FILE

IN THE SUPREME COURT OF OHIO 13-0521

The Kroger Co.	:	Ohio Supreme Court Case No. 13-0521
	:	
Appellant,	:	Appeal from the Public Utilities Commission of Ohio
v.	:	
	:	Public Utilities Commission of Ohio
The Public Utilities Commission of Ohio,	:	Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-349-EL-AAM, 11-350-EL-AAM
Appellee.	:	

NOTICE OF APPEAL OF APPELLANT THE KROGER CO.

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NOTICE OF APPEAL OF APPELLANT THE KROGER CO.

Appellant The Kroger Co. (herein "Kroger") hereby gives notice of its appeal as of right, pursuant to R.C. 4903.11 through 4903.13 and S.Ct.Prac.R. 3.11(A)(2) and 10.02, to the Supreme Court of Ohio from the decisions issued in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-349-EL-AAM, 11-350-EL-AAM of the Public Utilities Commission of Ohio (herein "Commission" or "Appellee" or "PUCO"). The decisions being appealed are the PUCO's Opinion and Order entered in its Journal on August 8, 2012 and the PUCO's Entry on Rehearing entered in its Journal on January 30, 2013.[1]

On September 7, 2012, Kroger, in accordance with R.C. 4903.10, filed a timely Application for Rehearing from the August 8, 2012 Opinion and Order. The PUCO issued an Entry on Rehearing on October 3, 2012, to further consider, *inter alia,* the matters specified in Kroger's Application for Rehearing. Kroger's Application was subsequently denied in the January 30, 2013 Entry on Rehearing.

Appellant files this Notice of Appeal complaining of errors in the PUCO's Opinion and Order and Entry on Rehearing. Kroger alleges that the PUCO's Orders and Entries are unlawful and unreasonable. Specifically, the PUCO's August 8, 2012 Opinion and Order and January 30, 2012 Entry on Rehearing are unlawful and unreasonable for the following reason, which reason was raised in Kroger's Application for Rehearing:

> By permitting Ohio Power to allocate costs for the Retail Stability Rider to customer classes on a demand basis but recovering revenue on an energy charge, the Commission has unreasonably and unlawfully mismatched cost allocation and revenue recovery, resulting in improper subsidies among customers.

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[1] Per S.Ct.Prac. R. 10.02(A)(2), the Opinion and Order and Entry on Rehearing are attached as Exhibits A and B, respectively.

WHEREFORE, Kroger respectfully submits that the PUCO's Opinion and Order and Entry on Rehearing are unreasonable and unlawful, and should be reversed or modified with instructions to the PUCO to correct the errors complained of herein.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies the a copy of the foregoing **Notice of Appeal of Appellant The Kroger Co.** was served by hand-delivery on the Chairman or other Commissioner of the Public Utilities Commission of Ohio, or by leaving a copy at the offices of the Public Utilities Commission of Ohio on April 1, 2013, and served by regular U.S. Mail, postage prepaid on this 1st day of April, 2013 on the following, which are all of the parties to the proceedings before the Commission:

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CERTIFICATE OF FILING

The undersigned hereby certifies that, in accordance with S.Ct.Prac.R. 3.11(A)(2), a copy of the foregoing **Notice of Appeal of The Kroger Co.** has been filed with the docketing division of the Public Utilities Commission in accordance sections § 4901-1-02(A) and § 4901-1-36 of the Ohio Administrative Code this 1st day of April, 2013.

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31360107.1

EXHIBIT A

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

OPINION AND ORDER

Table of Contents

The Commission, considering the above-entitled applications, and the record in these proceedings, hereby issues its opinion and order in these matters.

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Mike DeWine, Attorney General of the State of Ohio, by Werner L. Margard III, John H. Jones, and Steven L. Beeler, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215-3793, on behalf of the Staff of the Public Utilities Commission of Ohio.

Bruce J. Weston, Interim Ohio Consumers' Counsel, Office of the Ohio Consumers' Counsel, by Maureen R. Grady, Joseph P. Serio, and Terry L. Etter, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215-3485, on behalf of the residential utility consumers of Ohio Power Company.

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OPINION:

I. HISTORY OF THE PROCEEDINGS

A. First Electric Security Plan

On March 18, 2009, the Commission issued its opinion and order regarding Columbus Southern Power Company's (CSP) and Ohio Power Company's (OP) (jointly, AEP-Ohio or the Companies) application for an electric security plan (ESP 1 Order) in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO. The ESP 1 Order was appealed to the Supreme Court of Ohio (Court). On April 19, 2011, the Court affirmed the ESP Order in numerous respects, but remanded the proceedings to the Commission. The Commission issued its order on remand on October 3, 2011. In the order on remand, the Commission found that AEP-Ohio should be authorized to continue its recovery of incremental capital carrying costs incurred after January 1, 2009, on past environmental investments (2001-2008) that were not previously reflected in the Companies' existing rates prior to the ESP 1 Order. In addition, the Commission found that the provider of last resort (POLR) charges authorized by the ESP 1 Order were not supported by the record on remand, and directed the Companies to eliminate the amount of the provider of last resort (POLR_ charges authorized in the ESP Order and file revised tariffs consistent with the order on remand.

B. Initial Proposed Electric Security Plan

On January 27, 2011, AEP-Ohio filed the instant application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code. This application is for approval of an electric security plan (ESP 2) in accordance with Section 4928.143, Revised Code. As filed, AEP-Ohio's SSO application for ESP 2 would commence on January 1, 2012, and continue through May 31, 2014.

The following parties were granted intervention by entries dated March 23, 2011, and July 8, 2011: Industrial Energy Users-Ohio (IEU), Duke Energy Retail Sales, LLC (Duke Retail), Ohio Energy Group (OEG), Ohio Hospital Association (OHA), Ohio Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAE),[1] The Kroger Company (Kroger), FirstEnergy Solutions Corporation (FES), Paulding Wind Farm II LLC (Paulding), Appalachian Peace and Justice Network (APJN), Ohio Manufacturers' Association Energy Group (OMAEG), AEP Retail Energy Partners LLC (AEP Retail), Distributed Wind Energy Association (DWEA),[2] PJM Power Providers Group (P3), Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.

[1] Subsequently, OPAE filed a motion to withdraw from the ESP 2 proceedings and the request granted in the Commission's December 14, 2011 Order.

[2] On August 4, 2011, DWEA filed a motion to withdraw from the ESP 2 proceedings. DWEA's request to withdraw was granted in the December 14, 2011 Order.

(Constellation), COMPETE Coalition (Compete), Natural Resources Defense Council (NRDC), The Sierra Club (Sierra), city of Hilliard, Ohio (Hilliard), Retail Energy Supply Association (RESA), Exelon Generation Company, LLC (Exelon), city of Grove City, Ohio (Grove City), Association of Independent Colleges and Universities of Ohio (AICUO), Wal-Mart Stores East, LP and Sam's East, Inc., (Wal-Mart), Dominion Retail, Inc. (Dominion Retail), Environmental Law and Policy Center (ELPC), Ohio Environmental Council (OEC), Ormet Primary Aluminum Corporation (Ormet) and EnerNOC, Inc. (EnerNOC).

On September 7, 2011, numerous parties (Signatory Parties) to the ESP 2 proceedings filed a Joint Stipulation and Recommendation (Stipulation). The Stipulation proposed to resolve the ESP 2 cases as well as a number of other related AEP-Ohio matters pending before the Commission.[3] The evidentiary hearing in the ESP 2 cases was consolidated with the related proceedings for the sole purpose of considering the Stipulation. On December 14, 2011, the Commission issued its Opinion and Order, concluding that the Stipulation, as modified by the order, should be adopted and approved. As part of the December 14, 2011, Order, the Commission approved the merger of CSP with and into OP, with OP as the surviving entity.[4]

Several applications for rehearing of the Commission's December 14, 2011, Order in the ESP 2 and consolidated cases were filed. On February 23, 2012, the Commission issued its Entry on Rehearing finding that the Stipulation, as a package, did not benefit ratepayers and was not in the public interest and, thus, did not satisfy the three-part test for the consideration of stipulations. AEP-Ohio was directed to provide notice to the Commission within 30 days whether it intended to modify or withdraw its ESP.

C. Pending Modified Electric Security Plan

On March 30, 2012, AEP-Ohio filed a modified ESP (modified ESP) for the Commission's consideration. As proposed, the modified ESP would commence June 1, 2012, and continue through May 31, 2015. As proposed in the application, the Company states for all customer classes, customers in the CSP rate zone will experience, on average, an increase of two percent annually and customers in the OP rate zone will experience, on average, an increase of four percent annually. The modified ESP proposes the recovery of other costs through riders during the term of the electric security plan. In addition, the

3 Including an emergency curtailment proceeding in Case Nos. 10-343-EL-ATA and 10-344-EL-ATA (Emergency Curtailment Cases); a request for the merger of CSP with OP in Case No. 10-2376-EL-UNC (Merger Case); the Commission review of the state compensation mechanism for the capacity charge to be assessed on competitive retail electric service (CRES) providers in Case No. 10-2929-EL-UNC (Capacity Case); and a request for approval of a mechanism to recover deferred fuel costs and accounting treatment in Case Nos. 11-4920-EL-RDR and 11-4921-EL-RDR (Phase-in Recovery Cases).

4 By entry issued on March 7, 2012, the Commission again approved and confirmed the merger of CSP into OP, effective December 31, 2011, in the Merger Case.

modified ESP contains provisions addressing distribution service, economic development, alternative energy resource requirements, and energy efficiency requirements.

