BEFORE
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 Rev. 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

REPLY BRIEF OF INDUSTRIAL ENERGY USERS-OHIO

Samuel C. Randazzo, Esq.
Frank P. Darr
Joseph E. Oliker
Matthew R. Pritchard
McNees Wallace & Nurick LLC
21 East State Street, Suite 1700
Columbus, OH 43215-4228
Telephone: 614-469-8000
Telecopier: 614-469-4653
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com
mpritchard@mwncmh.com

July 9, 2012

Attorneys for Industrial Energy Users-Ohio

TABLE OF CONTENTS

BEFORE
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 Rev. 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

REPLY BRIEF OF INDUSTRIAL ENERGY USERS-OHIO

I. INTRODUCTION

The initial briefs in this proceeding unanimously confirm that Ohio Power Company ("OP") and Columbus Southern Power Company ("CSP") (now merged as "AEP-Ohio") are once again asking the Public Utilities Commission of Ohio ("Commission") to approve an Electric Security Plan ("Modified ESP") that insulates its competitive generation business from the discipline of competition mandated by Ohio law. Whether called a "transition," a cost-based capacity charge, placeholder generation-related riders, or revenue supplements that allow AEP-Ohio to hit its financial objectives, all the labels and names cannot hide or change the Modified ESP's anticompetitive mission.

The initial briefs confirm that, if the Modified ESP is approved, it will also raise electric bills further above market for standard service offer ("SSO") for non-shopping

customers by known and presently unknown amounts.[1] Part of the above-market impact of the Modified ESP on SSO electric bills is captured in the mandatory statutory test ("ESP versus MRO test") that caps the revenue production potential of a lawful ESP at the level produced by the Market Rate Offer ("MRO"). The initial briefs and the thousands of consumer comments concerning AEP-Ohio's attempt to frustrate customer choice also confirm that the proposed Modified ESP will, if approved, subject shopping customers to new generation-related charges designed to favor AEP-Ohio's competitive generation business and tilt the competitive generation playing field against shopping.[2]

In other words, the initial briefs confirm that the core structure and fundamental business purpose of the Modified ESP are unlawful and unreasonable for the reasons expressed in the initial briefs of every party that addressed the ESP versus MRO test with the exception of AEP-Ohio. This uniform conclusion offered by a diverse group of stakeholders having different interests is the result of subjecting AEP-Ohio's Modified ESP to examination in accordance with Ohio law and the Commission's precedent. Based on this examination, the Commission must find, as a matter of law, that the Modified ESP is presented in furtherance of an anticompetitive SSO mission which Ohio law forbids. No Commission modification to the Modified ESP and approval of it can bring the Modified ESP within the limits of the law unless the Commission removes the anticompetitive provisions contained in the Modified ESP.

AEP-Ohio's Initial Brief implicitly acknowledges that the Modified ESP is fatally flawed and it does so by rewriting history and the law. At page 1 of its Initial Brief, AEP-

[1] Increases would occur due to the authorization of the Retail Stability Rider ("RSR"), the Generation Resource Rider ("GRR"), and the Pool Termination Provision ("PTP") and the implementation of the Phase-In Recovery Rider ("PIRR").

[2] The RSR, the GRR, and the PTP are proposed as new non-bypassable riders.

Ohio identifies that rewriting history and the law (Amended Substitute Senate Bill 3 or "SB 3" and Amended Substitute Senate Bill 221 or "SB 221") is the foundation upon which AEP-Ohio rests its claim that the Modified ESP is lawful and reasonable.

> Parties to this proceeding want to focus on SB 3 and hearken back to the deregulatory vision and goals of that legislation, while conveniently ignoring that the basic purpose of SB 3 (to complete the transition to market pricing by 2006) failed and that SB 3 was eventually replaced by a hybrid re-regulatory approach adopted under SB 221 [that] substantially changed the standard service offer (SSO) pricing regime in 2009.

Yet, AEP-Ohio's post hearing brief in its first ESP proceeding offered a very different view of SB 221:

> There is no generally applicable cost-of-service standard, least cost standard or just and reasonable standard set out in SB 221. Nonetheless, some intervenors have argued that the reference to "reasonably priced retail electric service" in Sec. 4928.02 (A), Ohio Rev. Code, has the effect of resurrecting traditional cost-of-service principles that had been applicable to generation service as part of bundled rate regulation prior to the enactment of Am. Sub. S. B. No. 3 (SB 3). This argument fails to recognize that the "reasonably priced" reference in this division was present in SB 3 and was applicable to a market-based pricing regime. Similarly, there is no general "public interest" standard for approving an ESP. The public interest is served if the ESP is more favorable in the aggregate than the expected results of an MRO.
>
> While SB 221 changed the pricing standard for an ESP, it did not amend this particular language. Therefore, the "reasonably priced" policy, which had provided guidance for the Commission's implementation of the market-based standard, now is applicable in the context of whether the price for electric service, as part of the ESP as a whole, is more favorable than the expected results of an MRO. In other words, the price for electric service is judged not in isolation, but as part of the ESP in comparison to expected results of an MRO.[3]

Also, AEP-Ohio's litigation position in the ESP proceedings that produced the current SSO rates was that SB 221 did not fundamentally alter SB 3:

---

[3] *In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan; and Amendment to its Corporate Separation Plan; and Sale or Transfer of Certain Generating Assets*, Case Nos. 08-917-EL-SSO, *et al.*, Columbus Southern Power Company's and Ohio Power Company's Initial Post-Hearing Brief at 15 (Dec. 30, 2008) ("*ESP I*").

> Despite many changes to Ohio's customer choice legislation enacted in 1999 … that were made by S.B. 221. The fundamental premise of S.B. 3 remains. That is, all customers are free to switch to receive generation service from Competitive Retail Electric Service (CRES) providers. Further, customers can become part of a government aggregation group as another form of switching.[4]

Additionally, the Commission recently stated: "Chapter 4928, Revised Code, provides for market-based pricing for retail electric generation service…."[5]

More importantly, whatever changes SB 221 brought into Ohio law, there is nothing in SB 221 or prior law that authorizes non-bypassable generation-related charges to protect the competitive generation business of an electric distribution utility ("EDU") such as AEP-Ohio, to protect an EDU's generation business against the risk of customer migration to a Competitive Retail Electric Service ("CRES") provider, or to provide the EDU with a generation-related revenue supplement to facilitate the EDU's transition to competition. The only transition left as a matter of law (after first considering AEP-Ohio's binding commitment to not impose lost generation revenue charges on shopping customers[6]) is the statutory transition provided by the MRO's phased introduction of the competitive bidding process ("CBP") to set the default generation supply price, and the MRO alternative leaves no room for non-bypassable charges.

For the reasons explained previously by Industrial Energy Users-Ohio ("IEU-Ohio), IEU-Ohio urges the Commission to reject the Modified ESP.

---

[4] *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, IEU-Ohio's Initial Brief at 25 (May 23, 2012) (*quoting ESP I*, Direct Testimony of Craig Baker at 25 (July 31, 2008)) ("*Capacity Case*").

[5] *Capacity Case*, Opinion and Order at 22 (July 2, 2012). The Commission made this statement suggesting that the market-based pricing approach of Chapter 4928, Revised Code, applies to retail electric generation service as opposed to wholesale service.

[6] IEU-Ohio Ex. 124 at 10-16 (discussing the Electric Transition Plan ("ETP") Stipulation).

If the Commission elects to accept AEP-Ohio's invitation to ignore history, statutory law, and Commission precedent by modifying and approving the Modified ESP, the Commission cannot lawfully and should not approve an ESP containing non-bypassable generation-related charges designed to recover lost revenue.

In either case (outright rejection or significant modifications and approval), IEU-Ohio urges the Commission to adopt the uncontested recommendation of IEU-Ohio witness Murray regarding the information disclosure recommendations made at page 49 of his prefiled testimony. No party questioned IEU-Ohio witness Murray regarding the information disclosure recommendations. Such recommendations were also not challenged by any party's brief. These recommendations are designed to bring much needed transparency and verification detail to AEP-Ohio's use of any form of CRES provider capacity pricing and to make sure that AEP-Ohio is not putting its anticompetitive generation-related thumb on the scale. Adopting these information disclosure recommendations is necessary to ensure that the Ohio portion of the aggregate peak load contribution ("PLC") factor billing determinant against which the capacity obligation established by PJM Interconnection LLC ("PJM") is measured is not being overly allocated or assigned to Ohio (relative to other states) or improperly assigned or allocated as between shopping and non-shopping customers.

On July 2, 2012, the Commission issued a decision in the *Capacity Case*. That decision throws a new wrinkle into the examination of the Modified ESP, an ESP wrinkle on which parties have had no opportunity to be heard.[7]

[7] Because of the procedural and substantive prejudice created by the Commission's decision in the *Capacity Case* and the Commission's statements regarding the use of the decision in the *Capacity Case* in these proceedings, IEU-Ohio hereby incorporates herein its briefs (initial and reply) in the *Capacity Case*. *Capacity Case,* Industrial Energy Users-Ohio's Post Hearing Brief (May 23, 2012) and Industrial Energy Users-Ohio Reply Brief (May 30, 2012). Among other things, IEU-Ohio's briefs in the *Capacity*

In the *Capacity Case*, the Commission concluded that AEP-Ohio must bill the Reliability Pricing Model ("RPM")-based price to CRES providers serving retail customers in AEP-Ohio's distribution service area while also concluding that the ultimate capacity price that will be paid by somebody someday is $188.88/megawatt day ("mw-day"). It also permitted AEP-Ohio to initiate accounting changes to defer the difference between the RPM-based amount (about $20/mw-day for the 12 months commencing June 1, 2012) and $188.88. The Commission's *Capacity Case* Order also indicates that the "mechanism" to address how, when and from whom the deferred portion of the $188.88 capacity price plus interest at an above-market or arbitrary rate will be recovered will be addressed in this case. Thus, since the close of the record in this case, the Commission's decision in the *Capacity Case* effectively confirms an $833 million cost of using a "cost-based" capacity charge as part of the aggregate cost of the Modified ESP based on the AEP-Ohio's shopping assumptions.[8] Because the Commission has decided to address the deferred portion of the *Capacity Case* capacity price in these proceedings, the Commission has, in effect, ruled that there is an identifiable cost of the Modified ESP that would reach over $833 million, based on AEP-

Case demonstrated that the Commission is without authority to authorize AEP-Ohio to collect cost-based compensation for capacity from either a CRES provider or an ultimate customer (shopping and non-shopping). IEU-Ohio's briefs in the *Capacity Case* also show that, contrary to the Commission's statement at page 33 of the *Capacity Case* decision, IEU-Ohio demonstrated that the Commission's Staff's ("Staff") so-called cost-based approach (the approach the Staff did not ultimately favor but the approach the Commission used as the foundation for the result in the *Capacity Case*) is unlawful and unreasonable.

[8] The demonstration of the potential deferred amount is presented in the section of the Reply Brief below addressing the ESP versus MRO test. There is no record evidence in these proceedings addressing the mechanism which the *Capacity Case* decision has injected in these proceedings.

Ohio shopping assumptions,[9] and this Modified ESP cost was not considered or addressed during the evidentiary phase of these proceedings.[10]

The *Capacity Case* decision, however, does not change what the Commission must do to and should do with the Modified ESP. Even if the Commission had not interjected the new issue through its decision in the *Capacity Case*, the Commission could not have approved the Modified ESP based on the record at the close of hearing.

II. ARGUMENT

1. AEP-Ohio's Brief Fails to Demonstrate that the Modified ESP Passes the ESP versus MRO Test

As noted in IEU-Ohio's Initial Brief and the supporting testimony of witness Murray,[11] AEP-Ohio fails to demonstrate that the Modified ESP is more favorable in the aggregate than a MRO. According to IEU-Ohio's testimony, the Modified ESP fails the ESP versus MRO test by $1.5 billion. Every other intervenor that addressed the issue agreed.[12] The Modified ESP not only fails the test, but is substantially worse than the Stipulation ESP[13] that the Commission modified and then rejected because it was contrary to the public interest.[14] Nonetheless, AEP-Ohio continues to claim that the Modified ESP is more favorable in the aggregate than a MRO. Its claims, however, are

[9] The demonstration of the potential deferred amount is presented in the section of the Reply Brief below addressing the ESP versus MRO test.

[10] There is no record in the hearings concerning the Modified ESP or the prior hearings concerning the Stipulation and Recommendation that address the effect of the Commission's decision to create a mechanism to allow the collection of deferred amounts.

[11] IEU-Ohio Ex. 125.

[12] *See, e.g.*, FES Ex. 104 at 36-37; Staff Ex. 110, *passim*.

[13] Stipulation and Recommendation (Sept. 7, 2012) ("Stipulation ESP"). The Stipulation ESP was rejected by the Commission's Entry on Rehearing on February 23, 2012.

