capital is not based on returns earned during the Modified ESP period but is, instead, based on expected revenue streams for AEP Ohio's assets during the Modified ESP period and beyond. Importantly, once corporate separation is achieved prior to 2014, AEP Ohio's own estimates show that 2014 and future years will be more than adequate to attract capital.[22] All of AEP Ohio's claims of "confiscation" completely ignore corporate separation.

Moreover, the U.S. Constitution does not guarantee that public utilities will earn a profit. In *Hope*, the U.S. Supreme Court recognized that "regulation does not insure that the business shall produce net revenues" and furthermore that "the hazard that the [utility] will not earn a profit remains on the company in the case of a regulated, as well as an unregulated business."[23] The Ohio Supreme Court followed suit in *Dayton Power & Light*, stating: "Regulation is deemed no different from any other government action; it can 'limit stringently' the profitability of [a utility's] investment in endeavoring to balance the 'broad public interest entrusted to its

---

[21] *Ohio Edison Co. v. Pub. Util. Comm'n of Ohio*, 63 Ohio St. 3d 555, 565 (1992).

[22] *See* Sever Direct, Ex. OJS-2, p. 1 (assuming ROE of 10.5% in years 2014 and 2015).

[23] *Hope Natural Gas Co*., 320 U.S. at 603 (quoting *Fed. Power Comm'n v. Natural Gas Pipeline Co*., 315 U.S. 575, 590 (1942)); *Market Street Ry. Co. v. RR. Comm'n. of California*, 324 U.S. 548 (1945) (regulation does not insure a utility's profit).

protection.'"[24] In *Dayton Power & Light*, the utility argued the balancing of the investor and consumer interests in that case was not proper because all Ohio utilities would be disadvantaged in attracting capital "because the utilities must inform their investors that they may not be permitted to earn a rate of return on this investment if the facilities which are prudently planned and necessary today are canceled in the future."[25] The Ohio Supreme Court rejected this argument, noting that "[a]bsent such explicit statutory authorization, however, the commission may not benefit the investors by guaranteeing the full return of their capital at the expense of the ratepayers."[26] AEP Ohio's limited complaint regarding 2013 earnings simply does not implicate the Constitutional standard.

AEP Ohio has offered no evidence that a one-year decline in earnings, following many years of superior earnings and prior to future years of projected stable earnings above 10%, will prevent it from operating successfully and maintain its financial integrity. Thus, the Commission's rejection or substantial modification of the Modified ESP as required by state law to benefit consumers and open markets is not a denial of AEP Ohio's substantive due process rights under the Fifth and Fourteenth Amendments.

B. The Modified ESP Fails The Statutory Test.

1. AEP Ohio's calculation is significantly flawed.

AEP Ohio does not address whether the Modified ESP meets the relevant statutory test until page 127 of its Brief. When it does, AEP Ohio relies solely on Ms. Thomas's flawed

---

[24] *Dayton Power & Light Co. v. Pub. Util. Comm'n of Ohio,* 4 Ohio St.3d 91, 99 (1983) ("The fixing of prices, . . . may reduce the value of the property which is being regulated. But the fact that the value is reduced does not mean that the regulation is invalid.").

[25] *Dayton Power & Light Co.,* 4 Ohio St.3d at 102.

[26] *Dayton Power & Light Co.,* 4 Ohio St.3d at 102 (emphasis added).

analysis.[27] As set forth in FES' Initial Brief, Ms. Thomas's analysis must be corrected to account for significant flaws:

- *Ms. Thomas improperly relies on a $355/MW-day capacity price, which artificially increases the MRO Price.*

In order to create a "benefit" where none exists, Ms. Thomas used a $355/MW-day capacity price in her calculation of the CBP component of the MRO to which the Modified ESP must be compared.[28] FES' Brief described the numerous reasons as to why only RPM market-based prices are appropriate for the calculation of the CBP component, including that: (1) R.C. § 4928.143(C)(1) requires an ESP to be compared to a "market-rate offer" that incorporates competitive market-based pricing for "the costs of energy and capacity;"[29] (2) RPM prices are the "market" price for capacity in PJM's territory, including AEP Ohio's zone;[30] and, (3) even if the $355/MW-day cost-based price were the state compensation mechanism, it would be limited to retail LSEs and would not be available through PJM for capacity provided for an MRO CBP.[31] Moreover, even if the state compensation mechanism were relevant to an MRO capacity price, the 10-2929 Order rejected the $355/MW-day rate and supported use of the RPM market price. Simply put, a "market-rate offer" based on competitive market prices necessitates RPM market

---

[27] *See* AEP Ohio Brief, pp. 127-140.

[28] *See* Direct Testimony of Laura J. Thomas on behalf of AEP Ohio ("Thomas Direct"), Ex. LJT-1 ($355/MW-day); *see also* Ex. LJT-5 (blending of $355/MW-day, $146/MW-day, and $255/MW-day); *see also* Direct Testimony of Michael M. Schnitzer on behalf of FES ("Schnitzer Direct"), p. 21.

[29] R.C. § 4928.142(C)(3) (emphasis added).

[30] Direct Testimony of Robert Stoddard on behalf of FirstEnergy Solutions Corp. ("Stoddard Direct"), pp. 5-6; Tr. Vol. III, p. 766 (AEP Ohio witness Graves testifying that PJM is "no doubt aware that it has administrative elements but certainly it is market-like in design and intent"); Direct Testimony of Daniel R. Johnson on behalf of Staff ("Johnson Direct"), p. 6.