The modified ESP also sets forth that AEP-Ohio will begin an energy auction for 100 percent of its SSO load beginning in 2015, with full delivery and pricing through a competitive auction process for AEP-Ohio's SSO customers beginning in June 2015. Beginning six months after the final order in the modified ESP case, the application states AEP-Ohio will begin conducting energy auctions for five percent of the SSO load. In addition, the modified ESP provides for the elimination of American Electric Power Corporation's East Interconnection Pool Agreement and describes the plan for corporate separation of AEP-Ohio's generation assets from its distribution and transmission assets.

In addition to the parties previously granted intervention in this matter, following AEP-Ohio's submission of its modified ESP, the following parties, were granted intervention on April 26, 2012: Interstate Gas Supply, Inc. (IGS); The Ohio Association of School Business Officials, The Ohio School Boards Association, The Buckeye Association of School Administrators, and The Ohio Schools Council (collectively, Ohio Schools); Ohio Farm Bureau Federation; Ohio Restaurant Association; Duke Energy Ohio, Inc. (Duke); Duke Energy Commercial Asset Management Inc. (DECAM); Direct Energy Services, LLC and Direct Energy Business, LLC (Direct); The Ohio Automobile Dealers Association (OADA); The Dayton Power and Light Company; The Ohio Chapter of the National Federation of Independent Business (NFIB); Ohio Construction Materials Coalition; Council of Smaller Enterprises; Border Energy Electric Services, Inc.; University of Toledo Innovation Enterprises Corporation; Summit Ethanol, LLC d/b/a POET Biorefining-Leipsic and Fostoria Ethanol, LLC d/b/a POET Biorefining-Fostoria (Summit Ethanol); city of Upper Arlington, Ohio; Ohio Business Council for a Clean Economy; IBEW Local Union 1466 (IBEW); city of Hillsboro, Ohio; and CPV Power Development, Inc.

D. Summary of the Hearings on Modified Plan

1. Local Public Hearings

Four local public hearings were held in order to allow AEP-Ohio's customers the opportunity to express their opinions regarding the issues raised within the modified application. Public hearings were held in Canton, Columbus, Chillicothe, and Lima. At the local hearings, a total of 67 witnesses[5] offered testimony: 17 witnesses in Canton, 31 witnesses in Columbus, 10 witnesses in Chillicothe, and nine witnesses in Lima. In addition to the public testimony, numerous letters were filed in the docket regarding the proposed ESP applications.

5 One witness, Doug Leuthold, testified at both the Columbus and Lima public hearings.

At each of the public hearings, numerous witnesses testified in support of AEP-Ohio's modified ESP. Specifically, many witnesses testified on behalf of community groups and non-profit organizations that praised AEP-Ohio's charitable support to their organizations. Witnesses that testified in favor of the modified ESP also noted that AEP-Ohio maintains a positive corporate presence and promotes economic development endeavors throughout its service territory. Members of local unions testified in support of AEP-Ohio's proposal, explaining it would not only allow AEP-Ohio to retain jobs, but also create new jobs as AEP-Ohio continues to expand its infrastructure throughout the region.

Several residential customers testified at the public hearings in opposition to AEP-Ohio's modified ESP, noting an increase in customer rates would be burdensome in light of the current economic recession. Many of these witnesses pointed out that low-income and fixed-income residential customers would be particularly vulnerable to any rate increases. Several witnesses also argued that the proposed application might limit customers' ability to shop for a CRES supplier.

In addition, many witnesses testified on behalf of small business and commercial customers. These witnesses argued the proposed rate increases would be burdensome on small businesses who cannot take on any electric rate increases without either laying off employees or passing costs on to customers. Representatives on behalf of school districts also testified that the modified ESP could create a financial strain on schools throughout AEP-Ohio's service territory.

2. Evidentiary Hearing

The evidentiary hearing commenced on May 17, 2012. Twelve witnesses testified on behalf of AEP-Ohio, 10 witnesses on behalf of the Staff, and 54 witnesses offered testimony on behalf of various interveners to the cases. In addition, AEP-Ohio offered three witnesses on rebuttal. The evidentiary hearing concluded on June 15, 2012. Initial briefs and reply briefs were due June 29, 2012, and July 9, 2012, respectively. For those parties that filed a brief or reply brief addressing select issues, oral arguments were held before the Commission on July 13, 2012.

E. Procedural Matters

1. Motions to Withdraw

On May 4, 2012, the city of Hilliard filed a notice requesting to withdraw as an intervenor from the modified ESP cases. Also on May 4, 2012, IBEW filed a notice stating that it intends to withdraw as an intervenor in these proceedings. The Commission finds IBEW's and Hilliard's requests to withdraw reasonable and should be granted.

2. Motions for a Protective Order

On May 2, 2012, AEP-Ohio filed a motion for a protective order, seeking protective treatment of supplemental testimony and corresponding exhibits of AEP-Ohio witness Nelson containing confidential and proprietary information relating to the Turning Point Solar project (Turning Point). On May 4, 2012, OMAEG filed a motion for a protective order relating to proprietary business information of OSCO Industries, Summitville Tiles, Belden Brick, Whirlpool Corporation, Lima Refining, and AMG Vanadium. Also, on May 4, 2012, IEU filed a motion for a protective order seeking to protect confidential and proprietary information contained within witness Kevin Murray's testimony. FES filed a motion for protective treatment on May 4, 2012, for confidential items contained in attachments to witness Jonathan Lesser's testimony. In addition, Exelon filed a motion for protective order seeking protection of confidential and proprietary information contained within witness Fein's direct testimony. On May 11, 2012, AEP-Ohio filed an additional motion for protective order to support the protection of confidential AEP-Ohio information contained within IEU witness Murray, FES witness Lesser, and Exelon witness Fein's testimony. Finally, on the record in these proceedings May 17, 2012, AEP-Ohio also sought the continuation of protective treatment of exhibits attached to AEP-Ohio witness Jay Godfrey, as previously set forth in AEP-Ohio's July 1, 2011, motion for a protective order (Tr. at 24).

At the evidentiary hearing on May 17, 2012, the attorney examiners granted the motions for protective order, finding the information specified within the parties' motions constitutes confidential, proprietary, and trade secret information, and meets the requirements contained within Rule 4901-1-24, Ohio Administrative Code (O.A.C.) (*Id.* at 23-24). Rule 4901:1-24(F), O.A.C., provides that, unless otherwise ordered, protective orders prohibiting public disclosure pursuant to Rule 4901:1-24(D), O.A.C., shall automatically expire after 18 months. Therefore, confidential treatment shall be afforded for a period ending 18 months from the date of this order, until February 8, 2014. Until that date, the Docketing Division should maintain, under seal, the conditional diagrams, filed under seal. Rule 4901:1-24(F), O.A.C., requires any party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date, including a detailed discussion of the need for continued protection from disclosure. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to the parties.

In addition, on June 29, 2012, IEU and Ormet filed motions for protective order regarding items contained within their initial briefs. Specifically, both the information for which IEU and Ormet's are seeking confidential treatment was already determined to be confidential in the evidentiary hearing and was discussed in a closed record. On July 5, 2012, AEP-Ohio filed a motion for protective order over the items contained within Ormet and IEU's briefs, noting that it contains proprietary and trade secret information. On July 9, Ormet filed an additional motion for protective order for the same information, which it also included in its reply brief filed on July 9, 2012. Similarly, AEP-Ohio filed a motion for protective order on July 12, 2012, in support of Ormet's motion, as it contains AEP-Ohio's confidential trade secret information. As the attorney examiners previously found the information contained within the IEU and Ormet's initial briefs and Ormet's reply brief was confidential in the evidentiary hearing, we affirm this decision and find that confidential treatment shall be afforded for a period ending 18 months from the date of this order, until February 8, 2014.

3. Requests for Review of Procedural Rulings

IEU argues that the record improperly includes evidence of stipulations as precedent. Specifically, IEU argues that several witnesses relied on Duke Energy-Ohio's ESP to indicate that certain proposed riders were appropriate. IEU also points out that a witness relied on AEP-Ohio's distribution rate case stipulation as evidence of AEP-Ohio's capital structure. IEU claims that these stipulations expressly state that no party or Commission order may cite to a stipulation as precedent, and accordingly, IEU requests that the references to stipulations be struck.

The Commission finds that IEU's request to strike portions of the record should be denied. We acknowledge that individual components agreed to by parties in one proceeding should not be binding on the parties in other proceedings, but we find that references to other stipulations in this proceeding were limited in scope and did not create any prejudicial impact on parties that signed the stipulations. Consistent with our Finding and Order in Case No. 11-5333-EL-UNC, we also note that, while parties may agree not to be bound by the provisions contained within a stipulation, these limitations do not extend to the Commission.

In addition, IEU claims the attorney examiners improperly denied IEU's motions to compel discovery. In its motions to compel discovery, IEU sought information related to AEP-Ohio's forecasts of the RPM price for capacity, which IEU alleges would have provided information relating to the transfer of AEP-Ohio's Amos and Mitchell generating units.

The Commission finds the attorney examiners' denials of IEU's motions to compel discovery were proper and should be upheld. As noted in AEP-Ohio's memorandum contra the motion to compel, the information IEU sought relates to AEP-Ohio forecasts beyond the period of this modified ESP. As these proceedings relate to the appropriateness of AEP-Ohio's modified ESP, we find that any forecasts beyond the terms contained within AEP-Ohio's application are irrelevant and unlikely to lead to discoverable information. Accordingly, the attorney examiners' ruling is affirmed.