[14] FES Ex. 104 at 37.

based on hypothetical capacity prices and legal theories about the manner in which the Commission is to apply the test that are wrong. As a result, the Commission must reject the Modified ESP.

a. The capacity cost assumptions of AEP-Ohio's ESP versus MRO test are fatally flawed

According to AEP-Ohio, the ESP versus MRO test requires the Commission to consider a "Price Test," the quantifiable non-price benefits of the Modified ESP not available under a MRO, and the qualitative benefits of the Modified ESP.[15] In its Initial Brief, AEP-Ohio continues to argue that the Modified ESP will pass the ESP versus MRO test if the Commission accepts its three-part approach using its so-called "embedded cost" of capacity of $355/mw-day. AEP-Ohio claims that it is proper to use its "embedded cost" of capacity because that "cost" is what "a supplier, either a CRES (competitive electric retail service) provider or winning bidder in an auction, would incur to serve a retail customer in AEP Ohio's service territory."[16] AEP-Ohio's argument that the test should use the "embedded cost" was wrong before the Commission issued its decision in the *Capacity Case*.[17] The Commission's *Capacity Case* decision, however, eliminates any further basis for claiming that the Commission should use AEP-Ohio's "embedded cost" as a basis for applying the ESP versus MRO test.

First, AEP-Ohio grossly overstates the bid portion of the MRO in its ESP versus MRO test because it uses $355/mw-day as a cost of its benchmark price in the MRO. Contrary to AEP-Ohio's assertion, $355/mw-day does not represent either the cost that

[15] Ohio Power Company's Initial Post-Hearing Brief at 127-29 ("AEP-Ohio Initial Brief")

[16] *Id*. at 131.

[17] IEU-Ohio Initial Brief at 5-6 & 9.

a bidder would pay for capacity or what a CRES provider would pay to serve retail customers. The bidder would not be bound to pay the price of capacity as established by the State Compensation Mechanism since the provision of the Reliability Assurance Agreement ("RAA"), Schedule 8.1, Section D.8, applies only to load that switches to an alternative load serving entity. Instead, the bidder is providing the supply to the electric distribution utility ("EDU") for the EDU to resell to the retail SSO customer.[18] As a result, the bidder would secure capacity by contract with AEP-Ohio, provide its own capacity, or enter into a bilateral transaction for capacity with a third party, and it would not pay AEP-Ohio for capacity at rates above market prices.[19] Even if the bidder were bound to pay the State Compensation Mechanism, the Commission concluded in the *Capacity Case* that the capacity price under the State Compensation Mechanism should be set at RPM-based prices.[20]

Thus, AEP-Ohio's insertion of its "embedded cost" of capacity in the estimate of the results of the competitive bid portion of the MRO alternative and thereafter to perform the ESP versus MRO test is not correct. Bidders would pay either a contract rate or provide their own capacity, and the price would be set through a competitive process that allowed the bidder to minimize its own costs. As a result, AEP-Ohio's "embedded costs" are irrelevant to the calculation of the administratively-determined competitive bid price.

When a market-based price of capacity is substituted for AEP-Ohio's embedded costs in the ESP versus MRO calculation, the record demonstrates that the Modified

[18] IEU-Ohio Ex. 125 at 62-63.

[19] *Id*. at 64.

[20] *Capacity Case,* Opinion and Order at 23 & 36 (July 2, 2012).

ESP fails the ESP versus MRO test. A clear demonstration of a simple substitution of a market-based capacity price is contained in Staff's Exhibit 110. When Staff substituted RPM-based prices into AEP-Ohio's calculation of the ESP versus MRO test (and made no other changes to account for the increase in the RSR that would result under AEP-Ohio's witness Allen's description of the math used to calculate the RSR), the Modified ESP fails the ESP versus MRO test by $465 million.[21] Similarly, when Mr. Murray used actual auction results where available and an administratively-determined price based on RPM-based prices where SSO auction prices were not available, the Modified ESP failed the test by at least $330 million over the first 31 months of the Modified ESP.[22]

The *Capacity Case* decision also confirms that the Commission should reject AEP-Ohio's claim that there is a benefit from "discounted capacity." In its quantification of the benefits not available through a MRO, AEP-Ohio again uses a capacity cost of $355/mw-day.[23] Based on shopping load projections provided by Mr. Allen, AEP-Ohio argues that there was a $989 million benefit associated with the two-tiered pricing scheme ("Pricing Scheme"), the difference between capacity priced at $355/mw-day and the two price levels contained in the Pricing Scheme.[24] As a result of the Commission's decision in the *Capacity Case*, however, there is no reason for the Commission to find that the Modified ESP provides a benefit to customers as a result of the provision of "discounted capacity." Based on the *Capacity Case* decision, CRES

[21] Staff Ex. 110, Attachment A.

[22] IEU-Ohio Ex. 125 at 70. This estimate is conservative because it does not account for the costs of delaying implementation of the PIRR and the effects of the proposed auctions. *Id*. at 70-74.

[23] AEP-Ohio Initial Brief at 136.

[24] AEP-Ohio Ex. 116 at 8.

providers will be charged the RPM-based price for capacity used to serve customers in the AEP-Ohio service territory over the three years of the Modified ESP.[25] In contrast, the provision of capacity at levels proposed under the Pricing Scheme would be substantially in excess of RPM-based prices. Rather than a benefit, IEU-Ohio and the other intervenors have correctly demonstrated that the Modified ESP carries a substantial additional cost in the form of increased capacity charges billed to CRES providers.

The Commission's *Capacity Case* decision also created a new identifiable cost of the Modified ESP. That cost arises out of the Commission's determination that AEP-Ohio will be authorized to make accounting changes to defer the difference between the RPM-based price and $188.88/mw-day for capacity provided to CRES providers serving customers in the AEP-Ohio service territory.[26] Further, the Commission determined that it would establish an appropriate recovery mechanism for the deferred portion and address any additional financial considerations in the Modified ESP proceeding.[27]

Those costs resulting from the *Capacity Case* decision can be readily quantified by information that is part of the record in this proceeding. As indicated in the direct testimony of Staff witness Dr. Choueiki, RPM-based capacity prices can be converted into a rate per megawatt-hour ("mwh") by dividing the daily capacity charge per mw-day by 24 hours and then dividing the result by AEP-Ohio's system average load factor of

[25] As IEU-Ohio argues below, the Commission does not have the legal authority to set the wholesale capacity rate. Even if the Commission has that authority, it has determined that the State Compensation Mechanism should be set at RPM-based prices. Thus, mathematically, at least, CRES providers will be billed at RPM-based prices during the term of the Modified ESP.

[26] *Capacity Case*, Opinion and Order at 23 & 36.

[27] *Id*.

64.54%. These calculations produce RPM-based capacity charges of $1.08/mwh, $1.80/mwh and $8.13/mwh for the 2012/2013, 2013/2014 and 2014/2015 delivery years, respectively.[28] When the same methodology is applied to the capacity rate of $188.88/mw-day reflected in the Commission's *Capacity Case* Opinion and Order, it produces a capacity rate of $12.19/mwh.

AEP-Ohio witness Allen provided his estimate of the shopping load for each year of the proposed ESP. He estimated the shopping load would total 30,245 gigawatt-hours ("gwh") in the 2012/2013 delivery year (13,789 plus 16,456 gwh), 34,432 gwh in the 2013/2014 delivery year, (16,942 plus 17,490 gwh) and 34,376 gwh in the 2014/2015 delivery year (19,750 plus 14,626 gwh).[29]

For the 2012/2013 delivery year, a RPM-based capacity charge of $1.08/mwh multiplied by the assumed shopping level of 30,245 gwh reflected in AEP-Ohio witness Allen's testimony would produce capacity revenue of $32,664,600. Conversely, a capacity rate of $12.19/mwh multiplied by this same level of shopping would produce capacity revenue of $368,686,550—a difference of $336,021,950 above the revenue produced at the RPM-based price. For the 2013/2014 delivery year, a RPM-based capacity charge of $1.80/mwh multiplied by the assumed shopping level of 34,432 gwh reflected in AEP-Ohio witness Allen's testimony would produce capacity revenue of $61,977,600. Conversely, a capacity price of $12.19/mwh multiplied by this same level of shopping would produce capacity revenue of $419,726,080—a difference of $357,748,480. For the 2014/2015 delivery year, a RPM-based capacity price of $8.13/mwh multiplied by the assumed shopping level of 34,376 gwh reflected in AEP-

[28] Staff Ex. 101 at 6.

[29] AEP-Ohio Ex. 116, Exhibit WAA-4, page 2 of 2.

Ohio witness Allen's testimony would produce capacity revenues of $279,476,880. Conversely, a capacity price of $12.19/mwh multiplied by this same level of shopping would produce capacity revenues of $419,043,440, a difference of $139,556,530. Thus, the total of the amounts deferred over the three-year ESP would be $833,336,990, based on Mr. Allen's shopping projections. This identifiable cost of the Modified ESP overwhelms any potential benefits claimed by AEP-Ohio.

Further, to satisfy AEP-Ohio's revenue claim for $929 million, the RSR would also increase. The RSR is designed to generate a certain level of revenue and is based on the assumption that AEP-Ohio will generate that revenue partially from capacity sales based on the Pricing Scheme.[30] The Commission's *Capacity Case* decision lowers the amount of revenue that would be collected through capacity charges in AEP-Ohio witness Allen's total non-fuel generation revenue calculation. The reduction of capacity revenue will be reflected in an increase in the RSR on a dollar-for-dollar basis.[31] If the RSR were approved as presented (and it should not be), the total revenue collected by RSR would have to increase and thereby make the Modified ESP even less favorable than the MRO.

The capacity pricing assumptions made by AEP-Ohio are pivotal and wrong. By using its "embedded cost" in the MRO bid portion and as a basis for claiming a "capacity discount," AEP-Ohio overstated the value of the Modified ESP by hundreds of millions of dollars. The Commission's *Capacity Case* decision confirms that the proper method of calculating the ESP versus MRO test used by AEP-Ohio is incorrect. When the

[30] AEP-Ohio Ex. 116 at 14.

[31] *Id*. at 14-15.

correct price of capacity is used, the results move hundreds of millions of dollars in the opposite direction, and the Modified ESP fails the test.

b. AEP-Ohio's attempt to implement the ESP versus MRO test contains statutory claims that are incorrect and unwarranted

Because the Modified ESP fails the ESP versus MRO test by hundreds of millions of dollars, AEP-Ohio attempts to distort the test to make the Modified ESP look better than it is. The Commission, however, should make clear in this case that the contorted theories about the ESP versus MRO test that AEP-Ohio has advanced in its testimony and Initial Brief are incorrect.

Initially, AEP-Ohio in its testimony and Initial Brief argues that there should be no weighting of the MRO for the legacy ESP price in the last five months of the Modified ESP term because AEP-Ohio proposes to go to a competitive bid for energy.[32] In its calculation, it has treated the competitive benchmark price and the legacy ESP price as being equivalent because AEP-Ohio would conduct an auction for energy for SSO sales beginning on January 1, 2015.[33] According to AEP-Ohio, the substitution would effectively replace not only the energy portion, but also the capacity portion, and thereby render the current ESP and MRO prices equal.[34] AEP-Ohio, however, points to nothing in the statute that would permit this substitution, because there is nothing. Instead, Section 4928.142(D), Revised Code, provides that the competitive bid portion of the MRO shall be blended with the "most recent standard service offer price" with certain

[32] AEP-Ohio Initial Brief at 133-34; AEP-Ohio Ex. 114 at 19.

[33] AEP-Ohio Ex. 114 at 19.

[34] AEP-Ohio Initial Brief at 134.

adjustments. As a result, there is no statutory basis for assuming, as AEP-Ohio does, that the legacy ESP price and the MRO competitive bid price are the same.

Alternatively, AEP-Ohio argues that the blending should be modified so that the percentages of the MRO load subject to a CBP are set at 40%, 50%, and 60% because AEP-Ohio would be in the fourth, fifth, and sixth years of an ESP.[35] Again, AEP-Ohio ignores the relevant statutory provision. Section 4928.142(D), Revised Code, requires that 10%, 20%, and 30% of the MRO load be subject to a CBP in the first application for a MRO by an EDU that owned or operated generation facilities as of July 1, 2008. Once again, there is no statutory basis for AEP-Ohio's alternative blending proposal. The start of the MRO is the relevant date for determining the level of blending, not the date that AEP-Ohio was authorized to implement an ESP.

2. AEP-Ohio's Initial Brief Offers an Illegal Standard for Judging an ESP

AEP-Ohio's Initial Brief also presents a novel and illegal new test to apply to the Modified ESP. Repeating a claim it makes in support of the standard by which the Commission should judge the RSR discussed below, AEP-Ohio states that "the process may not result in adverse financial impacts to the EDU that would cause a financial emergency, threaten the utility's financial integrity or result, directly or indirectly, in a taking of the EDU's property without compensation."[36] In support of this argument, AEP-Ohio relies on Section 4928.142(D), Revised Code, the provision that authorizes the Commission to establish a MRO. Section 4928.142(D), Revised Code, provides that the Commission may adjust the most recent SSO price to address an emergency

[35] AEP-Ohio Initial Brief at 134-35.

[36] *Id*. at 140.

that threatens financial harm or to prevent a rate that would result in confiscation. Without any explanation, AEP-Ohio claims Section 4928.142(D), Revised Code, provides a limitation on the manner in which the MRO for the ESP versus MRO test is calculated.[37] AEP-Ohio's claim, however, is not supported by the plain statutory language of Section 4928.143(C), Revised Code, or in the structure of the process for adopting an ESP.

Section 4928.143, Revised Code, itself makes no provision for adjusting the test in any way, let alone to assure that an EDU suffers no financial injury or risk. The test is designed to assure that customers will not be subjected to an ESP that is less favorable in the aggregate than a MRO.