[31] FES witness Stoddard explained that "the state compensation mechanism describes how <u>shopping</u> customers are charged, it does not say anything about how <u>nonshopping</u> customers are charged." Tr. Vol. VI, p. 1771 (emphasis added). AEP Ohio witness Graves also acknowledged that under an SSO CBP, the winning bidders would not be retail LSEs and the RAA's anticipated "state compensation mechanism" relates only to the charge to retail LSEs. Tr. Vol. III, pp. 792-793.

prices, as opposed to the illusory $355/MW-day "cost-based" capacity price. If Ms. Thomas' analysis is corrected to include RPM market prices in the CBP component of the MRO, her extremely high estimate of the CBP component would be reduced[32] and would result in an MRO that falls well below the price of the Modified ESP.[33] As Mr. Schnitzer confirmed, once *market* based capacity pricing is used to calculate an MRO price, the bypassable generation rates in the Modified ESP exceed MRO rates by approximately $105 million.[34]

- *Ms. Thomas's MRO Price Test ignores the costs associated with the proposed RSR.*

The RSR is a proposed "term and condition" of the Modified ESP; it is not available in an MRO.[35] Indeed, AEP Ohio also claims the RSR as a "benefit" of the Modified ESP.[36] Therefore, based on the statutory language and Commission precedent[37] – and as Staff agreed,[38] there is no rational basis on which to exclude its costs from the MRO Price Test. AEP Ohio estimated that the RSR is expected to cost $2.0/MWh or $284.1 million over the term of the

---

[32] Schnitzer Direct, p. 24 (calculating the change in the CBP price from $71.60/MWh to $50.96/MWh). The change to market-based pricing would also decrease her estimate under Ex. LJT-5, from $63.80/MWh to $50.96/MWh. *Id.*

[33] *See* Thomas Direct, Ex. LJT-1 (the two blended components of the MRO price – Ms. Thomas' $62.17/MWh "generation service price" and the corrected $50.96/MWh "expected bid price" – are substantially lower than her estimated $63.62/MWh average Proposed ESP Price).

[34] The Modified ESP's total cost to all customers includes an additional $876 million for above-market costs of Tier 1 and Tier 2 capacity, $284 million for the RSR and $8 million for the GRR. Schnitzer Direct, Ex. MMS-4, p. 1 (reflecting increased costs if capacity priced at RPM).

[35] *See* R.C. § 4928.142.

[36] *See* Supplemental Direct Testimony of Selwyn J. Dias on behalf of AEP Ohio ("Dias Supplemental Direct"), pp. 3-4 (alleged "benefits" of the RSR).

[37] *See* Stipulation ESP Order, p. 30 (Commission holding that the costs of a rider must be considered in the ESP v. MRO Test because the rider is considered a "benefit" of the ESP).

[38] Direct Testimony of Robert W. Fortney on behalf of Staff ("Fortney Direct"), p. 3 (including the costs of the RSR in Staff's analysis of the ESP v. MRO Test).

Modified ESP.[39] This $284 million cost exceeds the $256 million price "benefit" that Ms. Thomas calculated for the Modified ESP.[40] Thus, by making only this one correction the Modified ESP fails the MRO Price Test, as Ms. Thomas admitted.[41]

- *Ms. Thomas's analysis ignores the costs associated with the proposed GRR, which artificially decreases her ESP Price.*

The Commission has twice found that the costs of the GRR must be included in the MRO Price Test, and nothing has changed.[42] The GRR is a proposed "term and condition" of the Modified ESP and is not available in an MRO. AEP Ohio, without any authority, suggests that the GRR "is available under either an ESP or an MRO,"[43] but there is no provision in the MRO statute that would allow for a nonbypassable charge associated with the construction of a new

---

[39] Direct Testimony of William A. Allen on behalf of AEP Ohio ("Allen Direct"), Ex. WAA-6. However, the amount of revenue recovered through the RSR is dependent, to a large extent, on AEP Ohio's CRES capacity revenues. *See* Allen Direct, pp. 14-15. Because the 10-2929 Order directs AEP Ohio to charge RPM prices for capacity provided to CRES providers, the RSR would increase above the estimated $284 million. *See* Allen Direct, pp. 14-15 (noting that for every $10/MW-day decrease in the charge priced for Tier 2-priced capacity, the RSR "would increase by $33 million ($0.23/MWh) over the term of the Modified ESP").

[40] *See* AEP Ohio Brief, p. 135.

[41] Tr. Vol. IV, p. 1296.

[42] *See* Stipulation ESP Order, p. 30 (Commission holding that the costs of a rider must be considered in the ESP v. MRO Test because the rider is considered a "benefit" of the ESP); Entry, Apr. 25, 2012 at ¶ 5 ("As we established in our December 14, 2011, Opinion and Order, we believed the inclusion of projected Turning Point solar project costs were an important consideration in the statutory test under Section 4928.143, Revised Code. . . . Therefore, . . . having information related to any projected rate impacts by customer class, as well as any projected costs that are currently known to be associated with the creation of the Turning Point facility available for the Commission's consideration, is not only necessary for our consideration of the modified application, but is also in the public interest.").

[43] *See* AEP Ohio Brief, p. 153. AEP Ohio disingenuously argues that Ms. Thomas "confirmed on cross-examination" that the GRR is available under an MRO, citing her testimony at Tr. Vol. IV, pp. 1310-1311. However, Ms. Thomas actually testified that her belief was based only on "advice of counsel." Tr. Vol. IV, p. 1311. Her counsel was unable to provide any legal authority to support that belief, and there is none. AEP Ohio's other argument – that if the GRR was approved, it would carry over into an MRO – also is misleading. AEP Ohio Brief, p. 154. The statutory test calls for a comparison between the Modified ESP now or an MRO now. The question is not whether the Modified ESP is more favorable in the aggregate than a future MRO implemented after the Modified ESP is approved.

generation facility by the EDU (let alone a nonbypassable charge to recover renewable resource costs that R.C. § 4928.64(E) mandates must be bypassable).[44] AEP Ohio claims the GRR as a "benefit" of the Modified ESP but ignores its costs.[45] Based on AEP Ohio's Commission-ordered testimony, the GRR is expected to cost $0.05/MWh starting in June 2013 and increase up to $0.15/MWh starting January 2015, or $8 million over the term of the Modified ESP.[46] These GRR costs must be included in an analysis of the impact of the Modified ESP.

- *Ms. Thomas severely overstates the price benefit of the Modified ESP by assuming that all load, including shopping load, receives this benefit.*

As set forth in FES' Brief, Ms. Thomas's conclusion that the Modified ESP provides a quantifiable price benefit of $256 million is flawed because she applies the ESP price "benefit" to AEP Ohio's connected load.[47] Yet AEP Ohio also has assumed that more than half of its connected load will shop under the Modified ESP.[48] These shopping customers would not pay the ESP price while they are taking service from a CRES provider.[49] Thus, it is inappropriate to include them in the calculation of the purported "benefit" of the ESP price. If AEP Ohio's own shopping assumptions were applied to Ms. Thomas's calculation, the ESP price "benefit" would

---

[44] *See* R.C. § 4928.142; *see also* R.C. § 4928.64(E).