On July 13, 2012, OCC filed a motion to strike four specific portions of AEP-Ohio's reply brief at pages 29-30, 33-34, 68-69, 97-99, including footnotes, and attachments A and

B, as OCC asserts the information is not based on the record in the modified ESP proceeding but reflects the Commission's Order issued in the Capacity Case on July 2, 2012. OCC submits that the Commission has previously recognized that "it is improper to rely on claims in the brief that are unsupported by evidence within the record." In this instance, OCC points out that AEP-Ohio attached to its reply brief, documents that were not part of the record evidence or designated late-filed exhibits, a statement by Standard and Poor's (Attachment A) and the Company's recalculation of its ESP/MRO test (Attachment B) based on the Commission's decision in the Capacity Case. Since neither document is part of the modified ESP record evidence, OCC reasons that the attachments are hearsay which are not excused by any exception to the hearsay rule. OCC also notes that the reply brief includes discussion of recent storms in the Midwest and the East Coast, and there is nothing in the record regarding the strength of the winds or the ability of the Company's system to withstand hurricane force winds. Furthermore, neither the attachments nor AEP-Ohio's assertions was subjected to cross-examination by the parties nor the parties afforded an opportunity to rebut the associated arguments of the Company. For these reasons, OCC requests that Attachments A and B and the specified portions of the reply brief be stricken.

In its memorandum contra, AEP-Ohio asserts that discussion of matters related to the Commission's Capacity Case decision were appropriate. AEP-Ohio notes that it is fair to rely on a Commission opinion and order and reasonable to consider the impact of the Capacity Case on these proceedings, as evidenced by Commission questions during the oral arguments held on July 13, 2012. In addition, AEP-Ohio points out that several parties' reply briefs also included significant discussion of the impact of the Capacity Case on the modified ESP. Similarly, AEP-Ohio notes that the attachments indicate the financial impact of the Capacity Case on AEP-Ohio, and that the items are consistent with the testimony of AEP-Ohio witness Hawkins. Finally, AEP-Ohio provides that its references to major storms that occurred this summer relate to customer expectations and AEP-Ohio's need for the DIR.

The Commission finds that OCC's motion to strike portions of AEP-Ohio's reply brief should be denied. The Company's reply brief reports the impact of the Commission's Order in the Capacity Case based on subject matters and information subjected to extensive cross-examination by the parties in the course of this proceeding. Furthermore, several of the parties to this proceeding discuss in their respective reply briefs the Order in the Capacity Case. For these reasons, we conclude that it would be improper to strike the portions of AEP-Ohio's reply brief, including Attachment B, which reflect AEP-Ohio's interpretation of the Commission Capacity Order as requested by OCC. We, likewise, deny OCC's request to strike the Company's reference to recent storms, where the Company offered support for its position on customer reliability expectations. Customer service reliability was an issue raised and discussed by AEP-Ohio as well as OCC. However, Attachment A to the Company's reply brief is a July 2, 2012 statement by

Standard & Poor's regarding the effect of the Commission's Capacity Charge Order, and should be stricken. We find that the Company's Attachment A is not part of the record and should not be considered by the Commission in this proceeding.

On July 20, 2012, OCC/APJN filed a motion to take administrative notice of several items contained within the record of the Capacity Case. Specifically, OCC/APJN seek administrative notice of pages 3, 9, and 12 of the direct testimony of AEP-Ohio witness Munczinski, pages 19-20 of the rebuttal testimony of AEP-Ohio witness Allen, pages 304, 348-350, and 815 of the hearing transcripts, and AEP-Ohio's post-hearing initial and reply briefs. OCC/APJN opine that the record should be expanded to include these materials in order to have a more thorough record on issues pertaining to customer rates. Further, OCC/APJN state that no parties would be prejudiced as parties, particularly those involved in the Capacity Case, who had opportunities to explain and rebut these items.

AEP-Ohio filed a memorandum contra OCC/APJN's motion on July 24, 2012. AEP-Ohio argues that OCC/APJN improperly seeks to add documents into the record at this late stage, is not only inappropriate, but also unnecessary as there are no further actions to these proceedings except the Commission opinion and order and rehearing. AEP-Ohio notes the Commission has broad discretion in handling its proceedings, but points out that the small subset of information could have a prejudicial effect to parties, and due process would require that other parties be permitted to add other items to the record. In addition, AEP-Ohio explains that OCC/APJN had the opportunity in the ESP proceedings to further explore areas of the Capacity Case that were related to parts of the modified ESP.

On August 6, 2012, FES also filed a memorandum contra OCC/APJN's motion. On August 7, 2012, OCC/APJN filed a motion to strike FES's memorandum contra. In support of its motion to strike, OCC/APJN argues that FES filed its memorandum contra 17 days after OCC/APJN filed its motion, past the procedural deadlines established by attorney examiner entry issued April 2, 2012. The Commission finds that OCC/APJN's motion to strike FES's memorandum contra OCC/APJN's motion should be granted. By entry issued April 2, 2012, the attorney examiner set an expedited procedural schedule establishing that any memoranda contra be filed within five calendar days after the service of any motions. Therefore, as FES filed its memorandum contra 17 days after OCC/APJN filed its motion, OCC/APJN's motion to strike shall be granted.

The Commission finds that OCC's motion to take administrative notice should be denied. AEP-Ohio correctly points out that the timing of OCC/APJN's request is troublesome and problematic. While the Commission has broad discretion to take administrative notice, it must be done in a manner that does not harm or prejudice any other parties that are participating in these proceedings. Were the Commission to take notice of this narrow window of information, we would be allowing a party to supplement the record in a misleading manner. Further, while we acknowledge that parties may rely on the Commission's order in the Capacity Case, as it speaks for itself, to show effects on items in this proceeding, to exclusively select narrow and focused items in an attempt to supplement the record is not appropriate. Accordingly, we deny OCC's motion.

II. DISCUSSION

A. Applicable Law

Chapter 4928 of the Revised Code provides an integrated system of regulation in which specific provisions were designed to advance state policies of ensuring access to adequate, reliable, and reasonably priced electric service in the context of significant economic and environmental challenges. In reviewing AEP-Ohio's application, the Commission is cognizant of the challenges facing Ohioans and the electric industry and will be guided by the policies of the state as established by the General Assembly in Section 4928.02, Revised Code, amended by Senate Bill 221 (SB 221).

Section 4928.02, Revised Code, states that it is the policy of the state, *inter alia*, to:

> (1) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service.
>
> (2) Ensure the availability of unbundled and comparable retail electric service.
>
> (3) Ensure diversity of electric supplies and suppliers.
>
> (4) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management (DSM), time-differentiated pricing, and implementation of advanced metering infrastructure (AMI).
>
> (5) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems in order to promote both effective customer choice and the development of performance standards and targets for service quality.
>
> (6) Ensure effective retail competition by avoiding anticompetitive subsidies.

(7) Ensure retail consumers protection against unreasonable sales practices, market deficiencies, and market power.

(8) Provide a means of giving incentives to technologies that can adapt to potential environmental mandates.

(9) Encourage implementation of distributed generation across customer classes by reviewing and updating rules governing issues such as interconnection, standby charges, and net metering.

(10) Protect at-risk populations including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource.

In addition, SB 221 enacted Section 4928.141, Revised Code, which provides that effective January 1, 2009, electric utilities must provide consumers with an SSO consisting of either a market rate offer (MRO) or an ESP. The SSO is to serve as the electric utility's default SSO.

AEP-Ohio's modified application in this proceeding proposes an ESP pursuant to Section 4928.141, Revised Code. Paragraph (B) of Section 4928.141, Revised Code, requires the Commission to hold a hearing on an application filed under Section 4928.143, Revised Code, to send notice of the hearing to the electric utility, and to publish notice in a newspaper of general circulation in each county in the electric utility's certified territory.

Section 4928.143, Revised Code sets out the requirements for an ESP. Under paragraph (B) of Section 4928.143, Revised Code an ESP must include provisions relating to the supply and pricing of generation service. The ESP, according to paragraph (B)(2) of Section 4928.143, Revised Code, may also provide for the automatic recovery of certain costs, a reasonable allowance for certain construction work in progress (CWIP), an unavoidable surcharge for the cost of certain new generation facilities, conditions or charges relating to customer shopping, automatic increases or decreases, provisions to allow securitization of any phase-in of the SSO price, provisions relating to transmission-related costs, provisions related to distribution service, and provisions regarding economic development.

The statute provides that the Commission is required to approve, or modify and approve the ESP, if the ESP, including its pricing and all other terms and conditions, including deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply in an MRO under Section 4928.142, Revised Code. In addition, the Commission must reject an ESP that contains a surcharge for CWIP or for new generation facilities if the benefits derived for any purpose for which the surcharge is established are not reserved or made available to those that bear the surcharge.

B. Analysis of the Application

1. Base Generation Rates

As part of its modified ESP application, AEP-Ohio proposes to freeze base generation rates until all rates are established through a competitive bidding process. AEP-Ohio maintains that the fixed pricing is a benefit to customers by providing reasonably priced electricity in furtherance of Section 4928.02(A), Revised Code. AEP-Ohio explains that while the base generation rates will remain frozen, it will relocate the current Environmental Investment Carrying Cost Rider (EICCR) into the base generation rates, which will result in the elimination of the EICCR. AEP-Ohio witness Roush provides the change is merely a roll in and will be "bill neutral" for all AEP-Ohio customers (AEP-Ohio Ex. 118 at 8; AEP-Ohio Ex. 111 at 10-11).