Furthermore, if the ESP fails the test and is modified in a way not to AEP-Ohio's liking, it can reject the ESP.[38] The voluntary nature of an ESP demonstrates that AEP-Ohio's effort, at the briefing stage of this proceeding, to put a new ESP versus MRO test in play is without merit and is just another improper means by which AEP-Ohio is seeking to gain approval of its Modified ESP.

Moreover, if there were a financial emergency, the Commission's practice under Section 4909.16, Revised Code, noted below, details the requirements that AEP-Ohio must follow to secure relief. Thus, to the extent AEP-Ohio faces financial harm, the solution is an emergency rate proceeding, not an unwarranted rewriting of the ESP versus MRO test.

3. AEP-Ohio's Brief Wrongly Criticizes Other Parties' Correct Application of Market-Based Elements to the ESP versus MRO Test

[37] Section 4928.143(C), Revised Code.

[38] *Id*.

In the remainder of its Initial Brief addressing the application of the ESP versus MRO test, AEP-Ohio criticizes the arguments of the intervenors and Staff for using market-based components to test the Modified ESP.[39] It first argues that the parties incorrectly used RPM-based prices for capacity in their tests, again arguing that the Commission should use AEP-Ohio's alleged "embedded cost." As indicated previously, AEP-Ohio's argument is not correct, as bidders seeking to supply the competitive bid portion of the MRO would not pay a capacity price based on AEP-Ohio's "embedded cost." Moreover, even if AEP-Ohio's "embedded cost" were relevant to the ESP versus MRO test (and it is not), the Commission rejected AEP-Ohio's claim that its cost is $355/mw-day in the *Capacity Case*.

Second, AEP-Ohio argues that Staff's calculation of AEP-Ohio's capacity costs is wrong, debating the merits of Staff's and AEP-Ohio's positions in the *Capacity Case*.[40] AEP-Ohio's argument, however, is no longer relevant or correct because the Commission has issued a decision directing AEP-Ohio to charge RPM-based prices for capacity.[41]

In response to IEU-Ohio's analysis of the ESP versus MRO test using the actual Commission-approved results of competitive bidding for SSO load instead of the administratively-determined competitive benchmark prices advanced by AEP-Ohio, AEP-Ohio claims that such auction prices should be not be used. In support, it claims that IEU-Ohio did not properly adjust the bid results in the FirstEnergy Corp.

[39] AEP-Ohio Initial Brief at 141-56.

[40] *Id*. at 145-46.

[41] *Capacity Case,* Opinion and Order at 23.

("FirstEnergy") auctions to account for differences between FirstEnergy and AEP-Ohio. To support this claim, AEP-Ohio relies on the rebuttal testimony of Laura Thomas that was submitted during the litigation phase of the Stipulation ESP[42] that has now been rejected.

AEP-Ohio, however, is wrong in several respects. For example, AEP-Ohio argues that there are differences in zonal prices between the service territories, but does not indicate that they would materially affect the outcome of the application of the ESP versus MRO test on the Modified ESP.[43] It also claims that Mr. Murray failed to account for alternative energy requirements not included in the FirstEnergy bid, but Mr. Murray's calculation of the bid price very clearly includes AEP-Ohio's own estimate of the alternative energy costs.[44] Finally, AEP-Ohio alleges that the FirstEnergy auction results do not account for line losses; however, this issue was fully developed in the Stipulation ESP hearing in which Mr. Murray read into the record the portion of the FirstEnergy Master Supply Agreement that requires the bidders to be responsible for transmission and distribution line losses and the Commission took administrative notice of the FirstEnergy Master Supply Agreement containing those terms.[45]

AEP-Ohio also claims that Staff's backcasting of the AEP-Ohio administrative price approach to the results in Duke Energy Ohio, Inc.'s ("Duke") and FirstEnergy auctions proves that AEP-Ohio's methodology is valid. Notably, the Staff claimed that the backcasting proved effective at determining the results of real auctions, not the

[42] AEP-Ohio Initial Brief at 148-49.

[43] *Id*. at 148 &150. *See, also*, Stipulation ESP Tr. Vol. XIII at 2329 (Oct. 27, 2011).

[44] IEU-Ohio Ex. 125, Ex. KMM-20, line 21.

[45] Stipulation ESP Tr. Vol. XI at 1899 & 1902-03; Stipulation ESP Tr. Vol. XIII at 2329.

inaccurately estimated and administratively-determined price presented by AEP-Ohio.[46] If anything, the backcasting demonstrated that the administrative price would have been a more reasonable approximation of auction results if AEP-Ohio had used the correct capacity price inputs. In this case, however, AEP-Ohio assumed capacity prices that bear no relationship to the prices that a bidder would pay to establish its successful bid and, as a result, the MRO price in AEP-Ohio's ESP versus MRO test is grossly overstated.

Finally, AEP-Ohio urges that the ESP versus MRO test should not account for a cost of the GRR, arguing that there would be no effect on the ESP versus MRO test because the GRR would apply to both.[47] The Commission has already addressed this issue in the Stipulation ESP Opinion and Order, and concluded that the knowable cost of the GRR should be addressed in the ESP versus MRO test.[48] Further, it is clear that the GRR would only be approved as a part of an ESP; there is no provision for such a charge in a MRO. Thus, for purposes of applying the test, AEP-Ohio cannot legitimately argue that the effect of including the GRR is zero.[49]

AEP-Ohio also seeks to dismiss recognition of the effect of the GRR in the ESP versus MRO test by trotting out its defective theory that there is a $960 million benefit provided by the Modified ESP.[50] This claimed benefit, however, is based almost

[46] Staff Ex. 102 at 25-26

[47] AEP-Ohio Initial Brief at 151.

[48] Opinion and Order at 30 (Dec. 14, 2011).

[49] AEP-Ohio Initial Brief at 153.

[50] *Id*. at 155.

exclusively on the so-called "discounted capacity."[51] AEP-Ohio's claim of a benefit from the "discounted capacity," however, is indefensible as a result of the Commission's *Capacity Case* Opinion and Order. Although AEP-Ohio may be correct that the GRR is insignificant to the result, it is insignificant because the Modified ESP fails the ESP versus MRO test by $1.5 billion.

4. The Commission Must Reject the Modified ESP Because It Fails the ESP versus MRO Test

AEP-Ohio has offered nothing in this case to support its argument that the Modified ESP satisfies the requirement that the ESP is more favorable in the aggregate than a MRO.[52] Its "Price Test" results are grossly in error because it uses "embedded cost" for capacity prices to set the bid portion of the MRO and ignores the effects of the last five months of the Modified ESP. It claims a quantifiable benefit from "discounted capacity," but there is no discount when the correct capacity prices are used. The Commission's decision in the *Capacity Case*, furthermore, creates an identifiable cost of the Modified ESP in the form of deferral, and though it is not clear who and when that deferral will be paid, the sum that someone will face sometime is over $800 million based on AEP-Ohio's shopping projections. AEP-Ohio's legal arguments by which it seeks to modify the ESP versus MRO test are not supported by the statutory language and are another apparent attempt to guarantee the financial well-being of AEP-Ohio. When the test is properly applied, it is clear that the ESP fails the ESP versus MRO test

[51] AEP-Ohio Ex. 114 at Ex. LJT 1.

[52] The final aspect of the ESP versus MRO test offered by AEP-Ohio is its claim of qualitative benefits. This claim has been addressed previously and will not be repeated here. AEP-Ohio offers nothing new or responsive to the demonstration of IEU-Ohio that the qualitative benefits are illusory. IEU-Ohio Initial Brief at 17-20.

by hundreds of millions of dollars. As a result, the Commission must reject the Modified ESP.

5. AEP-Ohio Fails to Establish a Basis for its Capacity Pricing Schemes

As part of its Modified ESP, AEP-Ohio requests authority to charge CRES providers a two-tiered capacity charge (the Pricing Scheme) or alternatively to charge CRES providers $355/mw-day and make a credit available directly to shopping customers ("Alternative Pricing Scheme"). All parties agree that these charges are wholesale charges. In its Initial Brief, AEP-Ohio leaps around the legal limitations on the Commission's ability to entertain the Pricing Schemes and resorts to policy considerations that, even if valid, would not permit the Commission to violate the plain meaning of the law. First, AEP-Ohio claims the Pricing Schemes are a reasonable compromise from its claimed "embedded cost" of capacity, $355/mw-day.[53] In other words, AEP-Ohio asserts that the law could have been violated even more but for AEP-Ohio's discretion. Second, AEP-Ohio claims the Pricing Schemes support competition and would allow shopping.[54] Third, AEP-Ohio argues the Pricing Schemes would not result in stranded cost recovery and alternatively that it is not bound by SB 3's stranded cost recovery limitations as a result of SB 221's re-regulation of generation service which should relieve AEP-Ohio of any commitments under its ETP-related settlement agreement approved by the Commission.[55] AEP-Ohio's assertions are without merit.

[53] AEP-Ohio Initial Brief at 58-59.

[54] *Id*. at 61-63.

[55] *Id*. at 63-77.

a. AEP-Ohio's claim that it may charge capacity rates in excess of RPM-based prices is incorrect

As demonstrated in IEU-Ohio's Initial Brief,[56] AEP-Ohio has no lawful claim to charge $355/mw-day. The Federal Energy Regulatory Commission ("FERC") has not authorized AEP-Ohio to charge anything other than the RPM-based price. In fact, when presented an opportunity to review a cost-based formula rate based on AEP-Ohio's template, FERC held that the formula template appeared to produce "unjust and unreasonable" rates.[57] Additionally, as demonstrated by IEU-Ohio's Initial Brief, the Commission is without jurisdiction to establish wholesale rates, and, therefore, cannot alter the wholesale rates AEP-Ohio charges to CRES providers.[58] Thus, AEP-Ohio has not been lawfully authorized to change its wholesale capacity pricing and must revert to the default price under the RAA, RPM-based pricing. Although the Commission disagrees with IEU-Ohio on this jurisdictional issue, the Commission has also rejected AEP-Ohio's claimed "cost" of $355/mw-day.

In the *Capacity Case*, the Commission rejected AEP-Ohio's claimed cost of $355/mw-day and instead found that AEP-Ohio's "cost" of making capacity available to CRES providers is $188.88/mw-day.[59] The Commission, however, found that AEP-Ohio should charge the RPM-based price to CRES providers no later than August 8, 2012, instead of the $188.88/mw-day charge. The Commission held that AEP-Ohio could defer the difference between the RPM-based price and $188.88/mw-day (the "Delayed

[56] IEU-Ohio Initial Brief at 21-56.

[57] *American Electric Power Service Corporation*, FERC Docket No. ER12-1173-000, FERC Order at 7 (Apr. 30, 2012).

[58] IEU-Ohio Initial Brief at 39.

[59] *Capacity Case*, Opinion and Order at 33 (July 2, 2012).

Recognition Pricing Scheme").[60] The Commission stated that it would address, in this case, how, when and on whom, the Delayed Recognition Pricing Scheme (including interest) will land.[61] Thus, regardless of whether the Commission could lawfully alter the wholesale rate AEP-Ohio charges CRES providers for its capacity, both the RAA and the Commission require AEP-Ohio to return to charging the RPM-based price at least for CRES providers. Because the Pricing Scheme and Alternative Pricing Scheme proposed by AEP-Ohio in this case are significantly greater than the RPM-based price, they are not a "reasonable compromise" and should not be authorized, even if the Commission has authority to do so.

b. AEP-Ohio's proposed Pricing Schemes do not support competition, shopping, or customer choice in violation of State Policy.

As demonstrated in IEU-Ohio's and FirstEnergy Solutions Corp.'s ("FES") Initial Briefs,[62] the Pricing Schemes do not support competition. AEP-Ohio, however, asserts that shopping will be robust based on shopping assumptions provided by AEP-Ohio that are as unreasonable as they are unrealistic. Other AEP-Ohio witnesses, however, assumed significantly less shopping during the term of the Modified ESP.[63] Finally, AEP-Ohio's own statements indicate that the Pricing Scheme was designed to restrain shopping, an illegal mission by operation of law.[64]

---

[60] *Id.* at 23-24.

[61] *Id.*

[62] IEU-Ohio Initial Brief at 23 & 53; FES Initial Brief at 29-32.

[63] Tr. Vol. IV at 1069. (AEP-Ohio witness Roush based his summary of proposed ESP rate increases on assumed shopping levels of 10-15%).

[64] FES Ex. 105 at Ex. TCB-6.

The Commission has also found that anything other than RPM-based pricing will not promote competition and customer choice. In the Commission's July 2, 2012 Opinion and Order in the *Capacity Case,* it held that the Delayed Recognition Pricing Scheme was necessary because "RPM-based capacity pricing will promote retail electric competition."[65] The Commission found that "RPM-based capacity pricing will stimulate true competition among suppliers in AEP-Ohio's service territory" and will "incent shopping."[66] The Commission also found that RPM-based pricing has "been used successfully throughout Ohio and the rest of the PJM region and puts electric utilities and CRES providers on a level playing field."[67] Thus, the Commission found that RPM-based pricing promoted state policy and competition in line with Ohio law and policy and the Commission's duty to effectuate that policy. As the Commission knows, RPM-based pricing is "just and reasonable" since it has been approved by the FERC at the request of parties, including AEP-Ohio or its agent, which urged FERC to approve the RAA, and has been used by AEP-Ohio and other EDUs.[68] Based on the findings in the *Capacity Case* decision, it is clear that the above-market Pricing Schemes are inconsistent with the pro-competition and pro-customer choice policies contained in Section 4928.02, Revised Code.

c. AEP-Ohio's Initial Brief wrongly claims that it is not barred from seeking above-market generation-related transition revenue

[65] *Capacity Case,* Opinion and Order at 23; *see* IEU-Ohio Ex. 118 at Attachment 1; IEU-Ohio Ex. 125 at 36-43.