[45] *See* AEP Ohio Brief, p. 156; *see also* Dias Direct, pp. 13-14 ("benefits" of the GRR). Notably, if one believes the arguments of AEP Ohio that the GRR is a mere placeholder and does not require any consideration of the Turning Point project, then any claimed benefits of constructing the Turning Point project also should be ignored.

[46] *See* Schnitzer Direct, p. 17, Ex. MMS-3, MMS-4.

[47] Tr. Vol. IV, p. 1267.

[48] *See* AEP Ohio Brief, p. 62.

[49] Tr. Vol. IV, p. 1263 (Thomas admitting same). It also is inconsistent because AEP Ohio also adds a "benefit" of "discounted capacity" for those same customers. *See* Schnitzer Direct, pp. 33-34.

be reduced from $256 million to approximately $82 million – even before any other corrections were made to the ESP price.[50]

When the impacts of Ms. Thomas' multiple errors on the entirety of AEP Ohio's connected load are considered, the additional costs of the Modified ESP rise. In fact, the Modified ESP would cost AEP Ohio's customers $400 million to $1.3 billion more than the expected results of an MRO.[51]

2. The Modified ESP fails the statutory test even if a $188.88/MW-day price is used to price capacity under an MRO.

AEP Ohio's proposed $355/MW-day capacity price in the CBP component is particularly improper given the 10-2929 Order. Even if the Commission were to disregard the numerous reasons (and unanimous agreement among Intervenors) that RPM prices should be used in the comparison of the Modified ESP to an MRO, the $355/MW-day price cannot be justified now that the Commission has established that the maximum price AEP Ohio is authorized to receive for capacity used to support CRES providers is $188.88/MW-day. Staff witness Fortney's analyses confirm that, even if the $188.88/MW-day price is used to set the price for capacity under an MRO (instead of the appropriate RPM market-based prices), the Modified ESP would remain more expensive than an MRO.

Specifically, Staff witness Fortney prepared alternative calculations of the ESP v. MRO Test using a $146.41/MW-day and a $255/MW-day price for capacity under the CBP component

---

[50] Tr. Vol. IV, p. 1271 (also acknowledging that the reduction for shopping customers as applied to her Alternative MRO Price Test calculation would reduce the purported benefit of $81 million to "in the ballpark" of $26 million); Schnitzer Direct, pp. 33-34 (calculating a $80 million "benefit" using Thomas's erroneous Modified ESP Price); *see also* Thomas Direct, Ex. LJT-1, LJT-5 (providing alternative MRO price test).

[51] Schnitzer Direct, pp. 36-37 and Ex. MMS-4.

of an MRO.[52] Mr. Fortney's analysis – which used only an "overly simplistic"[53] estimate of the RSR and ignored the necessary GRR[54] – concluded that under each of these scenarios "the ESP as proposed by AEP is not more favorable than the blended MRO."[55] Thus, even when the MRO price is based on a capacity price of $255/MW-day, which is $66/MW-day higher than AEP Ohio's costs as determined in the 10-2929 Order ($188.88/MW-day), the Modified ESP remains less favorable than an MRO.[56]

Staff's analyses can be amended to incorporate the $188.88/MW-day price. Staff witness Johnson prepared the calculation of the MRO price that was used in Staff witness Fortney's analyses.[57] That calculation can be amended to substitute the $188.88/MW-day price for (for example) a $146.41/MW-day capacity price.[58] Exhibit A to this Reply Brief reflects the changes to Staff's MRO price if a $188.88/MW-day price is used in the CBP component of the MRO (replacing the appropriate RPM prices) and all other components are kept the same. Exhibit B to

---

[52] Fortney Direct, p. 6.

[53] Tr. Vol. XVI, p. 4582.

[54] Staff witness Fortney did not include the GRR (although he did in connection with his previous analysis of the Stipulation ESP), although he acknowledged that the GRR is not available under an MRO and that including the GRR "would increase the cost of an ESP." Tr. Vol. XVI, pp. 4604-4605. He also acknowledged that he did not review the Commission's direction to AEP Ohio to provide the costs associated with the Turning Point Solar project in connection with this proceeding. Tr. Vol. XVI, pp. 4604-4605.

[55] Fortney Direct, p. 6.

[56] In fact, Mr. Fortney's analysis also improperly favors the Modified ESP in that he omitted the additional nearly $160 million cost of the last five months of the Modified ESP. Including the costs of that portion of the Modified ESP obviously would further increase the cost of the Modified ESP and make it even less favorable than the expected results of an MRO. Tr. Vol. XVI, pp. 4608-4610 (Staff witness Fortney acknowledging additional $158 million cost for January - June 2015 based on Staff witness Johnson's analyses).

[57] *See* Johnson Direct, Att. DRJ-4 through DRJ-6.

[58] *See* Johnson Direct, Att. DRJ-5. Mr. Johnson used a $9.45/MWh charge for capacity priced at $146.41/MW-day. Through simple algebra, the $188.88/MW-day capacity price would be converted into a $12.19/MWh charge.

this Reply Brief reflects the changes to Mr. Fortney's analysis regarding the price of the Modified ESP using a $188.88/MW-day capacity price. As set forth in Exhibit B, using Staff's analysis, the Modified ESP would cost $277 million more than the expected results of an MRO for June 1, 2012 through December 31, 2014.[59]

In summary, RPM market prices are the only appropriate prices to incorporate into an MRO and under such a scenario the Modified ESP is less favorable than an MRO. Yet even at a capacity price of $188.88/MW-day, the Modified ESP remains hundreds of millions of dollars less favorable than an MRO. Thus, the Modified ESP cannot be approved.

3. AEP Ohio's proposed two-tiered capacity prices would represent a <u>cost</u> of the Modified ESP, not a benefit.

AEP Ohio's Brief – specifically its quantitative analysis of the Modified ESP – includes a purported quantitative "benefit" of its proposed two-tiered capacity prices of $146/MW-day for Tier 1 and $255/MW-day for Tier 2. Indeed, this is the single largest "benefit" (by at least a factor of three over the next largest benefit). AEP Ohio asserts that the Modified ESP's "discounted" capacity prices provide a $989 million "benefit" of the Modified ESP.[60] Without this claimed benefit, AEP Ohio's own calculations show that the Modified ESP would cost $28 million more than the expected results of an MRO.[61] But, the "discounted" capacity – even before the 10-2929 Order was issued – has never represented a legitimate "benefit." As set forth in FES' Brief, the two-tiered capacity pricing structure is anti-competitive and discriminatory. It

---

[59] *See* Exhibits A and B to FES' Reply Brief (including amended attachments to Staff witness Johnson's and Staff witness Fortney's direct testimony). The Modified ESP's relative costs would further increase after including the additional costs of above-market capacity pricing during the January-June 2015 period.