While AEP-Ohio's base generation rates will be frozen under the modified ESP, AEP-Ohio witness Roush notes that the generation rates are based on cost relationships, and include cross-subsidies among tariff classes, which, upon class rates being based on an auction, may result in certain customer classes being disproportionately impacted by rate changes. Mr. Roush notes that residential customers with high winter usage may face unexpected impacts, but that a possible solution may be to phase-out lower rates for high winter usage customers (*Id.* at 14-15).

OADA supports the adoption of the base generation rate design as proposed, advocating that the consistency in the rate design is beneficial for GS-2 customers (OADA Br. at 2). OCC and APJN claim that frozen base generation rates is not a benefit to customers, as the price of electricity offered by CRES providers have declined and may continue to decline through the term of the ESP (OCC Ex. 111 at 15). OCC and APJN also point out that the inclusion of numerous riders, including the retail stability rider (RSR) and the deferral created in the Capacity Case will result in increases in the rates residential customers continue to pay. (OCC/APJN Br. at 43-44.)

The Commission finds that AEP-Ohio's proposed base generation rates are reasonable. We note that AEP-Ohio's base generation rate design was generally unopposed, as most parties supported AEP-Ohio's proposal to keep base generation rates frozen. Although OCC and APJN conclude that the base generation rate plan does not benefit customers, OCC and APJN failed to justify their assertion and offer no evidence within the record other than the fact that the modified ESP contains several riders. Accordingly, the modified ESP's base generation rates should be approved. In addition, as AEP-Ohio raised the possibility of disproportionate rate impacts on customers when class rates are set by auction, we direct the attorney examiners to establish a new docket within

90 days from the date of this opinion and order and issue an entry establishing a procedural schedule to allow Staff and any interested party to consider means to mitigate any potential adverse rate impacts for customers upon rates being set by auction. Further, the Commission reserves the right to implement a new base generation rate design on a revenue neutral basis for all customer classes at any time during the term of the modified ESP.

2. Fuel Adjustment Clause and Alternative Energy Rider

(a) Fuel Adjustment Clause

The Commission approved the current fuel adjustment clause (FAC) mechanism in the Company's ESP 1 case pursuant to Section 4928.143(B)(2)(a), Revised Code.[6] In this modified ESP application, AEP-Ohio requests continuation of the current FAC mechanism, with modifications. The Company proposes to modify the FAC by separating out the renewable energy credit (REC) expense component of the fuel clause and recovering the REC expense through the newly proposed alternative energy rider (AER) mechanism. The Company also requests approval to unify the CSP and OP FAC rates into a single FAC rate effective June 2013. AEP-Ohio reasons that delaying unification of the FAC rates until June 2013, to coincide with the implementation of the Phase-In Recovery Rider (PIRR), limits the impact on both CSP and OP rate zones which results in a net decrease in rates of $0.69 per megawatt hour (MWh) for a typical CSP transmission voltage customer and a net increase in rates of $0.02 per MWh for a typical OP transmission voltage customer. (AEP-Ohio Ex. 111 at 5-6; AEP-Ohio Ex. 103 at 14-20.)

Beginning January 1, 2014, after corporate separation is effective, AEP-Ohio's generation affiliate, AEP Generation Resources Inc. (GenResources), will bill AEP-Ohio its actual fuel costs in the same manner and detail as currently performed by AEP-Ohio, and the costs will continue to be recovered through the FAC. As a component of the modified ESP, AEP-Ohio proposes that as of January 1, 2015, all energy and capacity to serve the Company's SSO load be supplied by auction, whereupon the FAC mechanism will no longer be necessary. (AEP-Ohio Ex. 103 at 14-20.)

In opposition to the FAC, Ormet argues that the FAC has caused significant increases in the cost of electric service, rising 22 percent for GS-4 customers since 2011. Ormet asks that the Commission temper the impact of FAC increases and improve the transparency of the cause for increasing FAC costs, as well as reconsider the FAC rate design, to avoid cost shifts between low load factor customers and high load factor customers. Ormet, a 98.5 percent load factor customer, asserts that it pays an equal share of the FAC costs as a customer that uses all its energy on-peak. As such, Ormet contends that the FAC rate design violates the principle of cost causation. Ormet suggests that this

6 In re *AEP-Ohio*, ESP 1 Order at 13-15 (March 18, 2009).

modified ESP presents the Commission with the opportunity, as it is within the Commission's jurisdiction, to redesign the FAC, such that FAC costs are separated into charges which reflect on-peak and off-peak usage. (Ormet Ex. 106B at 19; Ormet Br. at 13-15; Ormet Reply Br. at 14-16.)

The Company responds that Ormet's arguments on the FAC reflect improper calculations and is based on forecasted FAC rates. More importantly, AEP-Ohio points out that the FAC is ultimately based on actual FAC costs and any increases in the FAC rate cannot appropriately be attributed to the modified ESP. Ormet is served by AEP-Ohio pursuant to a unique arrangement and as such avoids charges that other similarly situated customers pay; however, the Company requests that Ormet not be permitted to avoid fuel costs. (AEP-Ohio Reply Br. at 5-6.)

The Commission notes that currently, through the FAC mechanism, AEP-Ohio recovers prudently incurred fuel and associated costs, including consumables related to environmental compliance, purchase power costs, emission allowances, and costs associated with carbon-based taxes. We note that, since January 1, 2012, AEP-Ohio has been collecting its full fuel expense and no further fuel expenses are being deferred.

We interpret Ormet's arguments to more accurately request the institution of a fuel rate cap on the FAC or to revise the FAC rate design. The Commission rejects Ormet's request to review and redesign the FAC. The FAC rate mechanism is reconciled to actual FAC costs each quarter and annually audited for accounting accuracy and prudency. Furthermore, as AEP-Ohio notes, Ormet's rates are set pursuant to its unique arrangement as opposed to the Company's SSO rates paid by other high load industrial and commercial customers. By way of Ormet's unique arrangement, Ormet is provided some rate stability and rate certainty and we see no need to redesign the FAC for Ormet's benefit. No other intervener took issue with the continuation and the proposed modification of the FAC. The Commission finds that the FAC rates should continue on a separate rate zone basis. We note that there are a few Commission proceedings pending that will affect the FAC rate for each rate zone which the Commission believes will be better reviewed and adjusted if the FAC mechanisms remain distinguishable. Further, as discussed, below, maintaining FAC rates on a separate basis is necessary to be consistent with our decision regarding recovery of the PIRR.

(b) Alternative Energy Rider

As noted above, AEP-Ohio proposes to begin recovery of REC expenses, associated with renewable energy purchase agreements (REPAs) or REC purchases by means of the new AER mechanism to be effective with this modified ESP. With the proposed modification, the Company will continue to recover the energy and capacity components of renewable energy cost through the FAC, until the FAC expires. After the FAC ends, energy and capacity associated with REPAs will be sold into the PJM Interconnection, LLC

(PJM) market and offset the total cost of the REPAs, with the balance of REC expense to be recovered from SSO customers through the AER. AEP-Ohio proposes that the AER be bypassable for shopping customers. The Company also proposes that where the REC is part of the REPA, the value of each component be based on the residual method using the monthly average PJM market price to value the energy component, the capacity will be valued using the price at which it can be sold into the PJM market and the remaining value would constitute the cost of the REC. The AER mechanism, according to AEP-Ohio, is consistent with Section 4928.143(B)(2)(a), Revised Code, and is essentially a partial unbundling of the FAC to provide greater price visibility of prudently-incurred REC compliance costs under Section 4928.66, Revised Code. The Company will make quarterly filings, in conjunction with the FAC, to facilitate the audit of the AER. AEP-Ohio reasons that the establishment of the AER for recovery of costs is uncontested, reasonable, and should be approved. The Company argues continuation and unification of the FAC and development and implementation of the AER, is reasonable and should be approved. (AEP-Ohio Ex. 103 at 18-19.)

Staff endorses the Company's requests to continue and consolidate the FAC rates for CSP and OP rate zones and to reclassify the RECs and REPA components for recovery through the AER, as proposed by the Company. However, Staff recommends that annual AER audit procedures be established and that the AER audit be conducted by the same auditor and in conjunction with the FAC audit to determine the appropriateness and recoverability of costs as a part of and between the AER and FAC mechanisms. As to the allocation of cost components, Staff agrees with the Company's proposal to allocate cost components of bundled products but suggests that the auditor detail how to best determine the cost components and how to apply the allocation to specific situations in the context of the FAC/AER audits. Staff recommends, and the Company agrees, that the auditor's allocation process be applied to AEP-Ohio's renewable generation from existing generation facilities. (Staff Ex. 104 at 2-3.)

No party took exception to the implementation of the AER mechanism. As proposed by AEP-Ohio, continuation of the FAC and establishment of the AER, through this modified ESP, is consistent with Section 4928.143(B)(2)(a), Revised Code, for the recovery of prudently incurred fuel costs and fuel-related costs and alternative energy and associated costs. We find the Company's proposal to continue the FAC and create the AER to better distinguish fuel and alternative energy costs to be reasonable and appropriate during the term of the modified ESP. We approve the continuation of the FAC and implementation of the AER mechanisms, consistent with the audit recommendations made by Staff. The next audit of AEP-Ohio's FAC shall also include an audit of the AER mechanisms and the allocation method for classification of the REPA components and their respective values. In all other respects, the Commission approves the continuation of the FAC rate mechanisms and the creation of the AER rate mechanism for each rate zone.