[66] *Id.*

[67] *Id.*

[68] *Id*.

In its Initial Brief, AEP-Ohio implicitly acknowledges that its Modified ESP contains specific charges and mechanisms that are designed to collect above-market, generation-related revenue during a term of the Modified ESP to permit it to transition to a competitive market. It, nonetheless, argues that because the ETP case was a retail ratemaking proceeding and its proposed CRES provider capacity charges are wholesale charges, the ETP Stipulation and Ohio Revised Code's prohibition on receiving above-market generation-related transition revenues do not apply.[69] AEP-Ohio is wrong factually, analytically, and legally.

AEP-Ohio resolved its ETP proceeding through the Commission-approved ETP Stipulation, and agreed to forgo recovery of any above-market generation-related transition costs. In the ETP proceeding, the determination of above-market generation-related costs eligible for recovery through a transition revenue claim was based on the totality of AEP-Ohio's generation assets.[70] The ETP case did not include a jurisdictionalization to identify the above-market portion, if any, of AEP-Ohio's generation assets that were associated with retail service.[71]

AEP-Ohio's Pricing Schemes similarly are tied to the total generating plant valuation as reported in FERC's Form 1. There is no separation between wholesale and retail transactions. Thus, the total company analytical framework used in the ETP case to identify and resolve any transition revenue claim AEP-Ohio may have had as a result of above-market generating plant values when SB 3 was implemented is the same analytical framework that AEP-Ohio is now using to claim a right to above-market

[69] AEP-Ohio Initial Brief at 66.

[70] IEU-Ohio Ex. 124 at 10, Ex. JEH-2.

[71] *Id.*

generation service capacity prices in this proceeding. As IEU-Ohio witness Hess testified, regardless of what labels AEP-Ohio attempts to put on its proposals to collect above-market generation service related prices and revenue, the labels cannot hide the fact that the proposals are belated and illegal claims for transition revenue.[72]

On the revenue side, the unrefuted testimony of IEU-Ohio witness Hess demonstrates that AEP-Ohio's own transition claim witness in the ETP proceeding looked at the future revenue produced by both wholesale and retail transactions to identify the generation-related revenue that was not otherwise recoverable in the market.[73] The unrebutted evidence, including the statements made by AEP-Ohio in its 2001 FERC Form 1,[74] as well as the Commission's ETP decisions (initial[75] and rehearing[76]), make it clear that AEP-Ohio agreed, as part of a settlement approved by the Commission, to forever forego asserting a claim for above-market generation related revenue. AEP-Ohio made no reservation of rights with regard to above-market generation-related revenue and, in any event, the law has closed the door on AEP-Ohio's ability to make such a claim.

AEP-Ohio has confirmed that its Pricing Schemes are designed to mitigate the "$600 million in lost revenue that AEP Ohio would potentially" face if it charged the market-based RPM-price.[77] The record makes it clear that this lost revenue is

[72] IEU-Ohio Ex. 124 at 17.

[73] *Id.* at 11.

[74] IEU-Ohio Ex. 105.

[75] IEU-Ohio Ex. 104.

[76] IEU-Ohio Ex. 124 at 16.

[77] AEP-Ohio Initial Brief at 60.

generation-related revenue and this fact is not in dispute. The ETP settlement commitment[78] made by AEP-Ohio, and now beyond modification, states that AEP-Ohio shall not impose any lost revenue charges on shopping customers.[79]

AEP-Ohio's Initial Brief implicitly acknowledges that its commitments in the ETP case bar its collection of transition revenue now, and argues instead that SB 221 "re-regulated" electric generation service, thereby relieving AEP-Ohio of any commitments it might have made in its ETP Stipulation. In its Initial Brief, AEP-Ohio states that SB 221 fundamentally altered SB 3, stating "[t]he General Assembly enacted SB 221 to change SB3,"[80] and has now "repealed and replaced [SB 3] with a reinstitution of regulatory control over SSO prices,"[81] and concluding "the entire regulatory regime for standard service offer pricing has substantially changed with the enactment of SB 221."[82] AEP-Ohio argues that these changes are evident from the fact that above-market rates are permitted under an ESP to the extent the ESP is more favorable in the aggregate than a MRO.[83] AEP-Ohio is wrong.

The Commission has held that its ability to lawfully authorize a generation service capacity price applicable to CRES providers must emanate from the Ohio Revised

[78] The ETP settlement was also incorporated into AEP-Ohio's rate stabilization plan ("RSP") at AEP-Ohio's request. IEU-Ohio 119 at 9.

[79] IEU-Ohio Ex. 124 at 13.

[80] AEP-Ohio Initial Brief at 72.

[81] *Id.* at 73.

[82] *Id.* at 75.

[83] *Id.* at 76-77.

Code.[84] Sections 4928.31 to 3928.40, Revised Code, prohibit the Commission from authorizing unavoidable above-market compensation for an electric utility's generation assets following December 31, 2005 (the latest date which an electric utility's market development period ("MDP") could end). Section 4928.38, Revised Code, is illustrative of the various statutory sections that prohibit transition revenue being asserted outside the ETP process.

> …an electric utility that receives such transition revenues shall be wholly responsible for how to use those revenues and wholly responsible for whether it is in a competitive position after the market development period. The utility's receipt of transition revenues shall terminate at the end of the market development period. With the termination of that approved revenue source, *the utility shall be fully on its own in the competitive market. The commission shall not authorize the receipt of transition revenues* ***or any equivalent revenues*** *by an electric utility except as expressly authorized in sections 4928.31 to 4928.40 of the Revised Code*. (Emphasis added).

The prohibition on seeking and receiving transition revenue was also confirmed by SB 221. Section 4928.141, Revised Code, added by SB 221, specifically requires the Commission to "exclude any previously authorized allowances for transition costs" from an EDU's SSO.

Beyond the absolute bar created by the statute of limitations on transition revenue claims, AEP-Ohio's Pricing Schemes are designed to impose lost revenue charges on shopping customers in complete contradiction to its Commission-approved settlement commitment.[85] Thus, even if the transition revenue claim window was still open as a matter of law (and it is not), AEP-Ohio is precluded contractually from imposing lost revenue charges on shopping customers. And whatever above-market

[84] *Capacity Case*, Opinion and Order at 35 (July 2, 2012) ("the Commission is bound by Ohio law in establishing an appropriate state compensation mechanism.").

[85] AEP-Ohio Initial Brief at 60.

revenue AEP-Ohio may be able to collect from non-shopping customers as a consequence of the specific means by which **default** generation supply prices may be established under the MRO option or the ESP option, there is nothing in Ohio law that provides AEP-Ohio with the ability to seek or obtain, through Commission authorization, above-market generation prices from shopping customers.

AEP-Ohio's attempt to hide its illegal transition revenue claim and violation of its ESP settlement commitment behind a wholesale curtain also ignores other provisions of Ohio law that preclude the Commission from exercising its supervisory and regulatory powers over any generation service (wholesale or retail) except as narrowly permitted for specific statutory purposes (none of which are relevant here).

The definitions in Section 4928.01, Revised Code,[86] in combination with the declaration in Section 4928.03, Revised Code, make it clear that the Commission may not lawfully supervise or regulate any service involved in supplying or arranging for the supply of electricity to ultimate consumers in Ohio, from the point of generation to the point of consumption, once such service is declared competitive. From these definitions, this conclusion holds irrespective of the force of federal preemption regarding sales for resale transactions[87] and regardless of whether the service is called

[86] "'Retail electric service' means any service involved in supplying or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the point of consumption. For the purposes of this chapter, retail electric service includes one or more of the following service components: generation service, aggregation service, power marketing service, power brokerage service, transmission service, distribution service, ancillary service, metering service, and billing and collection service." Section 4928.01(A)(27), Revised Code.

"Competitive retail electric service" means a component of retail electric service that is competitive as provided under division (B) of Section 4928.01, Revised Code.

[87] Of course, the Commission can exercise no authority except that authority that has been delegated to it by the General Assembly. To have any jurisdiction over wholesale services, the Commission would thus have to find some specific grant of authority by the General Assembly and this fundamental principle is true irrespective of the powers reserved to the federal government. But the General Assembly could not

wholesale or retail. The definition of "retail electric service" includes *any service* from the point of generation to the point of consumption.

Section 4928.02(B), Revised Code, makes it clear that the removal of the Commission's supervisory and regulatory powers extends to the service component or function (generation, transmission, distribution) where the service component is declared competitive.

Section 4928.03, Revised Code, states:

> Beginning on the starting date of competitive retail electric service, retail electric generation, aggregation, power marketing, and power brokerage services supplied to consumers within the certified territory of an electric utility are competitive retail electric services[88] that the consumers may obtain subject to this chapter from any supplier or suppliers.

Section 4928.05, Revised Code, states that retail generation service (which by definition includes any generation service from the point of generation to the point of consumption) is not subject to the Commission's supervision or regulation except as may be specifically allowed in Sections 4928.141 to 4928.143, Revised Code (which relate exclusively to the establishment of a SSO for *retail* electric customers). Notwithstanding the Commission's recent rulings in the *Capacity Case*, the Commission is specifically barred from using its supervisory powers or the regulatory authority in Chapters 4905 and 4909 to address pricing for any generation service from the point of generation to the point of consumption. Whatever authority the Commission has with

---

lawfully delegate authority to the Commission to regulate or supervise wholesale electric transactions because the authority to regulate commerce among the states is reserved to the federal government. U.S. Const., Art. I, § 8, cl. 3.

[88] The definition of "retail electric service" (in combination with the balance of Chapter 4928) also makes it clear that a service component or function is either competitive or non-competitive. Because non-competitive service components are defined to be everything except competitive service components or functions, a service component must either be competitive or non-competitive.

regard to generation service, it is limited to the authorization of retail prices that apply to non-shopping retail customers—prices that the Commission must establish in conformance with the requirements of Sections 4928.141 to 4928.143, Revised Code.

AEP-Ohio's Pricing Schemes (and the Delayed Recognition Pricing Scheme created by the Commission in the *Capacity Case*) are designed to provide AEP-Ohio with an opportunity to collect above-market generation revenue. No party disputes this legally significant conclusion. Ohio law specifically limited this opportunity to the ETP process and then walled off the Commission's ability to authorize the collection of above-market generation revenue or equivalent revenue outside the ETP process. If there was any doubt remaining from the plain meaning of the law, the revised version of Section 4929.141, Revised Code, enacted as part of SB 221, confirmed that the right to seek and obtain above-market generation revenue has come and gone. The law precludes AEP-Ohio from seeking and the Commission from authorizing AEP-Ohio to receive above-market generation revenue or the equivalent.

Moreover, AEP-Ohio is well aware that its position in this hearing is completely inconsistent with the position it advocated in support of the Stipulation ESP and in another pending proceeding, as well as in its internal discussions regarding the treatment of assets affected by environmental law changes. During the hearing to consider the Stipulation ESP in October 2011, then President of AEP-Ohio Joe Hamrock, testified and confirmed that SB 221 did not allow AEP-Ohio to recover above-market generation-related revenue:

> Q. ... And one of the other things that you identified as a Senate Bill 221 related business and financial risk for electric distribution utilities was that Senate Bill 221 did not provide them with the ability to obtain future stranded cost recovery for historical generating assets?

> A. Yes. And all of that is in the context of the unique risks that an EDU that owns generation faces under an ESP in this particular environment with major capital investments required, with long planning horizons and relatively short regulatory visibility as well as market visibility.[89]

As the evidence shows, AEP-Ohio's accounting practices and financial statements prove the AEP-Ohio's current assertions about the law of Ohio and the impacts of SB 221 are false. For example, AEP-Ohio provided the following statements and representations made by AEP-Ohio in the FERC Form 1 for 2011 (filed well after the enactment of SB 221).[90] Page 1 of the 2011 FERC Form 1, contains the following certification:

> I have examined this report and to the best of my knowledge, information, and belief all statements of fact contained in this report are correct statements of the business affairs of the respondent and the financial statements, and other financial information contained in this report, conform in all material respects to the Uniform System of Accounts.
>
> Andrew B. Reis, Assistant Controller 4/12/12

Page 123.6 of the 2011 FERC Form 1 states (emphasis added):

> The PUCO regulates all of the retail distribution operations and rates on a cost basis. **The ESP rates in Ohio continue the process of aligning generation/power supply rates over time with market rates.**

Page 123.8 of the 2011 FERC Form 1 states (emphasis added):

> ***Accounting for the Effects of Cost-Based Regulation***

[89] Stipulation ESP Tr. Vol. V at 1317. Mr. Hamrock's statements are consistent with AEP-Ohio statements elsewhere including the testimony of former AEP-Ohio witness Craig Baker, then Senior Vice President of Regulatory Affairs. In AEP-Ohio's initial ESP proceeding witness Baker testified that SB 221 did not alter the fundamental premise of SB 3. *Capacity Case*, IEU-Ohio's Initial Brief at 25 (May 23, 2012) (*quoting ESP I*, Direct Testimony of Craig Baker at 25 (July 31, 2008)).