[60] AEP Ohio Brief, p. 137.

[61] AEP Ohio Brief, p. 137 (asserting a $256 million price "benefit," which is offset by the $284 million cost of the RSR); *see also* Tr. Vol. IV, p. 1264 (Thomas acknowledging that the Modified ESP would be quantitatively less favorable without consideration of the "discounted capacity").

also is an arbitrary calculation based only on AEP Ohio's belief of what it was entitled to charge for capacity.[62] Moreover, AEP Ohio seeks to recover most of the "discount" through the proposed RSR.[63] Thus, the "discounted" capacity cannot be considered a "benefit" of the Modified ESP.

Any questions about whether the "discounted" capacity could be considered a benefit of the Modified ESP were eliminated by the 10-2929 Order. Recognizing the benefits of competition, the 10-2929 Order established a state compensation mechanism that: (1) directed AEP Ohio to charge CRES providers RPM prices for capacity; and (2) established a deferral mechanism through which AEP Ohio could recover the difference between the $188.88/MW-day and RPM prices from its customers.[64] Thus, the 10-2929 Order effectively has removed any issue of CRES capacity pricing from the Modified ESP. Indeed, given the 10-2929 Order, the two-tiered prices proposed in the Modified ESP would represent an additional cost to CRES providers and their customers over the state compensation mechanism established by the 10-2929 Order. Mr. Schnitzer calculated that the prices imposed under the proposed two tiers represent <u>$875 million</u> in costs above RPM prices.[65] The 10-2929 Order establishes prices lower than the proposed two tiers, and, as such, any "discount" associated with AEP Ohio's price for capacity provided to CRES providers has been eliminated.[66] The two-tiered prices, as opposed

---

[62] Tr. Vol. V, pp. 1367, 1407-1408 (AEP Ohio witness Allen).

[63] Tr. Vol. II, pp. 406-407 (AEP Ohio witness Powers acknowledging same); Direct Testimony of Kevin M. Murray on behalf of IEU Ohio ("Murray Direct"), p. 53. Moreover, again, AEP Ohio's calculation of the $989 million "benefit" was distorted by applying the "discount" to Mr. Allen's inflated shopping assumptions. *See* FES Brief, pp. 28-33.

[64] *See generally* 10-2929 Order.

[65] Schnitzer Direct, p. 35.

[66] AEP Ohio witness Dias acknowledged during the hearing that "if the Commission imposes a capacity price that is less than what we have proposed in our modified ESP, th[ere] would not be a discount." Tr. Vol. VI, p. 1967.

to the consistent rate established in the 10-2929 Order, also would inject confusion and uncertainty into the competitive market, as CRES providers and customers are left to sift through which customers are receiving capacity at what price and to navigate the confusing queue process.

The $188.88/MW-day price is $42/MW-day higher than the $146/MW-day Tier 1 price, but the $188.88/MW-day price is $66/MW-day *lower* than the $255/MW-day Tier 2 price. The net effect of this two-tiered structure is a cost to customers, not a $989 million benefit. Thus, whether the Commission includes the millions of dollars imposed by the proposed two-tiered prices or ignores the "benefit" of "discounted capacity" altogether, the Modified ESP would be less favorable in the aggregate than the expected results of an MRO.

C. The RSR Is Improper And Unsupported.

AEP Ohio's Brief vaguely identifies certain statutory provisions in an apparent grab-bag of alleged support for the RSR.[67] But, none of these provisions support such a rider. R.C. § 4928.143(B)(2)(d) is limited to "terms and conditions" that "would have the effect of stabilizing or providing certainty regarding retail electric service." The "stability" and "certainty" called for is for retail customers, not just for AEP Ohio. Yet the RSR guarantees *AEP Ohio* a stable and certain level of generation revenue while placing all of the risk of that guarantee on the backs of retail customers through an unstable and uncertain RSR charge. The RSR thus does nothing to promote stability or certainty for retail customers. Indeed, the estimated $284 million cost of the RSR would increase under the 10-2929 Order.[68]

---

[67] AEP Ohio Brief, p. 39.

[68] As noted above, the RSR is structured in such a way that if AEP Ohio's CRES capacity revenues decreased, the revenue recovered through the RSR would increase. *See* Allen Direct, pp. 14-15. Both RPM prices and the $188.88/MW-day price are lower than the proposed two-tiered prices. Thus, under either capacity pricing structure, the RSR would increase above the estimated $284 million.

Additionally, as set forth in FES' Initial Brief, the RSR is not justified by claims of financial harm that AEP Ohio believes may result if it receives market pricing for generation. AEP Ohio will not suffer unique financial harm if, like every other generation owner in PJM, it receives RPM market prices for its capacity. Indeed, AEP Ohio did not suffer any financial harm when it charged RPM prices as recently as 2011[69] – having earned over $1 billion in net income in 2010 and 2011,[70] and a ROE of higher than 12% in 2009.[71] Under AEP Ohio's theory of "financial harm," AEP Ohio also projects that it will be able to pay $300 million in dividends in 2012 and 2013 to AEP Ohio's parent, American Electric Power Co.[72] Moreover, any concerns about lower RPM prices in the 2012/13 and 2013/14 PJM Planning Years are temporary and cannot be said to materially affect AEP Ohio's financial stability. Further, AEP Ohio will not itself be providing generation service during some of that time period. AEP Ohio expects that its competitive generation affiliate will be operating in the competitive market as of January 1, 2014, and through the last 17 months of the term of the Modified ESP. The vague arguments AEP Ohio raises in its Brief as to its "financial integrity" and "stability" were refuted by the record evidence.