3. Timber Road

AEP-Ohio states that it conducted a request for proposal (RFP) process to competitively bid and secure additional renewable resources. As a result of AEP- Ohio's need for in-state renewables, AEP-Ohio only considered bids for projects in Ohio, and ultimately selected the proposal from Paulding for its Timber Road wind farm. Specifically, the Timber Road REPA will provide AEP-Ohio a 99 MW portion of Timber Road's electrical output, capacity and environmental attributes for 20 years as necessary for the Company to meet its increasing renewable energy benchmarks as required by Section 4928.64(C)(3), Revised Code. (AEP-Ohio Ex. 109 at 10-15; Paulding Ex. 101 at 1-4.)

AEP-Ohio testified that the 20-year agreement facilitates long-term financing by the developer, reduces up front costs, and allows for price certainty for AEP-Ohio customers. Paulding offers that although the project is capital intensive the fact that there are no fuel costs equates to no significant cost variables creating long-term risk for customers. AEP-Ohio argues that the Timber Road REPA provides the Company and its customers, with access to affordable renewable energy from an in-state resource supporting the state policy to facilitate the state's effectiveness in the global economy, Section 4928.02(N), Revised Code. (AEP-Ohio Ex. 109 at 16-18; Paulding Ex. 101 at 4-5.)

Staff supports AEP-Ohio's REPA with Paulding and the Timber Road contract as reasonable and prudent. Accordingly, Staff advocates its approval and that AEP-Ohio be permitted to recover costs associated with energy, capacity, and RECs outlined in the contract, subject to annual FAC and AER audits. The Company agrees with Staff that the implementation of the Timber Road REPA should be subject to the FAC and AER audit, as offered in the testimony of AEP-Ohio witness Nelson. AEP-Ohio commits to acquiring RECs to meet its portfolio requirements on behalf of its SSO load and to recover the costs through the AER once the FAC is terminated. (Staff Ex. 103 at 2-3; Tr. at 2498-2499; AEP-Ohio Ex. 103 at 18.)

The Commission finds that the long-term Timber Road REPA promotes diversity of supply, consistent with state policies set forth in Section 4928.02, Revised Code. Further, based on the evidence of record, the Timber Road project benefits Ohio consumers and supports the Ohio economy. Accordingly, the Commission finds it reasonable and appropriate to allow the Company to recover the cost of the Timber Road REPA through the bypassable FAC/AER mechanisms.

4. Generation Resource Rider

AEP-Ohio requests establishment of a non-bypassable, Generation Resource Rider (GRR) pursuant to Section 4928.143(B)(2), Revised Code, to recover the cost of new generation resources including, but not limited to, renewable capacity that the Company owns or operates for the benefit of Ohio customers. At this time, the Company proposes the rider as a placeholder and expects that the only project to be included in the GRR will be the Turning Point facility, assuming need is established in Case Nos. 10-501-EL-FOR and 10-502-EL-FOR.[7] To be clear, although the Company provided an estimate of the revenue requirement for the Turning Point project, as requested by the Commission, AEP-Ohio is not seeking recovery of any costs for the Turning Point facility in this ESP. The Company asks that the GRR be established at zero with the amount of the rider to be determined, and the remaining statutory requirements to be met, as part of a subsequent Commission proceeding. (AEP-Ohio Ex. 103 at 20-21; AEP-Ohio Ex. 104; Tr. at 2514, 599, 1170, 2139-2140.)

UTIE encourages the Commission's approval of the GRR as a regulatory mechanism pursuant to the authority granted under Section 4928.143(B)(2)(c), Revised Code, to adopt a non-bypassable surcharge for new electric generation (UTIE Br. at 1-2). NRDC and OEC support the proposed GRR, including the Timber Road REPA and the Turning Point project, with certain modifications, as permitted under Section 4928.143(B)(2)(c), Revised Code. NRDC and OEC recommend that the GRR be limited to only renewable and alternative energy projects or qualified energy efficiency projects, and also recommend that the Company develop a crediting system to ensure that shopping customers do not pay twice for renewable energy. NRDC and OEC reason that AEP-Ohio could make the RECs available to CRES providers based on the CRES provider's share of the load served or by liquidating the RECs in the market and crediting the revenue to the GRR. (NRDC Ex. 101 at 11; NRDC/OEC Reply Br. at 1.)

However, while Staff does not foresee any need for additional generation by AEP-Ohio, Staff and UTIE acknowledge and endorse the adoption of the GRR mechanism to facilitate the Commission's allowance for the construction of new generation facilities (Staff Ex. 110 at 7; Tr. at 4599; UTIE Reply Br. 1-2).

On the other hand, numerous interveners oppose the adoption of the GRR. IGS requests that the Commission reject the GRR or if it is not rejected, that the GRR be made bypassable or modified so the benefits flow to shopping customers (IGS Ex. 101 at 27-28). Wal-Mart requests that the GRR not be imposed on shopping customers because approval of a non-bypassable GRR would violate cost causation principles, send an incorrect price signal, and cause shopping customers to pay twice but receive no benefit (Wal-Mart Ex. 101 at 5-6).

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7 A stipulation between the Company and the Staff was filed agreeing, among other things, that as a result of the requirements of Sections 4928.143(B)(2)(c) and 4928.64(B)(2), Revised Code, which require AEP-Ohio to obtain alternative energy resources including solar resources in Ohio, the Commission should find that there is a need for the 49.9 MW Turning Point Solar project. The Commission decision in the case is pending.

RESA and Direct contend that the GRR will inhibit the growth of the competitive retail electric market and violates the state policy set forth in Section 4928.02(H), Revised Code, which prohibits the collection of generation-based rates through a non-bypassable rider. Similarly, IGS reasons that the GRR is intended to recover the cost for new generation to serve SSO customers and, therefore, the GRR amounts to an anticompetitive subsidy on CRES providers for the benefit of noncompetitive retail electric service, or, according to Wal-Mart, requires shopping customers to pay twice. IGS recommends that AEP-Ohio develop renewable energy projects on its own with recovery through market prices. RESA and Direct reason that AEP-Ohio's request is premature and creates uncertainty for CRES providers who are also required to comply with Ohio's renewable energy portfolio standards. RESA and Direct contend that, to the extent the Commission adopts the GRR, the GRR should not be assessed to shopping customers. RESA and Direct propose that the GRR be set at zero and incorporation of the Turning Point project or other facilities should occur in a separate case. (RESA Ex. 102 at 12; RESA/Direct Br. 18-21; IGS Br. at 13; Wal-Mart Ex. 101 at 5.)

To make the GRR benefit shopping and non-shopping customers, IGS suggests that AEP-Ohio sell the generated electricity on the market with revenues to be credited against the GRR or the renewable energy credits used to meet the requirements for all customers. IGS notes that AEP-Ohio witnesses agree that crediting the revenues against the GRR is reasonable. (IGS Ex. 101 at 27-28; Tr. 599, 1169-1170.)

OCC, APJN, IEU and FES contend that AEP-Ohio has inappropriately conflated two unrelated statutes, Sections 4928.143(B)(2)(c) and 4928.64, Revised Code, in support of the GRR. The goals of the two sections are different according to the interpretation of the aforementioned interveners. They contend that the purpose of Section 4928.64, Revised Code, is to require electric distribution utilities and CRES providers to comply with renewable energy benchmarks and paragraph (E) of Section 4928.64, Revised Code, directs that costs incurred to comply with the renewable energy benchmarks shall be bypassable. Whereas, according to IEU and FES, Section 4928.143(B)(2)(c), Revised Code, permits the Commission to implement a market safety valve under specific requirements should Ohio require additional generation. FES notes that AEP-Ohio has sufficient energy and capacity for the foreseeable future. IEU and FES interpret the two statutory provisions to affirmatively deny non-bypassable cost recovery under Section 4928.143(B)(2)(c), Revised Code, for renewable energy projects. IEU and FES contend that their interpretation is confirmed by the language in Section 4928.143(B), Revised Code, which states "Notwithstanding any other provision of Title XLIX of the Revised Code to the contrary except...division (E) of section 4928.64... ." Thus, FES reasons the Commission is expressly prohibited from authorizing a provision of an ESP which conflicts with Section 4928.64(E), Revised Code. (FES Br. at 87-90; IEU Br. 74-76; Tr. at 226-227.)

Further, IEU, FES, OCC, IGS and APJN argue that the statute requires, and AEP-Ohio has failed to demonstrate, the need for and the terms and conditions of recovery for the Turning Point project in this proceeding pursuant to Section 4928.143(B)(2)(c), Revised Code. Finally, IEU submits that AEP-Ohio has failed to offer any evidence as to the effect of the GRR on governmental aggregation, as required in accordance with the Commission's obligation under Section 4928.20(K), Revised Code. For these reasons, IEU, IGS, FES, OCC and APJN request that the Company's request to implement the GRR be denied. (Tr. 1170, 570-574, 2644-2646; FES Br. at 87-94; FES Reply Br. at 22-24, IGS Reply Br. at 5-6; OCC/APJN Br. at 84-85; IEU Br. 74-76.)

Staff notes that there are a number of statutory requirements pursuant to Section 4928.143(B)(2)(c), Revised Code, that OP has not satisfied as a part of this modified ESP proceeding but will be addressed in a future proceeding, including the cost of the proposed facility, alternatives for satisfying the in-state solar requirements, a demonstration that Turning Point was or will be sourced by a competitive bid process, the facility is newly used and useful on or after January 1, 2009, the facility's output is dedicated to Ohio consumers and the cost of the facility, among other issues. Staff notes the need for the Turning Point facility has been raised by parties in another case and a decision by the Commission is pending.[8] Staff emphasizes that the statutory requirements would need to be addressed, and a decision made by the Commission, before recovery could commence via the GRR mechanism. Further, Staff suggests that it is in this future proceeding that parties should explore whether the GRR should be applied to shopping customers. (Staff Ex. 106 at 11-14.)