[90] AEP Ohio has relied extensively in this proceeding on its FERC Form 1 filings. AEP-Ohio Ex.127 contains an excerpted portion of the FERC Form 1. Additionally, AEP-Ohio Ex. 128 is an excerpted portion of AEP-Ohio witness Pearce's testimony in the *Capacity Case*, which is based on the values contained in AEP-Ohio's 2010 FERC Form 1. Tr. Vol. IX. at 2605. See also IEU-Ohio Ex. 123 (excerpt of 2010 FERC Form 1.) The quoted material cited in the text above is the same in both the 2010 and 2011 FERC Form 1 filings.

> As a rate-regulated electric public utility company, OPCo's financial statements reflect the actions of regulators that result in the recognition of certain revenues and expenses in different time periods than enterprises that are not rate-regulated. In accordance with accounting guidance for "Regulated Operations," OPCo records regulatory assets (deferred expenses) and regulatory liabilities (future revenue reductions or refunds) to reflect the economic effects of regulation by matching expenses with their recovery through regulated revenues and income with its passage to customers through the reduction of regulated revenues. **Due to the passage of legislation requiring restructuring and a transition to customer choice and market-based rates, OPCo discontinued the application of "Regulated Operations" accounting treatment for the generation portion of its business.**

Accounting guidance for "Discontinuation of Rate-Regulated Operations" requires the recognition of an impairment of stranded net regulatory assets and stranded plant costs if they are not recoverable in regulated rates. In addition, an enterprise is required to eliminate from its balance sheet the effects of any actions of regulators that had been recognized as regulatory assets and regulatory liabilities. Such impairments and adjustments are classified as an extraordinary item.

In AEP-Ohio's *Corporate Separation Case,* it similarly stated after the enactment of SB 221, "[u]nder SB 3, all of [its] generation assets were subjected to market and EDUs therefore *were given a temporary opportunity* to recover stranded generation investments during a transition period. *That transition period is over.* EDUs can no longer recover stranded generation investments ...."[91] Further, an American Electric Power Company ("AEP") accounting review in 2011 to determine if the AEP-East generation fleet was financially impaired by expected changes in environmental

[91] IEU-Ohio Ex. 124 at 14-15 (quoting *In the Matter of the Application of Ohio Power Company for Approval of Full Legal Corporate Separation and Amendment to Its Corporate Separation Plan,* Case No. 12-1126-EL-UNC, Application at 7 (Mar. 30, 2012) ("*Corporate Separation Case*").

regulations noted that the Ohio generation facilities were no longer subject to cost-based regulation.[92]

Finally, and despite the prohibitions that remain in force under Ohio law that AEP-Ohio has recognized, AEP-Ohio claims that it would not be fair to hold it to its commitments in SB 3. AEP-Ohio argues, in a collateral attack of the Commission decisions approving its prior rates, that because it did not get to charge as much as it would have liked under its RSP it should not be bound to the terms of the ETP Stipulation (or apparently Ohio law).[93]

Although the Commission requested AEP-Ohio to file an RSP, the Commission approved AEP-Ohio's application, with only minor modifications.[94] As described by AEP-Ohio, its RSP was "a substitute for a market-based standard service offer."[95] As part of that substitution, AEP-Ohio requested the Commission grant a waiver of the competitive bidding option then required by Ohio law.[96] Although AEP-Ohio now takes issues with the market prices it charged following its MDP under its RSP,[97] it proposed the terms that were ultimately approved (with only minor modifications) and nothing prevented AEP-Ohio from challenging the Commission-approved RSP rates before the Ohio Supreme Court. Ironically enough, AEP-Ohio defended the market-based RSP on

[92] OCC Ex. 104.

[93] AEP-Ohio Initial Brief at 72-74.

[94] *See* IEU-Ohio Ex. 119.

[95] *Id.* at 14.

[96] *Id.* at 7, 11.

[97] *See* AEP-Ohio Initial Brief at 71-76.

appeal before the Ohio Supreme Court when challenged by the Office of the Ohio Consumers' Counsel ("OCC").[98]

Today, the Ohio Revised Code's provisions prohibiting the collection of above-market transition revenues enacted under SB 3 remain in effect. If the General Assembly had meant to repeal "the entire regulatory regime" created by SB 3, the General Assembly could have repealed the statutes prohibiting the collection of transition revenues either in their entirety or as applied to shopping customers. Instead, SB 221 continued and reaffirmed the prohibition on collecting unavoidable charges for above-market generation assets,[99] and AEP-Ohio's prior testimony and accounting documents concede this point. Thus, even if the Commission had jurisdiction to approve a wholesale capacity charge, (which, as discussed above, it does not), the Commission is without authority to approve specific charges or mechanisms that are designed to permit AEP-Ohio to collect above-market, generation-related transition revenues from any customers and, most definitely, from shopping customers.

6. AEP-Ohio's Claimed Financial Harm, Should It be Required to Charge the RPM-based Price, Should be Disregarded Because AEP-Ohio Has Failed to Follow the Statutory and Commission Requirements to Secure a Rate Increase Due to Alleged Financial Harm

Throughout AEP-Ohio's Initial Brief, its testimony in this case, and its filings in the *Capacity Case*, AEP-Ohio asserts it faces financial harm unless the Commission approves all of its proposals, including an increase in its wholesale capacity charges.[100]

---

[98] *See Ohio Consumers' Counsel v. Pub. Util. Comm.*, Ohio Supreme Court Case No. 2005-767, Brief and Appendix of Intervening Appellees, Columbus Southern Power Company and Ohio Power Company (Aug. 12, 2008).

[99] Section 4928.141, Revised Code.

[100] *See e.g.*, AEP-Ohio Ex. 101 at 15; AEP-Ohio Ex. 151 at 11-14; AEP-Ohio Initial Brief at 40-46.

AEP-Ohio, however, has not sought relief under Section 4909.16, Revised Code, which allows the Commission to authorize temporary rate relief for an EDU that faces emergency financial circumstances. Until AEP-Ohio follows the statutorily provided procedure for seeking an increase in rates to prevent financial harm, AEP-Ohio's financial harm arguments should be ignored.[101]

7. AEP-Ohio Fails to Justify the Authorization of Three Non-Bypassable Riders

In addition to seeking approval of increased capacity prices, AEP-Ohio is seeking three non-bypassable riders, the RSR, the GRR, and the PTP. As IEU-Ohio demonstrated in its Initial Brief, there is no legal authority for any of these riders. In its Initial Brief, AEP-Ohio likewise offers nothing that would justify authorization of these riders.

a. AEP-Ohio has not provided a legal basis for the authorization of a non-bypassable RSR charge

As a means of increasing its revenue in addition to the Pricing Scheme, AEP-Ohio is seeking authorization for an RSR, a non-bypassable charge that will assure it a non-fuel generation-related revenue of $929 million annually.[102] In its Initial Brief, AEP-Ohio argues that Section 4928.143(B)(2), Revised Code, provides a basis for the RSR.[103] It also seeks to justify the RSR on the basis that the rider is necessary to protect AEP-Ohio's financial well-being.[104] In particular, it argues that the Commission

---

[101] *In the Matter of the Application of Akron Thermal, Limited Partnership for an Emergency Increase in its Rates and Charges for Steam and Hot Water Service*, Case No. 09-453-HT-AEM, Opinion and Order at 6 (Sept. 2, 2009).

[102] AEP-Ohio Ex. 116 at 13-15.

[103] AEP-Ohio Initial Brief at 39.

[104] *Id*. at 34.

must adopt the RSR as a means of avoiding an ESP that would result in confiscation, basing its conclusion on the theory that the MRO statute provides some substantive direction to the Commission that requires the Commission to approve the RSR.[105] The AEP-Ohio Initial Brief then provides an irrelevant discussion on the merits of various methods of calculating the level of the RSR. Most of the claims contained in AEP-Ohio's Initial Brief are already addressed in IEU-Ohio's Initial Brief.[106] The remainder are discussed below.

1. AEP-Ohio's Initial Brief has not provided a legal basis for a non-bypassable rider to recover generation-related revenue

First, notably absent from AEP-Ohio's Brief is any demonstration of a legal basis for a non-bypassable rider to recover generation-related revenue. Such a demonstration is important: each of the riders that AEP-Ohio is proposing, including the RSR, would be non-bypassable, and each seeks to recover generation-related revenue. Yet, AEP-Ohio has not provided any legal authority to demonstrate that the Commission can authorize the RSR. In fact, the Commission does not have the legal authority to do so.

---

[105] *Id*. at 40.

[106] *See* IEU-Ohio Initial Brief at 56-68. As demonstrated there, the RSR, a so-called "transitional rider,"[106] AEP-Ohio Ex. 116 at 13, is illegal and unreasonable for several reasons. First, it would permit AEP-Ohio to collect above-market generation transition revenue in violation of state law. As the Ohio Automobile Dealers Association points out, the RSR is nothing more than a means of transferring AEP-Ohio's risk of lost revenue due to competition to its customers. Post-Hearing Brief of the Ohio Automobile Dealers Association at 3 (June 29, 2012). Second, the RSR violates requirements of corporate separation that prohibit the EDU from favoring its own generation or that of its affiliate. Third, AEP-Ohio has failed to demonstrate that the RSR can be approved under Section 4928.143(B), Revised Code. Fourth, AEP-Ohio has failed to demonstrate any reasoned basis for the rider based on the alleged claims that the RSR will improve shopping opportunities or is necessary to prevent "financial harm."

Because the electric utility's generation function has been declared competitive, generation-related revenue may not be recovered through a non-bypassable charge unless it falls into one of two narrowly defined exceptions.[107] AEP-Ohio's request for an RSR would violate the prohibition. Through the RSR, AEP-Ohio is seeking to have all customers, whether or not they are purchasing generation service from AEP-Ohio, contribute to non-fuel based generation revenue that would otherwise be lost as a result of shopping or other changes in load. Because Ohio law does not permit the Commission to authorize a charge to recover this generation-related revenue on a non-bypassable basis, the Commission cannot approve the RSR.

2. AEP-Ohio's claim that the RSR can be authorized under Section 4928.143(B)(2), Revised Code, is incorrect

Despite the fact that AEP-Ohio cannot point to any provision that would authorize a non-bypassable rider to recover generation-related revenue, AEP-Ohio argues that the RSR can be authorized based on Sections 4928.143(B)(2)(d), (e), and (i), Revised Code.[108] None of these sections, however, authorizes the RSR.

As noted in IEU-Ohio's Initial Brief, AEP-Ohio has not demonstrated that it has met the requirements of Section 4928.143(B)(2)(d), Revised Code, or that the section can be used to approve a non-bypassable charge.[109] The other two provisions upon which AEP-Ohio relies also do not provide a basis for the RSR. Section

[107] The exceptions are provided by Sections 4928.143(B)(2)(b) & (c), Revised Code. Deferred rate increases, again with significant conditions, may also be recovered through a non-bypassable charge. Section 4928.144, Revised Code. *See In the Matter of the Application of Ohio Power Company for Approval of the Shutdown of Unit 5 of the Philip Sporn Generating Station and to Establish a Plant Shutdown Rider*, Case No. 10-1454-EL-RDR, Finding and Order at 19 (Jan. 11, 2012).

[108] AEP-Ohio Initial Brief at 39.

[109] IEU-Ohio Initial Brief at 60-63.

.

4928.143(B)(2)(e), Revised Code, permits an automatic increase or decrease in any component of the SSO price. The RSR, however, does not increase the price of a component of the ESP price; it is a new stand-alone component. Likewise, Section 4928.143(B)(2)(i), Revised Code, authorizes a provision to recover costs of supporting job retention and economic development. The RSR, however, is designed to protect AEP-Ohio's revenue.[110] AEP-Ohio has not made a demonstration that an additional $284 million recovered through the RSR over three years will save or add a single job or otherwise expand the State's economy.[111] In fact, the authorization of the Modified ESP will produce significant adverse economic consequences, as FES witness Dr. Lesser explained.[112]

Additionally, Section 4928.143(B)(2), Revised Code, must be read in light of the prohibition on the recovery of transition revenue. There is no exception in Section 4928.143(B)(2), Revised Code, that would permit AEP-Ohio to recover generation-related transition revenue that is precluded by Sections 4928.141 and 4928.38, Revised Code. Because there is no exception to the prohibition on transition revenue recovery under Section 4928.143(B)(2), Revised Code, the Commission cannot authorize the RSR.

AEP-Ohio also makes the following claim regarding the statutory basis for its RSR: "if the Commission uses the RSR in conjunction with the capacity charges approved for CRES providers to compensate AEP Ohio for its capacity resources

[110] AEP-Ohio Ex. 116 at 13-15.

[111] AEP-Ohio's claims regarding internal job losses were themselves unsupported. *See* Initial Brief on Behalf of NFIB/Ohio and COSE at 12-13 ("NFIB Initial Brief").