The other provisions of R.C. § 4928.143(B)(2) that AEP Ohio suggests may support the RSR also fail. Subsection (B)(2)(e) is limited to "[a]utomatic increases or decreases in any component of the standard service offer price." However, the RSR is not an automatic increase

---

[69] Tr. Vol. I, pp. 248-249; FES Ex. 106 (reflecting that AEP Ohio enjoyed a 12.06% ROE in 2011, as shown on Exhibit WAA-6 in the direct testimony of AEP Ohio witness Allen).

[70] Tr. Vol. II, p. 363.

[71] Tr. Vol. I, p. 251 (discussing the results of AEP Ohio's 2009 SEET proceeding).

[72] Direct Testimony of Oliver J. Sever on behalf of AEP Ohio ("Sever Direct"), Ex. OJS-2; *see* Tr. Vol. I, p. 321 (AEP Ohio witness Powers acknowledged that he is "aware that we expect our operating companies to dividend up to the parent").

and is not a component of the SSO price. Rather, it is a nonbypassable charge imposed on all customers based on AEP Ohio's actual revenue.

Subsection (B)(2)(i) is limited to "[p]rovisions under which the [EDU] may implement economic development, job retention, and energy efficiency programs, which provisions may allocate program costs across all classes of customers of the utility and those of electric distribution utilities in the same holding company system." However, AEP Ohio has proposed no economic development or energy efficiency programs that it would implement based on the RSR revenues. There is no record evidence of any such proposed programs. To the contrary, AEP Ohio has posited the RSR as simply providing for its own economic development. Interestingly, while arguing that it needs the RSR to remedy anticipated "financial harm" (and yet pay hundreds of millions of dollars to its parent company), AEP Ohio also suggests that it could spend the money outside of its service territory on *transmission* investments in the ATSI zone.[73] AEP Ohio's customers should not be saddled with $284 million of additional unnecessary charges for AEP Ohio to turn over to its parent company or to make investments that would not benefit reliability in AEP Ohio's service territory.

The RSR is simply an anti-competitive subsidy in the form of $929 million guaranteed generation revenue annually.[74] Among other things, the RSR's calculation is flawed because the "lost revenues" that it recovers were largely incurred (if at all) based on customers who shopped before the Stipulation ESP was approved.[75] If the "revenue target" removed those previously

[73] *See* AEP Ohio Brief, pp. 45-46.

[74] Tr. Vol. V, p. 1426.

[75] Tr. Vol. V, pp. 1605-1606 (AEP Ohio witness Allen).

shopping customers, no additional RSR revenues would be needed under AEP Ohio's own calculation.[76]

Regardless, the 10-2929 Order establishes that the RSR is improper. The bulk of the "lost revenues" that form the basis of the RSR are attributed to the "lost" capacity revenues received from CRES providers if AEP Ohio was "entitled" to charge $355/MW-day for capacity and instead charged the proposed two-tiered prices.[77] The 10-2929 Order eliminated any "entitlement" for AEP Ohio to receive $355/MW-day from CRES providers. Thus, the foundation for the RSR has been eliminated.

The RSR is an unwarranted "extreme form of revenue guarantee."[78] There is no justification for guaranteeing AEP Ohio a revenue stream from its generation assets in a competitive market.

D. AEP Ohio's Brief Misrepresents The Record Evidence And Overstates Other Provisions Of The Modified ESP.

1. The Commission has no authority to approve the GRR.

Ohio law prohibits the approval of the proposed GRR. AEP Ohio has asserted that the only project for which it currently intends to recover costs through the GRR is the Turning Point Solar project[79] – a renewable energy facility that AEP Ohio acknowledges will be used to assist

---

[76] Tr. Vol. V, pp. 1606-1609; *see also* Allen Direct, Ex. WAA-6.

[77] Tr. Vol. I, p. 199; Tr. Vol. I, pp. 404-06 (AEP Ohio's $355/MW-day cost of capacity and the discounted rate that the company believes it charges to CRES providers is a significant cost sought to be recovered through the RSR). AEP Ohio witness Powers described the RSR as being designed to ameliorate the financial harm of the "discounted" capacity and the energy-only auctions. *Id.* Of course, given the timing of the auctions, any "harm" resulting from receiving market pricing for generation through an auction process would be incurred largely or exclusively by AEP GenCo, not by AEP Ohio. *See* Tr. Vol. I, pp. 241-42. Thus, only the "discounted" capacity is an RSR issue with regard to AEP Ohio.

[78] Tr. Vol. IX, p. 2757.

[79] AEP Ohio Brief, p. 29.

AEP Ohio in meeting its statutory benchmarks.[80] As set forth in R.C. § 4928.64(E), "[a]ll costs incurred by an electric distribution utility in complying with the [benchmark] requirements of this section *shall be bypassable* by any consumer that has exercised choice of supplier."[81] The General Assembly's direction is clear. The GRR is proposed as a nonbypassable rider and, thus, directly conflicts with the mandate of R.C. § 4928.64(E).

R.C. § 4928.143(B)(2)(c) does not provide the Commission with an option to circumvent the mandate of R.C. § 4928.64(E). An ESP may include a nonbypassable rider under R.C. § 4928.143(B)(2)(c), "[n]otwithstanding any other provision of Title XLIX of the Revised Code to the contrary **except** division (D) of this section, divisions (I), (J), and (K) of section 4928.20, **division (E) of section 4928.64**, and section 4928.69 of the Revised Code . . . ."[82] Thus, the ESP statute expressly recognizes that the limitations of R.C. § 4928.64(E) take precedence and are controlling.

Even if the proposed GRR did not violate R.C. § 4928.64(E) – and even if the proposed GRR included the costs of non-renewable projects – the GRR cannot be approved under R.C. § 4928.143(B)(2)(c) based on this record or, better said, the lack thereof. AEP Ohio has provided no evidence to establish that the GRR meets any of the requirements of R.C. § 4928.143(B)(2)(c). In fact, AEP Ohio's brief cites no such evidence. There is no evidence that the Turning Point Solar project was sourced through a competitive bid process.[83] There is no evidence in this proceeding that the Turning Point Solar or any other generation facility is needed. Indeed, AEP Ohio admitted that Turning Point is not needed for resource planning

---

[80] Tr. Vol. II, p. 704 (AEP Ohio witness Nelson); Tr. Vol. IX, p. 2635 (AEP Ohio witness Dias).

[81] R.C. § 4928.64(E) (emphasis added).

[82] R.C. § 4928.143(B) (emphasis added).