FES responds that the language of Section 4928.143(B)(2)(c), Revised Code, omits any asserted discretion of the Commission to consider the requirements to comply with the statute outside of the ESP case, as AEP-Ohio and Staff offer. Nor is it sufficient policy support, according to FES and IGS, that customers may transition from shopping to non-shopping and back during the useful life of the Turning Point facility as claimed by AEP-Ohio. The interveners argue AEP-Ohio overlooks that, as proposed by the Company, the load of all its non-shopping customers will be up for bid as of June 1, 2015. With that in mind, FES ponders why customers of AEP-Ohio competitors should pay for AEP-Ohio facilities after May 31, 2015. (FES Reply Br. at 24-25; IGS Reply Br. at 4.)

UTIE notes that parties that oppose the approval of the GRR, on the premise that it will require shopping customers to pay twice, overlook AEP-Ohio's proposal to allocate RECs between shopping and non-shopping customers, to sell the energy and capacity from the Turning Point facility into the market and credit such transactions against the GRR (UTIE Reply Br. at 2).

NRDC and OEC respond that it is disingenuous for parties to argue that establishing a placeholder rider as a part of an ESP is unlawful. The Commission has adopted placeholder riders in several previous Commission cases for AEP-Ohio, Duke

8 Case Nos. 10-501-EL-FOR and 10-502-EL-FOR.

Energy Ohio and the FirstEnergy operating companies.[9] Further, NRDC and OEC note that no party has waived its right to participate in subsequent GRR-related proceedings before the Commission. (NRDC/OEC Reply Br. at 2.)

The Company notes that four interveners support the adoption of the GRR and of the four supporters, two request modifications which are components already proposed by the Company.

First, AEP-Ohio addresses the arguments of FES and IEU that Section 4928.64(E), Revised Code, prohibits the use of Section 4928.143(B)(2)(c), Revised Code, for renewable generation projects. AEP-Ohio states that it recognizes the overlapping policies of the two statutes and offers that each section relates to the cost recovery aspect of the project, which as the Company interprets the statutes, will be addressed when cost recovery is requested in a future proceeding. Further, AEP-Ohio reasons that IEU's and FES's arguments are inappropriate as they would lead to the disallowance of a statutorily prescribed option merely because another option exists. In addition, AEP-Ohio contends, proper statutory construction seeks to give all statutes meaning and, therefore, both options are available to the Commission at its discretion.

It is premature, AEP-Ohio retorts, to assert as certain interveners have done, that the statutory requirements of Section 4928.143(B)(2)(c), Revised Code, have not been met by the Company. The statutory requirements of Section 4928.143(B)(2)(c), Revised Code, will be addressed in a separate proceeding before any costs can be recovered via the proposed GRR. AEP-Ohio asserts that the Commission is vested with the discretion to establish the GRR, as a zero-cost placeholder, as it has done in other Commission proceedings. The Company also proposes, and Staff agrees, that as a part of this future proceeding, the amount and prudency of costs associated with the Turning Point project and whether the GRR results in shopping customers paying twice for renewable energy compliance costs, among other issues will be determined. AEP-Ohio reiterates its plan to share the RECs from the Turning Point project between shopping and SSO customers on an annual basis. IGS, NRDC and Staff endorse AEP-Ohio's proposal to share the value of the Turning Point project between shopping and non-shopping customers. (AEP-Ohio Reply Br. at 7-10; Tr. at 2139-2140; NRDC/OEC Reply Br. at 1; Staff Ex. 110 at 7; Staff Br. at 20.)

The Commission interprets Section 4928.143(B)(2)(c), Revised Code, to permit a reasonable allowance for construction of an electric generating facility and the establishment of a non-bypassable surcharge, for the life of the facility where the electric utility owns or operates the generation facility and sourced the facility through a competitive bid process. Before authorizing recovery of a surcharge for an electric generation facility, the Commission must determine there is a need for the facility and to

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9 In re AEP-Ohio, ESP 1 (March 18, 2009); *In re Duke Energy-Ohio*, Case No. 08-920-EL-SSO (December 17, 2008); *In re FirstEnergy*, Case No. 08-935-EL-SSO (March 25, 2009).

continue recovery of the surcharge, establish that the facility is for the benefit of and dedicated to Ohio consumers. AEP-Ohio will be required to address each of the statutory requirements, in a future proceeding, and to provide additional information including the costs of the proposed facility, to justify recovery under the GRR. However, the Commission notes that there shall be no allowances for recovery approved unless the need and competitive requirements of this section are met.

Furthermore, we disagree with the arguments that the language in Section 4928.143(B)(2)(c), Revised Code, requires the Commission to first determine, within the ESP proceeding, that there was a need for the facility. The Commission is vested with the broad discretion to manage its dockets to avoid undue delay and the duplication of effort, including the discretion to decide, how, in light of its internal organization and docket considerations, it may best proceed to manage and expedite the orderly flow of its business, avoid undue delay and eliminate unnecessary duplication of effort. *Duff v. Pub. Util. Comm.* (1978), 56 Ohio St. 2d 367, 379; *Toledo Coalition for Safe Energy v. Pub. Util. Comm.* (1982), 69 Ohio St. 2d 559, 560. Accordingly, it is acceptable for the Commission to determine the need for the Turning Point facility as a part of the Company's long-term forecast case filed consistent with Section 4935.04, Revised Code, wherein the Commission evaluates energy plans and needs. To avoid the unnecessary duplication of processes, the Commission has undertaken the determination of need for the Turning Point project in the Company's long-term forecast proceeding. The Commission interprets the statute not to restrict our determination of the need and cost for the facility to the time an ESP is approved but rather to ensure the Commission holds a proceeding before it authorizes any allowance under the statute. FES raises the issue of whether shopping customers should incur charges associated with AEP-Ohio's construction of generation facilities. The Commission finds that Section 4928.143(B)(2)(c), Revised Code, specifically provides that the surcharge be non-bypassable. However, the statute also provides that the electric utility must dedicate the energy and capacity to Ohio consumers. AEP-Ohio has represented that any renewable energy credits will be shared with CRES providers proportionate with such providers' share of the load. Accordingly, as long as AEP-Ohio takes steps to share the benefits of the project's energy and capacity, as well as the renewable energy credits, with all customers, we find that the GRR should be non-bypassable. Further, in the subsequent application for any cost recovery AEP-Ohio will have the burden to demonstrate compliance with the statutory requirements set forth in Section 4928.143(B)(2)(c), Revised Code.

Accordingly, the Commission approves the Company's request to adopt as a component of this modified ESP the GRR mechanism, at a rate of zero. It is not unprecedented for the Commission to adopt a mechanism, with a rate of zero, as a part of an ESP.[10] The Commission explicitly notes that in permitting the creation of the GRR, it is not authorizing the recovery of any costs, at this time.

5. Interruptible Service Rates

In its modified ESP, AEP-Ohio suggests it would be appropriate to restructure its current interruptible service provisions to make its offerings consistent with the options that will be available upon AEP-Ohio's participation in the PJM base residual auction beginning in June 2015. AEP-Ohio witness Roush provides that interruptible service is more frequently represented as an offset to standard service offer rates as opposed to a separate and distinct rate (AEP-Ohio Ex. 111 at 8). To make AEP-Ohio's interruptible service options consistent with the current regulatory environment, AEP-Ohio proposes that Schedule Interruptible Power-Discretionary (IRP-D) become available to all current customers and any potential customers seeking interruptible service (*Id.*). The IRP-D credit would increase to $8.21 per kw-month upon approval of the modified ESP (AEP-Ohio Ex. 100 at 9). AEP-Ohio proposes to collect any costs associated with the IRP-D through the RSR to reflect reductions in AEP-Ohio's base generation revenues (*Id.*).

OCC believes the IRP-D proposal violates cost causation principles, as the beneficiaries are customers with more than 1 MW of interruptible capacity, and does not apply to residential customers. OCC witness Ibrahim argues it is unfair for non-participating customers to make AEP-Ohio whole for any lost revenues associated with the IRP-D (OCC Ex. 110 at 11-12). Therefore, OCC recommends the IRP-D should not allow for any lost revenue associated with IRP-D credits to be collected through the RSR (*Id.*).

Staff suggests modifying the IRP-D credit based upon the state compensation mechanism approved in the Capacity Case (Staff Ex. 105 at 6-9). Staff witness Scheck recommended lowering the IRP-D credit to $3.34/kw-month (*Id.*). Further, Staff notes its preference of any interruptible service to be offered in conjunction with Commission approved reasonable arrangements, as opposed to tariff service (*Id*). EnerNOC states that a reasonable arrangement process is more transparent than an interruptible service credit, and notes that a subsidized IRP-D rate may impede AEP-Ohio's transition to a competitive market by reducing the amount of demand response resources that may participate in RPM auctions (EnerNOC Br. at 6-9).