[112] FES Ex. 102 at 33-43.

dedicated to support retail shopping, there may be additional legal bases to justify the RSR. In addition, AEP Ohio witness Dias testified to numerous customer benefits under the Modified ESP and demonstrated in detail how Ohio energy policies are advanced by the Modified ESP."[113] First, AEP-Ohio once again misstates a factual premise that it has demonstrated that it has "capacity resources dedicated to support retail shopping." That demonstration has not been made.[114] Even if the factual premise had been shown, however, AEP-Ohio does not explain what those additional statutory provisions might be. The Commission has no basis for approving an RSR when AEP-Ohio cannot explain what provisions it is relying on and why. Likewise, conformity with Ohio energy policy is meaningless (if it were true) because there is no legal basis to include a provision such as the RSR in an ESP.[115] Moreover, there is no basis for a non-bypassable charge under Ohio law.[116] Thus, AEP-Ohio's claim that other unarticulated provisions of Section 4928.143(B)(2), Revised Code, or a resort to the State's energy policies justifies the RSR is without merit.

Finally, AEP-Ohio argues that the stipulation approved for the Duke SSO proceeding provides a basis for approving the RSR.[117] As noted in IEU-Ohio's Initial Brief, however, that stipulation may not be used as precedent or evidence in another proceeding unless the use is for the purpose of enforcement of the stipulation.[118] As the

[113] AEP-Ohio Initial Brief at 39-40.

[114] IEU-Ex. 125 at 45-49.

[115] *In re Columbus Southern Power Co*., 128 Ohio St.3d 512, 520 (2011) (provisions of the ESP must be authorized by Section 4928.143(B)(2), Revised Code) ("*Remand Decision*").

[116] IEU-Ohio Initial Brief at 63-64.

[117] AEP-Ohio Initial Brief at 40.

[118] IEU-Ohio Initial Brief at 93-94

Commission recently confirmed in the *Capacity Case*, a stipulation containing a limitation on its use in other proceedings has "no precedential effect pursuant to the express terms of the stipulation adopted by the Commission."[119] The same rule applies here and precludes AEP-Ohio from relying on Duke's stipulation to support the RSR. Moreover, AEP-Ohio has provided no basis for the Commission to conclude that a provision adopted in a different case under a different set of circumstances and which required the EDU to immediately conduct an auction to provide its SSO, has any relevance to AEP-Ohio's RSR or the rest of the Modified ESP.

3. AEP-Ohio's claim that the RSR is necessary to avoid financial harm is irrelevant and unsupported

In its Initial Brief, AEP-Ohio seeks to justify the RSR on the basis that it is a necessary part of a total package that moves the EDU to a CBP in a way that AEP-Ohio will avoid financial harm, confiscation of its property, and impairment of its investment.[120] It threatens job losses at AEP-Ohio and reductions in community support if it does not receive approval for its total plan.[121] Further, it raises the specter of reduced investment and reduced service if its financial demands are not approved.[122] Given the lack of legal authority to approve an RSR, this long discourse into AEP-Ohio's financial health is irrelevant.

---

[119] *Capacity Case*, Opinion and Order at 34.

[120] AEP-Ohio Initial Brief at 34, 36, & 40.

[121] *Id*. at 34 & 37.

[122] *Id*. at 37 & 45.

First, the financial health of AEP-Ohio is not a legal baseline for approval of an ESP. The test of an ESP is whether it is more favorable in the aggregate than a MRO. If the Commission injects a review of the financial well-being of AEP-Ohio into the approval process, it will engage in an irrelevant exercise as it seeks to resolve the debate over whether AEP-Ohio must earn a particular level of return or secure a particular level of revenue. The General Assembly made the debate over earnings moot when it determined that an electric utility's generation function was competitive,[123] terminated rate regulation of competitive services,[124] and limited the period in which it could recover transition costs,[125] as discussed above.[126]

Second, if there is a financial emergency, AEP-Ohio can use the procedures under Section 4909.16, Revised Code. It has not done so, and on this record, could not do so.

Third, even if AEP-Ohio's financial health were relevant, the record fails to demonstrate that any of AEP-Ohio's financial claims is warranted.[127] As demonstrated by the impairment analysis conducted in 2011, AEP generation assets, including those of AEP-Ohio, are not at risk of impairment over the next 30 years; in fact, the AEP-East operating companies will have a positive cash flow of over $22 billion.[128]

---

[123] Section 4928.03, Revised Code.

[124] Section 4928.05(A), Revised Code.

[125] Section 4928.38, Revised Code.

[126] IEU-Ohio Ex. 119 at 18 (earnings not relevant to determination of market-based rate approved in RSP).

[127] As demonstrated in the Initial Brief of NFIB, the financial facts demonstrate that AEP-Ohio is not in any financial harm or operating as if it faces any future financial problems. NFIB Initial Brief at 10-13.

[128] OCC Ex. 104.

AEP-Ohio, however, offers Mr. Allen's opinion that positive rates of return may be so low as to be "dangerous"[129] and may result in some reduction in service quality (which apparently means transmission service, according to Mr. Dias[130]). Neither witness, however, offered anything specific as to what sorts of problems are likely to occur. Further, AEP-Ohio, by its own estimate, would have positive returns under its proposal even if revenue from the RSR was removed and capacity prices for CRES providers serving in the AEP-Ohio service territory were set to RPM-based prices in 2013.

AEP-Ohio also argues that a double-digit return on equity is justified on a total company basis to support investment, based on the testimony of Dr. Avera.[131] Dr. Avera, however, understood that the risk of providing generation for the SSO could be shifted to bidders by adopting an auction to support the SSO service,[132] and AEP-Ohio has proposed to transfer the generation assets to a competitive generation affiliate.

AEP-Ohio's "confiscation" argument is no better than its claim that the RSR is necessary to avoid financial harm. In its argument, AEP-Ohio claims that the Commission is bound by the terms of the MRO statute to adjust the ESP to a level that avoids confiscation. First, AEP-Ohio is attempting to read into Section 4928.143(C)(1), Revised Code, a "floor" that is not found in that section. Second, imputation of a floor is not appropriate since the ESP is consensual. If the authorized rates are too low as a result of modifications in the Modified ESP, AEP-Ohio may reject the ESP and return to

[129] AEP-Ohio Initial Brief at 44-45 (citing Tr. Vol. XVII at 4877-78).

[130] *Id*. at 45-46.

[131] AEP-Ohio Ex. 150.

[132] Tr. Vol. XVII at 4683-84.

its prior rates.[133] As AEP's Chairman has stated, AEP-Ohio's current ESP rates are more than adequate.[134]

Further, AEP-Ohio has fallen far short in its claim that it faces confiscation of its property if the Commission does not approve its package of SSO and capacity price increases including the RSR. To support a claim of confiscation, AEP-Ohio must demonstrate that the rate is "so 'unjust' as to be confiscatory,"[135] but a review of a rate, standing alone, is not a basis for determining if a confiscation has occurred. Before the Commission may find that rates are confiscatory, it must assess "all relevant costs and expenditures made by [the electric distribution utility]."[136] "It is not the theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unreasonable, judicial inquiry … is at an end."[137] Relying on this well-understood test for determining if rates are confiscatory, the Commission has held that it must "consider the total effect of the [EDU's] rates."[138] There is no legal assurance that the EDU must have an opportunity to earn a profit for its competitive generation function.[139]

---

[133] Section 4928.143(C)(2)(b), Revised Code.

[134] FES Ex. 1 at 11 & Ex. TCB-2 (Sept. 27, 2011).

[135] *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307 (1989).

[136] *Monongahela Power Co. v. Schriber*, 322 F. Supp. 2d 902, 924 (S.D. Ohio 2004).

[137] *Id*. at 921.

[138] *In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for Monongahela Power Company*, Case No. 04-880-EL-UNC, Opinion and Order at 16 (Dec. 8, 2004).

[139] *Federal Power Comm'n v. Hope Natural Gas Co*., 320 U.S. 592, 603 (1944). As the Supreme Court has indicated, there is no due process requirement to protect a utility from the effects of market forces:

> [I]t may be safely generalized that the due process clause never has been held by this Court to require a commission to fix rates on the present reproduction value of something no one would presently want to reproduce, or on the historical valuation of a property whose history and current financial statements showed the value no longer to exist, or on an investment after it has vanished, even if once prudently made, or to maintain the credit of a concern whose securities already are impaired. The due process clause has been applied to prevent governmental destruction of existing economic values. It has not and

Instead of providing evidence of confiscation, however, AEP-Ohio has stated that the rejection of its illegal and unreasonable proposals to increase capacity charges and implement the RSR will still result in positive earnings.[140] That is, AEP-Ohio will continue to operate at the same hiring levels, buy the same supplies, make the same interest payments, and still generate positive returns even if it is selling capacity to CRES providers at RPM-based prices and does not have authorization for the RSR. Moreover, Mr. Allen's claim that the earnings will be reduced is not credible in light of the fact that it was based on shopping projections that would double or triple over the next six months.[141] The one-year snapshot provided by Mr. Allen also ignores the eleven years of double-digit earnings that AEP-Ohio has generated since generation service was deemed competitive.[142] In short, AEP-Ohio has failed to provide the Commission any basis to believe that it will suffer confiscation if the Commission refuses to approve the RSR.

4. Staff and the Ohio Hospital Association's ("OHA") argument that the RSR can be used to make AEP-Ohio whole if capacity charges are less than AEP-Ohio's "costs" should be rejected

Staff[143] and OHA[144] offer that the RSR may be approved to allow AEP-Ohio to make up the difference between its cost to provide capacity to CRES providers serving

---

> cannot be applied to insure values or to restore values that have been lost by the operation of economic forces.

Market Street Railway Co. v. Railroad Comm'n of California, 324 U.S. 548, 567 (1945).

[140] AEP-Ohio Ex. 151 at 11.

[141] Tr. Vol. XVII at 4828; FES Ex. 120.

[142] IEU-Ohio Ex. 129 at Ex. JGB-5.

[143] Initial Post-Hearing Brief of Staff at 23 (June 29, 2012) (Staff Initial Brief).

[144] Post-Hearing Brief of Ohio Hospital Association at 4 (June 29, 2012) ("OHA Initial Brief").

customers in the AEP-Ohio service territory and the price of capacity the Commission authorizes. There are two problems with this suggestion. First, it assumes that the Commission can set a price of capacity charged to CRES providers serving retail customers in the AEP-Ohio service territory. As discussed above, it cannot. Second, it assumes that AEP-Ohio may be authorized to recover its above-market costs, but that recovery is prohibited. Staff and OHA's suggestion that the RSR can be used to make AEP-Ohio whole, therefore, should be rejected.

b. AEP-Ohio and others fail to demonstrate a legal basis to authorize the GRR

The GRR, which AEP-Ohio presents as a "placeholder" for Turning Point, is illegal on its face. Section 4928.64(D), Revised Code, provides that the cost of compliance with renewable energy requirements cannot be recovered through non-bypassable charges.[145] The GRR, therefore, cannot be approved as a non-bypassable rider to recover the costs of Turning Point, a renewable energy generation facility.

Despite this legal bar on a non-bypassable charge, several parties persist in their efforts to establish the GRR to recover the costs of Turning Point.[146] Even if the Commission could turn a blind eye to the illegality of including Turning Point in the GRR, AEP-Ohio, Staff, Natural Resource Defense Council ("NRDC"), Ohio Energy Council ("OEC") and the University of Toledo Innovation Enterprise Corporation ("UT") fail to identify any evidence in the record to demonstrate that the GRR satisfies the

---

[145] Section 4928.143(B), Revised Code; Section 4928.64(E), Revised Code.

[146] AEP-Ohio, Staff, NRDC, OEC, and UT submitted Post-Hearing Briefs recommending that the Commission approve the GRR as a placeholder for Turning Point. NRDC and OEC also recommended that the GRR include energy efficiency projects. Initial Post-Hearing Brief by NRDC and OEC at 2. Because Section 4928.143(B)(2)(b) and (c), Revised Code, only apply to generating facilities, NRDC's and OEC's recommendation fails to comply with the law.

requirements in Section 4928.143(B)(2)(c), Revised Code. Indeed, Staff concedes that the statutory requirements have not been met in this proceeding,[147] and UT states that there is insufficient information in this proceeding to make a qualitative or quantitative assessment of Turning Point.[148] AEP-Ohio also has failed to demonstrate in this proceeding that Turning Point is "needed,"[149] the total amount AEP-Ohio will be seeking to recover through the GRR for Turning Point, or that Turning Point was sourced through a competitive bid. Finally, AEP-Ohio has failed to address the effect on large-scale governmental aggregation of any non-bypassable generation charges.

OCC agrees that AEP-Ohio has not satisfied the requirements contained in Section 4928.143(B)(2)(c), Revised Code, but claims that if the GRR is approved it should be "collected in terms of a per kWh basis; this is an established practice in Ohio and consistent with R.C. 4928.64(c)(2)(a)." Section 4928.64(C)(2)(a), Revised Code, however, sets forth the manner for calculating a compliance payment for failure to meet the renewable energy benchmark requirement and specifically states that "[t]he compliance payment shall not be passed through by the electric distribution utility or electric services company to consumers." Since assessed penalties cannot be passed

[147] Staff Initial Brief at 18.

[148] UT Initial Brief at 5.