[83] R.C. 4928.143(B)(2)(c); Tr. Vol. II, pp. 573-574 (AEP Ohio witness Nelson).

purposes since AEP Ohio is long on energy and capacity for the foreseeable future.[84] AEP Ohio also admits that it has not established a need "in the proceeding"[85] because it points to Case Nos. 10-501-EL-FOR and 10-502-EL-FOR as the relevant proceeding (although there is no such evidence there either).[86]

AEP Ohio's and Staff's references to evidence that may be submitted in "separate future proceedings"[87] inherently acknowledge that the Commission has no evidence on which to consider this "term and condition" in this proceeding – or as a part of this Modified ESP "package" that AEP Ohio has proposed. There is nothing for the Commission to approve and the Commission has no "discretion"[88] to later approve a rate under the GRR that was not considered and approved as a part of this proceeding. Ohio law and the dearth of record evidence regarding the GRR requires that it be rejected. It can only be approved as a bypassable generation charge pursuant to R.C. § 4928.64(E).

AEP Ohio's attempts to point to some policy basis for the GRR are equally unavailing. For example, AEP Ohio claims that because all customers likely will switch back and forth from shopping to nonshopping during the useful life of the Turning Point plant, all customers will

---

[84] *See, e.g.,* Tr. Vol. I, pp. 226-227 (AEP Ohio witness Powers); Vol. II, pp. 564-65, 569-570, 633 (AEP Ohio witness Nelson); *see also* Tr. Vol. III, p. 774 (AEP Ohio witness Graves); Tr. Vol. XVI, p. 4593 (Staff witness Fortney acknowledging same).

[85] R.C. § 4928.143(B)(2)(c) ("need" may only be determined if the Commission "first determines *in the proceeding* that there is a need for the facility based on resource planning projections") (emphasis added).

[86] AEP Ohio Brief, p. 30. AEP Ohio suggests that the Commission should "recognize the pending outcome of the 'Need Cases' in this proceeding." AEP Ohio Brief, p. 32. But, it is the determination of "need" that must be made in this proceeding, based on "resource planning projections provided by the electric distribution utility." R.C. § 4928.143(B)(2)(c). And even in the so-called "Need Cases," AEP Ohio specifically objected to the submission of any evidence relating to whether the Turning Point Solar project is a least-cost facility as compared to other solar resource options. Thus, AEP Ohio has now refused in two separate proceedings to demonstrate a need for the Turning Point Solar project.

[87] Staff Brief, pp., 17, 18, 20; AEP Ohio Brief, p. 30, 32.

[88] AEP Ohio Brief, p. 31.

benefit from it.[89] Aside from the fact that this is highly speculative about what "all" customers are "likely" to do (indeed, AEP Ohio cites nothing other than its own witnesses unsupported speculation), AEP Ohio overlooks that, by June 1, 2015, all of AEP Ohio's nonshopping load will be put up for bid. Thus, assuming that AEP Ohio intends to bid its generation into the SSO CBP, AEP Ohio will merely be one of many competitors to supply SSO load. Thus, the question becomes: why should customers of AEP Ohio's competitors pay for AEP Ohio's plants after May 31, 2015? This question is especially germane since, as AEP Ohio witness Dias admitted, AEP Ohio is currently able to meet native load and there are no plants, other than Turning Point, currently contemplated by AEP Ohio to come on line in the future. AEP Ohio has not demonstrated that additional generation is necessary some time after May 31, 2015, or that AEP Ohio needs to build such facilities. More importantly, AEP Ohio has not demonstrated that all of AEP Ohio's customers need to pay for them.

2. The pool modification provision cannot be ignored.

AEP Ohio's arguments regarding the pool modification provision are similarly vague and inadequate. AEP Ohio argues that it is "solely seeking permission to file a subsequent application if needed."[90] As discussed in FES' Initial Brief,[91] nothing in R.C. § 4928.143 authorizes cost recovery for the pool modification provision.[92] Further, because AEP Ohio has provided almost no information regarding the pool modification provision,[93] there is nothing for the Commission to consider in evaluating this "term and condition" of the Modified ESP. At the

---

[89] AEP Ohio Brief, p. 29-30.

[90] AEP Ohio Brief, p. 17.

[91] FES Brief, pp. 106-109.

[92] Tr. Vol. II, p. 698 (AEP Ohio witness Nelson acknowledging same); R.C. § 4928.143.

[93] Tr. Vol. II, pp. 583-586.

same time, the capacity revenues that could be deemed "lost" and, thus, applicable for recovery through the pool modification provision fall in the range of $350-$400 million.[94] Customers could potentially be asked to pay very significant amounts of money based on almost no information. Further, AEP Ohio has acknowledged that any such "subsequent application" likely would be filed after AEP Ohio's corporate separation. The pool modification provision would be particularly inappropriate at that time because it would require AEP Ohio's connected load to provide a cross-subsidy to the competitive AEP Generation Resources for its purportedly lost revenues.[95] There is no authority in Ohio law, and no justification, for the approval of the pool modification provision.

3. AEP Ohio's appeal to reasonableness is unsupported and wrong.

AEP exaggerates many of the "benefits" of the Modified ESP. In addition to the nonexistent "benefit" of "discounted" capacity (noted above), AEP Ohio contends that the Modified ESP would transform AEP Ohio's territory into a truly competitive market sooner than required would otherwise be the case.[96] AEP Ohio's view is that it wouldn't be "required" to have a fully competitive process for an SSO load for six to ten years, and refers to the "blending period" established in R.C. §4928.142(D). Putting aside that R.C. §4928.142(E) permits the Commission to shorten the blending period as of the second year of the MRO, the experience of other EDUs in Ohio – namely, the FirstEnergy Ohio utilities and Duke Energy Ohio – proves that a fully competitive SSO procurement process can start immediately under an ESP.

---

[94] Tr. Vol. II, p. 582.

[95] Tr. Vol. II, p. 619.

[96] *See, e.g.,* AEP Ohio Brief, pp. 54-56.