OMAEG and OEG support the proposed IRP-D credit, but recommend it not be tied to approval of the RSR (OMAEG Br. at 21, OEG Br. at 15). Ormet also supports the IRP-D credit, noting that customers should be compensated for taking on an interruptible load (Ormet Br. at 21-22). OEG explains it is reasonable and consistent with state policy

10 *In re AEP-Ohio, ESP 1* (March 18, 2009); *In re Duke Energy-Ohio*, Case No. 08-920-EL-SSO (December 17, 2008); *In re FirstEnergy*, Case No. 08-935-EL-SSO (March 25, 2009).

objectives under Section 4928.02, Revised Code, as it will promote economic development and innovation and market access for AEP-Ohio's customers. OEG witness Stephen Baron provides that the credit is beneficial to customers that participate in the IRP-D program who received a discounted price for power in exchange for interruptible service, which retains existing AEP-Ohio customers and can attract new customers to benefit the state's economic development (Tr. IV at 1125-1126, OEG Ex. 102 at 6-8). Mr. Baron notes that the IRP-D is beneficial to AEP-Ohio as well by allowing AEP-Ohio to have increased flexibility in providing its service, thus increasing overall system reliability (OEG Ex. 102 at 6-8). However, Mr. Baron believes that costs associated with the IRP-D would be more appropriate to recover under the EE/PDR rider (*Id.* at 9-10). OEG also disputes Staff's proposal to lower the IRP-D credit to the capacity rate charged to CRES providers, as the credit is only available to SSO customers, and not customers of CRES providers (OEG Br. at 16-21).

The Commission finds the IRP-D credit should be approved as proposed at $8.21/kW-month. In light of the fact that customers receiving interruptible service must be prepared to curtail their electric usage on short notice, we believe Staff's proposal to lower the credit amount to $3.34/kW-month understates the value interruptible service provides both AEP-Ohio and its customers. In addition, the IRP-D credit is beneficial in that it provides flexible options for energy intensive customers to choose their quality of service, and is also consistent with state policy under Section 4928.02(N), Revised Code, as it furthers Ohio's effectiveness in the global economy. In addition, since AEP-Ohio may utilize interruptible service as an additional demand response resource to meet its capacity obligations, we direct AEP-Ohio to bid its additional capacity resources into PJM's base residual auctions held during the ESP.

The Commission agrees with several parties who correctly pointed out that the IRP-D credit should not be tied to the RSR. As we will discuss below, the RSR is tied to rate certainty and stability, and while we have no qualms in finding that the IRP-D is reasonable, it is more appropriate to allow AEP-Ohio to recover any costs associated with the IRP-D under the EE/PDR rider. As the IRP-D will result in reducing AEP-Ohio's peak demand and encourage energy efficiency, it should be recovered through the EE/PDR rider.

6. Retail Stability Rider

In its modified ESP, AEP-Ohio proposes a non-bypassable RSR. AEP-Ohio states the RSR is justified under Section 4928.143(B)(2)(d), Revised Code, as it promotes stability and certainty with retail electric service, and Section 4928.143(B)(2)(e), Revised Code, which allows for automatic increases or decreases by revenue decoupling mechanisms that relate to SSO service. AEP-Ohio provides that in addition to the RSR's promotion of rate stability and certainty, it is essential to ensure the Company does not suffer severe financial repercussions as a result of the proposed ESP's capacity pricing mechanism.

AEP-Ohio witness William Avera explains that the Commission has the duty to ensure there is not an unconstitutional taking that may result in material harm to AEP-Ohio (AEP-Ohio Ex. 150 at 4-6). Dr. Avera stresses that not only does the Commission maintain this obligation to avoid confiscation, but in the event the rate plan is confiscatory, AEP-Ohio's credit rating would likely drop, limiting the ability to attract future capital investments (*Id.*).

The proposed RSR functions as a generation revenue decoupling charge that all shopping and non-shopping customers would pay through June 2015. As proposed, the RSR relies on a 10.5 percent return on equity to develop the non-fuel generation revenue target of $929 million per year, which, throughout the term of the modified ESP, would collect approximately $284 million in revenue (AEP-Ohio Ex. 100, 116 at WAA-6). In establishing the 10.5 percent target, AEP-Ohio witness William Allen considered CRES capacity revenues as based on the proposed two-tiered capacity mechanism, auction revenues, and credit for shopped load to determine where the RSR should be set. AEP-Ohio notes that while the RSR is designed to produce consistent non-fuel generation revenues, the RSR does not guarantee a company total ROE of 10.5 percent, as there are other factors affecting total company earnings, which AEP-Ohio witness Sever estimated at 9.5 percent and 7.6 percent (AEP-Ohio Ex. 151 at 2-4, AEP-Ohio Ex. 108 at OJS-2). Thus, AEP-Ohio explains the RSR only ensures a stable level of revenues during the term of the ESP, not a stable ROE (*Id.* at 3). For every $10/MW-day decrease in the Tier 2 price for capacity, Mr. Allen explains the RSR would increase by $33M (or $.023/MWh) (AEP-Ohio Ex. 116 at 14-15). Mr. Allen explains that the $3 shopped load credit is based on AEP-Ohio's estimated margin it earns from off-system sales (OSS) made as a result of MWh freed as a result of customer shopping. In his testimony, Mr. Allen provides that AEP-Ohio only retains 40 percent of the OSS margins due to its participation in the AEP pool, and of that 40 percent only 50 to 80 percent of reduced retail sales result in additional OSS, thus demonstrating the $3/MWh credit is reasonably based on appropriate OSS assumptions (AEP-Ohio Ex. 151 at 5-8).

In designing the RSR, AEP-Ohio explains that a revenue target is preferable to an earnings target, as decoupling will provide greater stability and certainty for customers and is easier to objectively measure and audit as compared to earnings, which are prone to litigation as evidenced by SEET proceedings (AEP-Ohio Ex. 116 at 13-16). AEP-Ohio believes a revenue target provides for risks associated with generation operations to be on AEP-Ohio while avoiding the need for evaluating returns associated with a deregulated entity after corporate separation (*Id.*) As proposed, the RSR would average $2/MWh (*Id.* at WAA-6).

AEP-Ohio believes the RSR is beneficial in that it freezes non-fuel generation rates and allows for AEP-Ohio's transition to a fully competitive auction by June 2015 (AEP-Ohio Ex. 119 at 2-4). AEP-Ohio opines that the RSR mechanism reflects a careful balance that will encourage customer shopping through discounted capacity prices while retaining reasonable rates for SSO customers and ensure that AEP-Ohio is not financially harmed as it transitions towards a competitive auction (*Id.*). AEP-Ohio also touts an increase in its interruptible service (IRP-D) credit upon approval of the RSR. AEP-Ohio witness Selwyn Dias explains that the increase in the IRP-D credit will benefit numerous major employers in the state of Ohio and promote economic development opportunities within AEP-Ohio's service territory (*Id.* at 7).

Without the Commission's approval of the RSR as proposed, AEP-Ohio claims that the modified ESP would result in confiscatory rates. In his rebuttal testimony, Mr. Allen argues that if the established capacity charge is below AEP-Ohio's costs, AEP-Ohio will face an adverse financial impact (AEP-Ohio Ex. 151 at 9). As such, AEP-Ohio points out that the 10.5 percent return on equity used to develop the RSR's target revenue is not only appropriate to prevent financial harm but is also necessary to avoid violating regulatory standards addressing a fair rate of return. Mr. Allen contends that the non-fuel generation revenue, which the RSR addresses, is separate and distinct from the total company earnings, which are not addressed by the RSR. This distinction, Mr. Allen states, shows the 10.5 percent return on equity is appropriate for the RSR because when the RSR is combined with total company earnings, AEP-Ohio would be looking at a total company return on equity of 7.5 percent in 2013. Therefore, AEP-Ohio argues it would be inappropriate to allow a RSR rate of return of less than 10.5 percent, as any reduction would lower the total company return on equity downward from 7.5 percent, harming AEP-Ohio's ability to attract capital and potentially putting the company in an adverse financial situation (*Id.* at 4-5).

DER, DECAM, FES, NFIB, OCC, and IEU all contend that the RSR lacks statutory authority to be approved. FES claims that Section 4928.143(B)(2)(d), Revised Code, only authorizes charges that provide stability and certainty regarding retail electric service, which AEP-Ohio has failed to show. OCC witness Daniel Duann argues that the RSR will raise customer rates and cause financial uncertainty to all native load customers (OCC Ex. 111 at 10). OCC contends that even if the RSR provided certainty and stability, it does not qualify as a term, condition, or charge pursuant to Section 4928.143(B)(2)(d), Revised Code (OCC Br. at 40). IEU and Exelon also argue the RSR violates Section 4928.02(H) Revised Code, as it would be tied to a distribution rate based on its charge to shopping customers despite the fact it is a non-bypassable charge designed to recover generation related costs (IEU Br. at 63-64, Exelon Br. at 12).

IEU, Ohio Schools, Kroger, and DECAM/DER argue that AEP-Ohio is improperly utilizing the RSR to attempt to recover transition revenue. IEU notes that AEP-Ohio's attempt to recover generation-related revenue that may not otherwise be collected by statute is an illegal attempt to recover transition revenue (IEU Ex. 124 at 4-10, 24-26). Kroger and Ohio Schools point out that not only has the opportunity to recover generation *transition costs expired with the establishment of electric retail competition in 2001*, AEP-Ohio waived its right to generation transition costs when it stipulated to a resolution in Case Nos. 99-1729 and 99-1730 (Kroger Br. at 3-5, Ohio Schools Br. at 18-20). Exelon and FES maintain the RSR is anticompetitive and would stifle competition.