[149] While AEP-Ohio insists that the need for Turning Point will be established in a separate proceeding, NRDC's and OEC's Initial Post-Hearing Brief appear to claim that AEP-Ohio will need additional renewable solar energy credits ("SRECs") beyond 2012, based on a solitary statement in the testimony of witness Godfrey. Initial Post-Hearing Brief by NRDC and OEC at 3. Witness Godfrey's testimony, however, provides no basis for the Commission to find a need for Turning Point. First, on cross-examination, Mr. Godfrey stated that he was not offering any recommendation on anything but the Timber Road renewable energy purchase agreement. Tr. Vol. III at 967. Second, Mr. Godfrey's testimony on AEP-Ohio's compliance with SREC requirements was unsupported by evidence. Moreover, on cross-examination, Mr. Godfrey conceded that AEP-Ohio has sufficient instate SRECs through 2012 and that he had not forecasted AEP-Ohio's future SREC compliance requirement under the shopping levels forecasted by witness Allen. Tr. Vol. III at 971-74.

on to customers, Section 4928.64(c)(2)(a), Revised Code, cannot be relied upon to formulate an allocation methodology for the GRR.

While it does not address the statutory requirements under Section 4928.143(B)(2), Revised Code, AEP-Ohio offers feeble policy arguments to support authorization of the GRR. First, AEP-Ohio claims that shopping customers will receive a benefit from the GRR because they may one day return to the SSO.[150] This argument, however, does not make any sense. An ESP may not include a charge in violation of the terms of Section 4928.64(E), Revised Code. Section 4928.64(E), Revised Code, requires that costs associated with renewable energy requirements must be bypassable. As a result, no shopping or non-shopping customer can be charged for renewable requirements twice, once through the charge authorized to cover compliance with renewable energy requirements and once through another charge such as a non-bypassable rider like the GRR.[151] If the charge is non-bypassable all customers will always face the double charge. The fact that customers may return to SSO service at a later time does not make the double charge on all customers for renewable energy requirements any more reasonable or lawful.

Second, AEP-Ohio claims that SRECs could follow a customer that shops,[152] but fails to explain how its recommendation could be implemented. The burden to demonstrate the legality and reasonableness of the GRR, however, is on AEP-Ohio. Because AEP-Ohio's argument boils down to "trust us to figure this out," this recommendation is of no value.

[150] AEP-Ohio Initial Brief at 29-30.

[151] Section 4928.143(B), Revised Code.

[152] AEP-Ohio Initial Brief at 30.

Third, AEP-Ohio claims that Turning Point would lead to solar market development, incorrectly citing to the testimony of NRDC witness Lyle. Mr. Lyle, however, stated that approving non-bypassable recovery for Turning Point would discourage solar resource development in Ohio.[153] Witness Lyle's conclusion is not hard to understand: if the Commission approves Turning Point, approximately 50 MW of solar generation—and thousands of SRECs—will flood into the Ohio solar market. Further, the SRECs will be subsidized by a non-bypassable rider, a benefit other producers of solar energy will not have. Under basic principles of supply and demand, if the GRR is approved, the price of SRECs will decrease and suppliers will have less incentive to build solar resources in Ohio.

Thus, AEP-Ohio has not provided the Commission with any basis to approve the GRR. Under Section 4928.64(E), Revised Code, the Commission cannot approve a non-bypassable charge to recover the cost of a renewable resource. Additionally, the evidence offered by AEP-Ohio demonstrated that the requirements for a non-bypassable charge under Section 4928.143(B)(2)(c), Revised Code, cannot be satisfied.[154] Finally, AEP-Ohio's policy arguments cannot provide a basis for the Commission to ignore the statutory requirements and are themselves, meritless.

c. AEP-Ohio has failed to demonstrate that the PTP is lawful and reasonable

In the Modified ESP, AEP-Ohio requests authority to file an application to establish a non-bypassable PTP to recover generation-related revenues that may be lost as a result of its election, jointly with the affiliates, to terminate the System

[153] NRDC Ex. 101 at 10; Tr. Vol. IX at 2647-49.

[154] IEU-Ohio Initial Brief at 75.

Interconnection Agreement ("Pool Agreement").[155] Once again, it is important to note what AEP-Ohio has failed to demonstrate in its Initial Brief. Like the RSR, AEP-Ohio has failed to demonstrate any basis for a non-bypassable charge to recover lost generation-related revenue. As discussed above, there is no legislative authority for such a charge.

Additionally, AEP-Ohio has failed to identify any provision of Section 4928.143(B)(2), Revised Code, that would authorize the PTP in its prefiled testimony, on cross-examination, or its Initial Brief. Without some statutory authorization, the Commission cannot approve the PTP even as a bypassable charge.[156]

The PTP is also barred by the prohibition on the recovery of generation transition revenue and corporate separation requirements, as IEU-Ohio has previously noted and which AEP-Ohio has ignored in its Initial Brief.[157] The PTP is designed to recover revenues that cannot be recovered in the market, post-pool termination;[158] thus, the PTP would provide AEP-Ohio transition revenues in violation of Ohio law.[159]

8. AEP-Ohio's Initial Brief Fails to Demonstrate that its Proposal Concerning the Implementation of the PIRR Is Lawful and Reasonable

The Modified ESP proposes that the Commission delay the implementation of the PIRR for a year, but permit the accrual of a carrying charge on the full, unadjusted balance at the weighted average cost of capital ("WACC"). Although AEP-Ohio has

[155] AEP-Ohio Ex. 103 at 21-23.

[156] *Remand Decision*, 128 Ohio St.3d at 519-20.

[157] IEU-Ohio Initial Brief at 68-70.

[158] AEP-Ohio Ex. 103 at 22-23.

[159] IEU-Ohio Ex. 124 at 21-23.

argued that the delay is a benefit of the Modified ESP,[160] the PIRR as proposed, is not just and reasonable and violates sound regulatory principles, as demonstrated in IEU-Ohio's Initial Brief.[161]

Once again, AEP-Ohio's Initial Brief fails to respond to the problems IEU-Ohio and others have identified with the implementation of the PIRR. First, AEP-Ohio has not contested that the delayed implementation of the PIRR and continued accrual of carrying charges at a full WACC will cost customers an additional $40-45 million in carrying charges.[162]

Second, AEP-Ohio does not contest that extending the PIRR to former CSP customers' bills misaligns costs and benefits.[163] Rather, AEP-Ohio claims that because the deferral balance is on the books of OP which has now merged with CSP, former CSP customers also should pay the PIRR.[164] This response ignores the problem; it does not address the violation of regulatory policy.

Third, AEP-Ohio seeks to collect the PIRR from governmental aggregation customers in the CSP rate zone. AEP-Ohio, however, has not addressed whether these customers received a benefit from the phase-in of OP's rates in proportion to the surcharge as required by Section 4928.20(I), Revised Code.

Fourth, although IEU-Ohio witness Bowser demonstrated that a debt rate of 3.6% is a more appropriate interest rate, AEP-Ohio continues to insist—without justification—

[160] AEP-Ohio Initial Brief at 107-09.

[161] IEU-Ohio Initial Brief at 70-73.

[162] Because AEP-Ohio considers the delayed implementation as a part of the ESP, the cost of the delay must be considered in the ESP versus MRO test. AEP-Ohio Initial Brief at 108.

[163] IEU-Ohio Ex. 129 at 9-11.

[164] AEP-Ohio Initial Brief at 108.

that it is entitled to defer the PIRR at a full WACC rate. As Mr. Bowser showed, a lower debt rate is required as a matter of sound policy.[165] Additionally, AEP-Ohio does not address why it cannot undertake a competitive solicitation to determine the proper cost of financing the PIRR.[166] Finally, AEP-Ohio has failed to rebut testimony that carrying charges should be calculated on a deferral balance adjusted for accumulated deferred income taxes ("ADIT").[167]

9. AEP-Ohio's Request for Approval of Corporate Separation Based on the Findings in this Case Is Illegal and Unreasonable

AEP-Ohio seeks through its Modified ESP to pursue issues that will assist it in securing approval of its separate application to amend its corporate separation plan and to authorize a transfer of generation-related assets. In its Initial Brief, IEU-Ohio demonstrated that the Commission cannot approve the corporate separation application and transfer of assets based on the record in the Modified ESP case. Additionally, IEU-Ohio identified significant issues arising from the testimony in this case that require the Commission to conduct an evidentiary hearing in the *Corporate Separation Case*.[168] The Commission must make clear that nothing it is doing in this case can be construed as approval of the terms and conditions of either the corporate separation plan or the transfer of assets proposed in the other case.

Although AEP-Ohio itself decided to pursue amendments to its corporate separation plan and transfer of generation assets in a separate case, it asserts in its

[165] IEU-Ohio Ex. 129 at 12-13.

[166] *See* IEU-Ohio Ex. 129 at 13-14; Tr. Vol. XIII at 3653.

[167] Staff Ex. 109 at 8; IEU-Ohio Ex. 129 at 15-16.

[168] IEU-Ohio Initial Brief at 76-79.

Initial Brief that "[w]ith approval of the Modified ESP, the Commission has the necessary information, . . . in order to approve the corporate separation, which complies with Ohio law."[169] As IEU-Ohio has stated previously, the decision in this case does not affect the *Corporate Separation Case*. AEP-Ohio's request to amend its corporate separation plan and its generation asset transfer is not before the Commission in this proceeding.[170] Although AEP-Ohio could have moved to consolidate the *Corporate Separation Case* with its ESP Application, it did not.[171] Thus, there is no legal basis for the Commission to approve the application in the *Corporate Separation Case* based on the record in this case.

Further, AEP-Ohio's description of what it seeks to accomplish through its *Corporate Separation Case* highlights the need for thorough hearings in that case.[172] AEP-Ohio has proposed the transfer of two facilities to Fixed Resource Requirement ("FRR") entities, but failed to address how removing additional generation from the Base Residual Auctions will affect RPM-pricing. Likewise, it has failed to address the legal problems inherent in a full requirements contract with its affiliate competitive generation company to which it is passing through all generation-related ESP revenue, including the proposed non-bypassable "lost revenues" collected under the RSR. Because these issues (and others previously noted in IEU-Ohio's Initial Brief remain unaddressed, any

[169] AEP-Ohio Initial Brief at 5.

[170] *Corporate Separation Case,* Ohio Power Company's Application for Approval of Full Legal Corporate Separation and Amendment to its Corporate Separation Plan (Mar. 30, 2012).

[171] *See generally* AEP-Ohio Ex. 103; AEP-Ohio Ex. 105; AEP-Ohio Ex. 101.

[172] AEP-Ohio Initial Brief at 85-86.

action approving corporate separation and transfer of assets would be unreasonable and unlawful.

10. If the Commission Modifies the Modified ESP, It Should Require a CBP and Other Consumer Protections

Because the Modified ESP is illegal and unreasonable, the Commission must reject it.[173] If the Commission nonetheless modifies and approves the Modified ESP, it should also order several significant modifications as outlined in IEU-Ohio's Initial Brief. These modifications include directing an immediate CBP, and rejecting the Pricing Scheme and illegal RSR, PTP, and GRR.

Additionally, the Commission should direct AEP-Ohio to provide the necessary PLC and other customer information to CRES providers and customers.[174] No party, including AEP-Ohio, has objected to the provision of this information.

11. Procedural Rulings

IEU-Ohio again urges the Commission to correct the procedural errors that permitted the improper use of stipulations. As a result of the Attorney Examiners' failure to strike the testimony of AEP-Ohio and Intervenors,[175] and symptomatic of the problem in Attorney Examiners' error, AEP-Ohio improperly relied upon the Duke ESP Stipulation in its Initial Brief.[176] As demonstrated by its Initial Brief, however, AEP-Ohio

---

[173] Section 4928.143(C), Revised Code.

[174] *See also* Initial Post-Hearing Brief of Constellation NewEnergy, Inc., Constellation Energy Commodities Group, Inc., Exelon Energy Company, Inc., Exelon Generation Company, LLC at 14-15 (June 29, 2012); Post-Hearing Brief of Interstate Gas Supply, Inc. at 4-12 (June 29, 2012); Initial Brief of the Retail Energy Supply Association, Direct Energy Services, LLC, and Direct Energy Business, LLC at 27 (June 29, 2012) (identifying problems with current tariffs and need for additional information regarding peak load contribution).

[175] IEU-Ohio Initial Brief at 93-94.

[176] AEP-Ohio Initial Brief at 40.

agrees that reliance on a stipulation limiting its use as evidence or precedent is improper:

> The Staff's attempt to define issues in the *black box* of the 11-351 et al. settlement should be rejected by the Commission. The Stipulation enumerated all of the items that any party raised as an issue in need of specific consideration beyond the black box. *As many black box settlements are structured, a final number is reached without enumerating the detail of how the final number was reached. This allows parties with divergent interests to settle a case even though they do not agree on matters within the case.* The Staff's attempt to reach into that black box and pull out its litigation position and apply it after the fact to the ESSR is improper. . . . *The Commission should not afford the Staff the opportunity to undermine the settlement process and improperly claim its litigation position from a previous case as a final non-appealable order.*[177]

Likewise, the Commission in the *Capacity Case* agrees.[178] Settlements permit parties with divergent interests to settle matters that they do not agree upon in a case. If parties are permitted to peel off an individual aspect of the settlement as if it is precedent under a final non-appealable order, the process will be undermined and settlements will be harder to achieve.

III. CONCLUSION

As discussed above, AEP-Ohio has failed to provide the Commission with a sufficient basis to approve the Modified ESP. It is based on flawed legal arguments and is not supported by credible facts. As a result, the Commission must reject the Modified ESP.