AEP Ohio complains that it must be able to "unwind" its "legal obligations" before a fully competitive SSO procurement can take place.[97] Specifically, AEP Ohio points to its Pooling Agreement and its FRR obligation. The record shows otherwise. As FES witness Frame testified without rebuttal, there is nothing in the Pooling Agreement that prevents AEP Ohio from having a CBP for SSO load.[98] There is nothing about being an FRR entity that prevents an EDU from having a CBP for SSO load.[99] Again, the experience of the FirstEnergy Ohio utilities and Duke Energy Ohio also proves AEP Ohio's assertions to be false. All of these EDUs were FRR entities and all were able to hold CBPs for SSO load during the time when they had such obligations.[100]

AEP Ohio touts that its proposed two-tiered capacity proposal will encourage – and indeed, already has spurred – "substantial" customer switching.[101] But only in AEP Ohio's anticompetitive world view would a level of shopping that remains last among all Ohio EDUs[102] be considered "substantial." In fact, the specific amount of switching that AEP Ohio points to is approximately 6% currently shopping "at $255/MW-day."[103] Yet, the fact that this relatively small amount of customers currently take service from CRES providers paying $255/MW-day for capacity means nothing. CRES providers are likely currently taking a wait and see approach to the current controversy and will make decisions to pass costs through, terminate contracts,

---

[97] AEP Ohio Brief, p. 3.

[98] Direct Testimony of Rodney Frame on behalf of FES ("Frame Direct"), p. 3.

[99] Indeed, AEP Ohio witnesses acknowledged that fact. *See* Tr. Vol. I, p. 277 (Powers), Vol. II, p. 531 (Nelson), Vol. III, p. 789 (Graves).

[100] Tr. Vol. III, p. 789 (AEP Ohio witness Graves acknowledging same).

[101] AEP Ohio Brief, p. 61.

[102] Direct Testimony of Tony C. Banks on behalf of FES ("Banks Direct"), p. 15.

[103] AEP Ohio Brief, p. 61.

allow customers to walk away from contracts if they are permanently forced to pay above-market capacity prices.[104]

AEP Ohio attempts to contrast how competition might work under the Modified ESP with how competition has worked with the FirstEnergy Ohio utilities' territories. AEP Ohio mischaracterizes the testimony of FES witness Banks and then breathlessly cites (and attaches) an out-of-state commission opinion – and a dissenting one at that.[105] AEP Ohio's point appears to be that somehow the territories that have the lowest prices-to-compare, the highest shopping rates, the most governmental aggregation activity, and the most successful CBPs for SSO load (and in which AEP Ohio's retail affiliate competes rigorously) is not really an area where competition – on both a wholesale and a retail level – exists.

AEP Ohio also touts that the Modified ESP provides "locked in" rates while AEP Ohio is required to meet its "risky" POLR obligation.[106] Neither part of this is true. As noted, AEP Ohio's rates are not "locked in." Numerous riders will change from year to year based on the Company's costs or revenues, as the case may be.[107] Further, nothing requires AEP Ohio to shoulder the "risk" of the POLR obligation. As the FirstEnergy Ohio utilities and Duke Energy Ohio have done, that risk can be transferred to wholesale suppliers successfully bidding in a CBP for SSO load.

---

[104] *See* FES Brief, pp. 64-71. Notably, to support its view that its two-tiered capacity proposal supports shopping, AEP Ohio cites is witness Mr. Graves. AEP Ohio Brief, p. 61. Mr. Graves testified that capacity prices lower than $355/MW-day could promote shopping, but Mr. Graves' support for this view was Mr. Allen. Mr. Allen's flawed analysis has been previously discussed. FES Brief, pp. 69-71. Nevertheless, Mr. Graves also testified that RPM-based pricing as opposed to AEP Ohio's proposed pricing would create further shopping opportunities. Tr. Vol. III, p. 818. Mr. Graves further admitted that providing capacity at RPM prices "would probably increase the number of CRES providers and increase the number of interested buyers." Tr. Vol. III, pp. 817-818.

[105] AEP Ohio Brief, pp. 115-116.

[106] AEP Ohio, Brief, pp. 3-4.

[107] *See* FES Brief, pp. 38-39.

For a large part of its brief, AEP Ohio attempts to portray itself as some sort of victim of the combination of its compliance with various Commission demands and the vicissitudes of the General Assembly. This is also false. As an initial matter, AEP Ohio provides virtually no authority for a variety of supposed Commission demands – mainly, that AEP Ohio provide below-market rates while agreeing to undertake an FRR obligation.

AEP Ohio appears to imply that it gave up its right to recover stranded costs for the right to collect those costs later. AEP Ohio says that it would be "implausible" that AEP Ohio would give up its right to such recovery "forever."[108] Yet, S.B. 3 gave no indication that it would allow the Commission to allow such recovery after the market transition period. Certainly, AEP Ohio points to nothing in that statute supporting its view.

Further, as FES witness Stoddard explained, in a competitive market, receiving or paying a market price is simply not a subsidy.[109] AEP Ohio's potential inability to recover all of its embedded costs through market-based capacity prices makes it no different than any other generation owner in PJM. Indeed, AEP Ohio's contention that as a FRR entity, it is *entitled* to recover its embedded costs was expressly refuted by one of the drafters of the Reliabililty Assurance Agreement, Mr. Stoddard.[110] Rather, the costs, if any, to be considered in setting capacity prices to be paid to an FRR entity are avoidable costs.[111]

At bottom, the Modified ESP and AEP Ohio's case to support it are evidence of a company clinging to the now-rejected model of a vertically integrated utility. AEP Ohio is not

---

[108] AEP Ohio Brief, p. 71.

[109] *See* Tr. Vol. VI, pp. 1799-1800; *see also* Direct Testimony of Jonathan A. Lesser on behalf of FES ("Lesser Direct"), p. 17.

[110] Stoddard Direct, pp. 21-22.

[111] Stoddard Direct, pp. 16-17, 21-22.

entitled to any ROE on its generation. AEP Ohio is not entitled to recover for plant that it specifically waived its right to recover at the onset of the restructuring of the electricity market in Ohio. AEP Ohio is not entitled to keep its customers or to hang on to them for a few more years.

Instead, AEP Ohio's customers are entitled to the benefits of a competitive market on a wholesale and a retail level. AEP Ohio's customers are entitled to an ESP that is more favorable in the aggregate than an MRO. The Modified ESP fails to deliver these things. It should be rejected accordingly.

III. CONCLUSION

For the reasons set forth herein and in FES' Initial Brief, AEP Ohio's Modified ESP should be rejected.

Respectfully submitted,

s/ Mark A. Hayden

Mark A. Hayden (0081077)
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
(330) 761-7735
(330) 384-3875 (fax)
haydenm@firstenergycorp.com

James F. Lang (0059668)
Laura C. McBride (0080059)
N. Trevor Alexander (0080713)
CALFEE, HALTER & GRISWOLD LLP
1405 East Sixth Street
Cleveland, OH 44114
(216) 622-8200
(216) 241-0816 (fax)
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com

David A. Kutik (0006418)
Allison E. Haedt (0082243)
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114
(216) 586-3939
(216) 579-0212 (fax)
dakutik@jonesday.com
aehaedt@jonesday.com

Attorneys for FirstEnergy Solutions Corp.

EXHIBIT A

Amendment to Johnson Attachment DRJ-5

Planning Year 2012/2013

$/MWh

		Residential	Commercial	Industrial	System
1	Simple Swap				$ 31.63
2	Basis Adjustment				$ 0.49
3	Load Following/Shaping Adjustment				$ 3.13
4	Capacity				$ 12.19
5	Ancillary Services				$ 0.85
6	Alternative Energy Requirement				$ 0.54
7	ARR Credit				$ (1.18)
8	Losses				$ 1.39
9	Transaction Risk Adder				$ 3.06
10	Retail Administration				$ 5.00
	Class Total				
	Class Weighting Factors	30%	30%	40%	
	Staff MRO Price		$ 57.10		

Planning Year 2013/2014

$/MWh

		Residential	Commercial	Industrial	System
1	Simple Swap				$ 35.17
2	Basis Adjustment				$ 0.49
3	Load Following/Shaping Adjustment				$ 3.48
4	Capacity				$ 12.19
5	Ancillary Services				$ 0.85
6	Alternative Energy Requirement				$ 0.71
7	ARR Credit				$ (1.10)
8	Losses				$ 1.55
9	Transaction Risk Adder				$ 3.41
10	Retail Administration				$ 5.00
	Class Total				
	Class Weighting Factors	30%	30%	40%	
	Staff MRO Price		$ 61.75		

Planning Year 2014/2015

$/MWh

		Residential	Commercial	Industrial	System
1	Simple Swap				$ 36.38
2	Basis Adjustment				$ 0.49
3	Load Following/Shaping Adjustment				$ 3.60
4	Capacity				$ 12.19
5	Ancillary Services				$ 0.85
6	Alternative Energy Requirement				$ 0.91
7	ARR Credit				$ (1.13)
8	Losses				$ 1.60
9	Transaction Risk Adder				$ 3.52
10	Retail Administration				$ 5.00
	Class Total				
	Class Weighting Factors	30%	30%	40%	
	Staff MRO Price		$ 63.41		

January 1, 2015 through May 31, 2015

$/MWh

		Residential	Commercial	Industrial	System
1	Simple Swap				$ 38.50
2	Basis Adjustment				$ 0.49
3	Load Following/Shaping Adjustment				$ 3.80
4	Capacity				$ 12.19
5	Ancillary Services				$ 0.85
6	Alternative Energy Requirement				$ 0.91
7	ARR Credit				$ (1.13)
8	Losses				$ 1.69
9	Transaction Risk Adder				$ 3.73
10	Retail Administration				$ 5.00
	Class Total				
	Class Weighting Factors	30%	30%	40%	
	Staff MRO Price		$ 66.03		

New

ESP v. MRO cents per kWh (Staff MRO Capacity = $188.88/MW-day)

Category	Current	2012 June 2013 May Proposed ESP	Proposed Incr 2012	2012 Staff Projected MRO	2013 June 2014 May Proposed ESP	Proposed Incr 2013	2013 Staff Projected MRO	2014 June 2014 Dec Proposed ESP	Proposed Incr 2014	Staff Projected MRO
								2014		
Base Generation	2.126	**2.286**			**2.286**			**2.289**		
Transmission Adjustment	0.295	**0.291**			**0.291**			**0.291**		
Fuel	3.635	**3.635**			**3.602**			**3.602**		
EICC	0.16	**0**			**0**			**0**		
Market Comparable Total Generation	6.216	**6.212**		5.710	**6.179**		6.175	**6.182**		6.341
Things that are part of the ESP but would not be in an MRO (or are already included in the MRO price #):										
Standard Offer Generation Service #		**2.286**	$ 77,111,820		**2.286**	$ -		**2.289**	$ 1,445,847	
Fuel Adjustment Clause #		**3.635**	$ -		**3.602**	$ (15,904,313)		**3.602**	$ -	
Environmental Investment carrying Cost Rider (EICCR)#		**0**	$ (77,111,820)		**0**	$ -		**0**	$ -	
Stability Rider		**0.20**	$ 96,389,775		**0.20**	$ -		**0.20**	$ -	
Sub Total		**6.121**	$ 96,389,775		**6.088**	$ (15,904,313)		**6.091**	$ 1,445,847	
Plus: Transmission Adj to Compare to MRO #		**0.291**			**0.291**			**0.291**	$ -	
Total to compare		**6.412**		**5.710**	**6.379**		**6.175**	**6.382**		**6.341**
		Current rate* 90%		55.944	80%		49.728	70%		43.512
		Market rate * 10%		5.71	20%		12.35	30%		19.023
				61.654			62.078			62.535
		Comparable MRO		6.165			6.208			6.254

*Current rate = 6.216-3.635+3.635
6.216
Capacity in Staff projected MRO= RPM

	kWhs	
EX LJT-1,p.3	48,194,887,407	2012 Jun:2013 May
	48,260,877,259	2013 Jun: 2014 May
	28,433,799,761	2014 Jun: 2014 Dec
	19,738,045,996	2015 Jan: 2015 May
	144,627,610,423	2012 Jun: 2015 May

2012 Jun:2013 May	$	118,848,592	
2013 Jun:2014 May	$	82,622,622	
2014 Jun:2014 Dec	$	36,537,433	
Subtotal	$	238,008,647	
2015 Jan:2015 May	$	39,476,092	Retail Stability Rider
TOTAL	$	277,484,739	An MRO is less expensive by:
	$	289,255,221	Total RSR Rev

4/26/2012

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *FirstEnergy Solutions Corp.'s Reply Brief* was served this 9th day of July, 2012, via e-mail upon the parties below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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