Respectfully submitted,

s/ Frank P. Darr

[177] *Id*. at 98 (emphasis added).

[178] *Capacity Case*, Opinion and Order at 34.

Samuel C. Randazzo (Counsel of Record)
Frank P. Darr
Joseph E. Oliker
Matthew R. Pritchard
MCNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
sam@mwnmch.com
fdarr@mwncmh.com
joliker@mwncmh.com
mpritchard@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Reply Brief of Industrial Energy Users-Ohio* was served upon the following parties of record this 9th day of July 2012, *via* electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

s/ Frank P. Darr
Frank P. Darr

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

Daniel R. Conway
Christen M. Moore
Porter Wright Morris & Arthur
41 S. High Street
Columbus, OH 43215
dconway@porterwright.com
cmoore@porterwright.com

ON BEHALF OF COLUMBUS SOUTHERN POWER COMPANY AND OHIO POWER COMPANY

Robert A. McMahon
Eberly McMahon LLC
2321 Kemper Lane, Suite 100
Cincinnati, OH 45206

Rocco D'Ascenzo
Elisabeth Watts
Duke Energy Ohio, Inc.
139 East Fourth Street - 1303-Main
Cincinnati, OH 45202
Elizabeth.watts@duke-energy.com
Rocco.d'ascenzo@duke-energy.com

ON BEHALF OF DUKE ENERGY OHIO, INC.

Dorothy K. Corbett
Amy B. Spiller
Jeanne W. Kingery
139 East Fourth Street
1303-Main
Cincinnati, OH 45202
Dorothy.Corbett@duke-energy.com
Amy.spiller@duke-energy.com
Jeanne.kingery@duke-energy.com

Philip B. Sineneng
Thompson Hine LLP
41 S. High Street, Suite 1700
Columbus, OH 43215
Philip.Sineneng@thompsonhine.com

ON BEHALF OF DUKE ENERGY RETAIL SALES, LLC AND DUKE ENERGY COMMERCIAL ASSET MANAGEMENT, INC.

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

ON BEHALF OF THE OHIO ENERGY GROUP

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

ON BEHALF OF ENERNOC, INC.

Kyle L. Kern
Terry L. Etter
Maureen R. Grady
Office of the Ohio Consumers' Counsel
10 W. Broad Street, 18th Floor
Columbus, OH 43215-3485
kern@occ.state.oh.us
etter@occ.state.oh.us
grady@occ.state.oh.us

ON BEHALF OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

Richard L. Sites
General Counsel & Senior Director of Health Policy
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620
ricks@ohanet.org

Thomas J. O'Brien
BRICKER & ECKLER, LLP
100 South Third Street
Columbus, OH 43215-4291
tobrien@bricker.com

OH BEHALF OF OHIO HOSPITAL ASSOCIATION

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

ON BEHALF OF THE KROGER CO.

Terrence O'Donnell
Christopher Montgomery
Matthew W. Warnock
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
todonnell@bricker.com
cmontgomery@bricker.com
mwarnock@bricker.com

ON BEHALF OF PAULDING WIND FARM II LLC

Mark A. Hayden
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.com

James F Lang
Laura C. McBride
N. Trevor Alexander
CALFEE, HALTER & GRISWOLD LLP
1400 KeyBank Center
800 Superior Ave.
Cleveland, OH 44114
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com

David A. Kutik
Jones Day
North Point
901 Lakeside Avenue
Cleveland, OH 44114
dakutik@jonesday.com

Allison E. Haedt
Jones Day
P.O. Box 165017
Columbus, OH 43216-5017
aehaedt@jonesday.com

John N. Estes III
Paul F. Wight
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Ave., N.W.
Washington, DC 20005
jestes@skadden.com
paul.wight@skadden.com

ON BEHALF OF FIRSTENERGY SOLUTIONS CORP.

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

ON BEHALF OF THE APPALACHIAN PEACE AND JUSTICE NETWORK

Lisa G. McAlister
J. Thomas Siwo
Thomas O'Brien
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
lmcalister@bricker.com
tsiwo@bricker.com
tobrien@bricker.com

ON BEHALF OF OMA ENERGY GROUP

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

ON BEHALF OF AEP RETAIL ENERGY PARTNERS LLC

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
P.O. Box 1008
Columbus, OH 43215-1008
mhpetricoff@vorys.com
smhoward@vorys.com

ON BEHALF OF PJM POWER PROVIDERS GROUP AND THE RETAIL ENERGY SUPPLY ASSOCIATION

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

ON BEHALF OF PJM POWER PROVIDERS GROUP

M. Howard Petricoff
Michael Settineri
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
P.O. Box 1008
Columbus, OH 43215-1008
mhpetricoff@vorys.com
mjsettineri@vorys.com

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

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

ON BEHALF OF THE COMPETE COALITION

Henry W. Eckhart
1200 Chambers Road, Suite 106
Columbus, OH 43212
henryeckhart@aol.com

Christopher J. Allwein
Williams, Allwein and Moser, LLC
1373 Grandview Ave., Suite 212
Columbus, OH 43212
callwein@williamsandmoser.com

ON BEHALF OF THE NATURAL RESOURCES DEFENSE COUNCIL AND THE SIERRA CLUB

M. Howard Petricoff
Michael J. Settineri
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
mhpetricoff@vorys.com
mjsettineri@vorys.com
smhoward@vorys.com

ON BEHALF OF CONSTELLATION NEWENERGY, INC., CONSTELLATION ENERGY COMMODITIES GROUP, INC. , DIRECT ENERGY SERVICES, LLC

Gary A Jeffries
Assistant General Counsel
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212-5817
Gary.A.Jeffries@aol.com

ON BEHALF OF DOMINION RETAIL, INC.

David I. Fein
Vice President, Energy Policy – Midwest
Constellation Energy Group, Inc.
Cynthia Fonner Brady
Senior Counsel
Constellation Energy Resources LLC
550 West Washington Blvd., Suite 300
Chicago, IL 60661
david.fein@constellation.com
cynthia.brady@constellation.com

ON BEHALF OF CONSTELLATION NEWENERGY, INC. AND CONSTELLATION ENERGY COMMODITIES GROUP, INC.

Jeanine Amid Hummer
Thomas K. Lindsey
City of Upper Arlington
C. Todd Jones,
Christopher L. Miller,
Gregory H. Dunn
Asim Z. Haque
Ice Miller LLC
250 West Street
Columbus, OH 43215
christopher.miller@icemiller.com
gregory.dunn@icemiller.com
asim.haque@icemiller.com
jhummer@uaoh.net
tlindsey@uaoh.net

ON BEHALF OF THE CITY OF GROVE CITY, OHIO AND THE ASSOCIATION OF INDEPENDENT COLLEGES AND UNIVERSITIES OF OHIO, THE CITY OF UPPER ARLINGTON, THE CITY OF HILLSBORO, OHIO

Sandy I-ru Grace
Assistant General Counsel
Exelon Business Services Company
101 Constitution Ave., NW
Suite 400 East
Washington, DC 20001
sandy.grace@exeloncorp.com

M. Howard Petricoff
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street/P.O. Box 1008
Columbus, OH 43216-1008
mhpetricoff@vorys.com

David M. Stahl
Eimer Stahl Klevorn & Solberg LLP
224 South Michigan Avenue, Suite 1100
Chicago, IL 60604
dstahl@eimerstahl.com

ON BEHALF OF EXELON GENERATION COMPANY, LLC

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

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

Steve W. Chriss
Manager, State Rate Proceedings
Wal-Mart Stores, Inc.
Bentonville, AR 72716-0550
Stephen.Chriss@wal-mart.com

ON BEHALF OF WAL-MART STORES EAST, LP AND SAM'S EAST, INC.

Barth E. Royer (Counsel of Record)
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, OH 43215-3927
BarthRoyer@aol.com

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

ON BEHALF OF THE ENVIRONMENTAL LAW & POLICY CENTER

Nolan Moser
Trent A. Dougherty
Camille Yancy
Cathryn Loucas
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449
nolan@theoec.org
trent@theoec.org
camille@theoec.org
cathy@theoec.org.

ON BEHALF OF THE OHIO ENVIRONMENTAL COUNCIL

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

ON BEHALF OF KORENERGY

Douglas G. Bonner
Emma F. Hand
Keith C. Nusbaum
Clinton A. Vince
Daniel D. Barnowski
James Rubin
Thomas Millar
SNR Denton US LLP
1301 K Street NW
Suite 600, East Tower
Washington, DC 20005
doug.bonner@snrdenton.com
emma.hand@snrdenton.com
keith.nusbaum@snrdenton.com
clinton.vince@snrdenton.com
daniel.barnowski@snrdenton.con
james.rubin@snrdenton.com
thomas.millar@snrdenton.com

Arthur Beeman
SNR Denton US LLP
525 Market Street, 26th Floor
San Francisco, CA 94105-2708
arthur.beeman@snrdenton.com

ON BEHALF OF ORMET PRIMARY ALUMINUM CORPORATION

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

ON BEHALF OF HESS CORPORATION

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

Jacqueline Lake Roberts,
Counsel of Record
101 Federal Street, Suite 1100
Boston, MA 02110
jroberts@enernoc.com

ON BEHALF OF CPOWER, INC., VIRIDITY ENERGY, INC., ENERGYCONNECT INC., COMVERGE INC., ENERWISE GLOBAL TECHNOLOGIES, INC., AND ENERGY CURTAILMENT SPECIALISTS, INC.

Benita Kahn
Lija Kaleps-Clark
Vorys Sater, Seymour and Pease LLC
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216-1008
bakahn@vorys.com
lkalepsclark@vorys.com

ON BEHALF OF OHIO CABLE TELECOMMUNICATIONS ASSOCIATION

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

Matthew White
Interstate Gas Supply, Inc.
6100 Emerald Parkway
Dublin, OH 43016
mswhite@igsenergy.com

ON BEHALF OF INTERSTATE GAS SUPPLY, INC.

Dane Stinson
BAILEY CAVALIERI LLC
10 West Broad Street, Suite 2100
Columbus, OH 43215

ON BEHALF OF THE OHIO ASSOCIATION OF SCHOOL BUSINESS OFFICIALS, THE OHIO SCHOOL BOARDS ASSOCIATION, THE OHIO SCHOOLS COUNCIL AND THE BUCKEYE ASSOCIATION OF SCHOOL ADMINISTRATORS

Chad A. Endsley
Chief Legal Counsel
Ohio Farm Bureau Federation
280 North High Street, P.O. Box 182383
Columbus, OH 43218-2383
cendsley@ofbf.org.

ON BEHALF OF THE OHIO FARM BUREAU FEDERATION

Brian P. Barger
Brady, Coyle & Schmidt, LTD
4052 Holland-Sylvania Rd.
Toledo, OH 43623
bpbarger@bcslawyers.com

ON BEHALF OF THE OHIO CONSTRUCTION MATERIALS COALITION

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

ON BEHALF OF OHIO RESTAURANT ASSOCIATION

Judi L. Sobecki
Randall V. Griffin
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, OH 45432
Judi.sobecki@dplinc.com
Randall.griffin@dplinc.com

ON BEHALF OF THE DAYTON POWER AND LIGHT COMPANY

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

ON BEHALF OF THE OHIO AUTOMOBILE DEALERS ASSOCIATION

Joseph M. Clark
Direct Energy Services LLC
And Direct Energy Business LLC
6641 North High Street, Suite 200
Worthington, OH 43085
jmclark@vectren.com

ON BEHALF OF DIRECT ENERGY SERVICES, LLC AND DIRECT ENERGY BUSINESS, LLC

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

ON BEHALF OF THE OHIO BUSINESS COUNCIL FOR A CLEAN ECONOMY

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

ON BEHALF OF THE COUNCIL OF SMALLER ENTERPRISES (COSE)

Carolyn S. Flahive
Stephanie M. Chmiel
Michael L. Dillard
THOMPSON HINE LLP
41 S. High Street, Suite 1700
Columbus, OH 43215
Carolyn.Flahive@ThompsonHine.com
Stephanie.Chmiel@ThompsonHine.com
Michael.Dillard@ThompsonHine.com

ON BEHALF OF BORDER ENERGY ELECTRIC SERVICES, INC.

Randy J. Hart
Rob Remington
David J. Michalski
200 Public Square, Suite 2800
Cleveland, OH 44114-2316
rhart@hahnlaw.com
rrremington@hahnlaw.com
djmichalski@hahnlaw.com

ON BEHALF OF SUMMIT ETHANOL, LLC AND FOSTORIA ETHANOL, LLC

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

Larry F. Eisenstat
(Counsel of Record)
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

ON BEHALF OF CPV POWER DEVELOPMENT, INC.

Robert L. Kinder, Jr.
Dickstein Shapiro LLP
1825 Eye St. NW
Washington, DC 20006
kinder@DicksteinShapiro.com

ON BEHALF OF CPV POWER DEVELOPMENT, INC.

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

ON BEHALF OF THE UNIVERSITY OF TOLEDO

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

ON BEHALF OF NFIB/OHIO

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

ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

Greta See
Jon Tauber
Attorney Examiner
Public Utilities Commission of Ohio
180 East Broad Street, 12th Floor
Columbus, OH 43215

ATTORNEY EXAMINERS

Summary: Reply Brief of Industrial Energy Users-Ohio electronically filed by Mr. Frank P Darr on behalf of Industrial Energy Users-Ohio