Ormet, OCC, Ohio Schools, OEG, and Exelon indicate that, if the RSR is approved, it should contain exemptions for certain customer classes. Ohio Schools request an exemption from the RSR, pointing out that not only are schools relying on limited funding, but also that the Commission has traditionally considered schools to be a distinct customer class that is entitled to special rate treatment (Ohio Schools Br. at 22-30, citing to Case Nos. 90-717-EL-ATA, 95-300-EL-AIR, 79-629-TP-COI, Ohio Schools Ex. 103, and Tr. XVI at 4573-4574). Exelon believes the RSR should not apply to shopping customers and should be bypassable. While Exelon notes it does not oppose affording AEP-Ohio protection as it transitions its business structure, witness David Fein argues that shopping customers will unfairly be forced pay both the CRES provider and AEP-Ohio for generation (Exelon Ex. 101 at 13-14).

On the contrary, Ormet believes the RSR should not apply to customers like Ormet who cannot shop, as Ormet neither causes costs associated with the RSR nor can Ormet receive the benefits associated with it (Ormet Ex. 106 at 15-17). Ormet maintains that the RSR, as currently proposed, violates cost causation principles (*Id.*). OCC and OEG suggest that if the RSR is approved, it should not be charged to SSO customers, as these customers are not the cause of the RSR costs, and it would be unfair to force these customers to subsidize shopping customers and CRES providers (OEG Br. at 5-6, OCC Ex. 111 at 16-17).

While OEG does not support the creation of the RSR, it understands the Commission may need to provide a means to ensure AEP-Ohio has the ability to attract capital, and as such suggests that the Commission look to AEP-Ohio actual earnings as opposed to revenue (OEG Ex. 101 at 12-18). OEG argues that the RSR's use of revenues does not accurately reflect a utility's financial condition or ability to attract capital in the way that earnings do, as evidenced by earnings being the foundation used by credit agencies to determine bond ratings (*Id.*). OEG witness Lane Kollen points out that revenues are just a single component of AEP-Ohio's earnings and do not reflect a full picture of AEP-Ohio's financial health (*Id.*). Mr. Kollen suggests that if the Commission were to look at AEP-Ohio's earnings, an appropriate return on equity (ROE) would be between seven percent and 11 percent (OEG Ex. at 4-6). If the Commission were to use revenues to determine AEP-Ohio's ROE, as proposed in the RSR, Mr. Kollen believes the ROE should be at seven percent, as it is still double the cost of AEP-Ohio's long-term debt and falls within the Ohio Supreme Court's zone of reasonableness (*Id.* at 7, Tr. X at 2877-79).

In the event the Commission adopts RPM priced capacity, RESA also supports the use of earnings as opposed to revenues in calculating the RSR in the event it is necessary to avoid confiscatory rates (RESA Ex. at 11, Br. at 13-16). RESA also suggests the Commission consider projecting an amount of money necessary for AEP-Ohio to earn a reasonable rate of return and set the RSR accordingly (RESA Br. at 14-16). RESA maintains that either of these alternatives may reduce the possibility that AEP-Ohio and its new affiliate make uneconomic investments or other risks that may result from AEP-Ohio receiving a guarantee of a certain level of annual income (*Id.*). NFIB and OADA express similar concerns that the RSR, as proposed, creates no incentive for AEP-Ohio to limit its expenses (NFIB Br. at 4-6, OADA Br. at 2-3).

In addition, several other parties suggest modifications to the RSR, including its proposed ROE. Ormet states that the 10.5 percent ROE is excessive and unreasonably high. Ormet witness John Wilson explained that AEP-Ohio failed to sustain its burden of showing 10.5 percent ROE was just and reasonable, and upon utilizing Staff's methodology in 11-351-EL-AIR, determined that, based on current economic conditions and AEP-Ohio and comparable utility financial figures, an appropriate ROE would be between eight and nine percent (Ormet Ex. 107 at 8-30). Kroger witness Kevin Higgins testified that the average ROE for electric utilities is 10.2 percent, and based on the fact that AEP-Ohio's proposed two-tier capacity mechanism is above market, the ROE should be below 10.2 percent (Kroger 101 at 10). FES and Wal-Mart state that AEP-Ohio failed to justify its 10.5 percent figure, with Wal-Mart witness Steve Chriss suggesting the ROE be no higher than 10.2 percent (Wal-Mart Ex. 101 at 8-9, FES Ex. 102 at 79-80).

OCC recommends that the Commission allocate the RSR in proportion to each class share of the switched kWh sales as opposed to customer class contribution to peak load, as an allocation based on contribution to peak load is not just and reasonable (OCC Ex. 110 at 8-9). OCC witness Ibrahim points out that the residential customer class share of switched kWh sales is only eight percent, thus, if the Commission reallocates RSR costs, residential customer increases would drop from six percent to three percent (*Id.* at 24-26). Kroger argues the RSR allocates costs to customers by demand, but recovers through an energy cost, resulting in cross subsidies amongst customers (Kroger Ex. 101 at 8). Kroger recommends that costs and charges should be aligned and based on demand as opposed to energy usage (*Id.*)

OCC, FES, and Ormet also submit modifications related to the calculation AEP-Ohio's shopping credit included within the RSR calculation. Ormet argues that AEP-Ohio underestimates its $3 shopping credit. Ormet states that based on AEP-Ohio's 2011 resale percentage of 80 percent, the actual shopping credit increases to $3.75 MWh, with the total amount increasing to $78.5 million (Ormet Br. at 10-12, citing to Tr. XVII at 4905). Ormet also shows that AEP-Ohio will not need to reduce the credit by 60 percent beginning in 2013, as AEP-Ohio will no longer be in the AEP pool, resulting in the credit increasing to

\$6.50 per year in 2014 and 2015 (*Id.*). OCC also points out that the shopping credit should increase based on AEP-Ohio's 2011 shopping percentage, as well as the termination of the AEP pool agreement, and recommends the Commission adopt a shipping credit higher than \$3/MWh but less than \$12/MWh (OCC Br. at 49-54).

The Commission finds that, upon review of the record, it is apparent that no party disputes that the approval of the RSR will provide AEP-Ohio with sufficient revenue to ensure it maintains its financial integrity as well as its ability to attract capital. There is dispute, however, as to whether the RSR is statutorily justified, and, if it is justified, the amount AEP-Ohio should be entitled to recover, and how the recovery should be allocated among customers. The Commission must first determine whether RSR mechanism is supported by statute. Next, if we find that the Commission has the authority to approve the RSR, we must balance how much cost recovery, if any, should be permitted to ensure customers are not paying excessive costs but that the recovery is enough to allow AEP-Ohio to freeze its base generation rates and maintain a reasonable SSO plan for its current customers as well as for any shopping customers that may wish to return to AEP-Ohio's SSO plan.

In beginning our analysis, we first look to AEP-Ohio's justification of the RSR. While AEP-Ohio argues there are numerous statutory provisions that may provide support for the RSR, the thrust of its arguments in support of the RSR pertain to Section 4928.143(B)(2)(d), Revised Code, which AEP-Ohio notes is met by the RSR's promotion of rate stability and certainty. AEP-Ohio also suggests that Section 4928.143(B)(2)(e), Revised Code, which allows for automatic increases or decreases, justifies the RSR, as its design includes a decoupling mechanism.

Pursuant to Section 4928.143(B)(2)(d), Revised Code, an ESP may include terms, conditions, or charges relating to limitations on customer shopping for retail electric generation that would have the effect of stabilizing retail electric service or provide certainty regarding retail electric service. We believe the RSR meets the criteria of Section 4928.143(B)(2)(d), as it promotes stable retail electric service prices and ensures customer certainty regarding retail electric service. Further, it also provides rate stability and certainty through CRES services, which clearly fall under the classification of retail electric service, by allowing customers the opportunity to mitigate any SSO increases through increased shopping opportunities that will become available as a result of the Commission's decision in the Capacity Case.

In addition, we find that the RSR freezes any non-fuel generation rate increase that might not otherwise occur absent the RSR, allowing current customer rates to remain stable throughout the term of the modified ESP. While we understand that the non-bypassable components of the RSR will result in additional costs to customers, we believe any costs associated with the RSR are mitigated by the effect of stabilizing non-fuel generation rates, as well as the guarantee that, in less than three years, AEP-Ohio will establish its pricing based on energy and capacity auctions, which this Commission again maintains is extremely beneficial by providing customers with an opportunity to pay less for retail electric service than they may be paying today.

Therefore, we find that the RSR provides certainty for retail electric service, as is consistent with Section 4928.143(B)(2)(d), Revised Code. Until May 31, 2015, AEP-Ohio's SSO rate, as a result of this RSR, will remain available for all customers, including those who are presently shopping, as well as those who may shop in the future. The ability for AEP-Ohio to maintain a fixed SSO rate is valuable, particularly if an unexpected, intervening event occurs during the term of the ESP, which could have the effect of increasing market prices for electricity. The ability for all customers within AEP-Ohio's service territory to have the option to return to AEP-Ohio's certain and fixed rates allows customers to explore shopping opportunities. This is an extremely beneficial aspect of the RSR and is undoubtedly consistent with legislative intent in providing that electric security plans may include retail electric service terms, conditions, and charges that relate to customer stability and certainty. Further, we reject the claim that the RSR allows for the collection of inappropriate transition revenues or stranded costs that should have been collected prior to December 2010 pursuant to Senate Bill 3, as AEP-Ohio does not argue its ETP did not provide sufficient revenues, and, in light of events that occurred after the ETP proceedings, including AEP-Ohio's status as an FRR entity, AEP-Ohio is able to recover its actual costs of capacity, pursuant to our decision in the Capacity Case. Therefore, anything over RPM auction capacity prices cannot be labeled as transition costs or stranded costs.

Moreover, we find that the certainty and stability the RSR provides would be all but erased by its design as a decoupling mechanism. We agree with OCC that the ability for AEP-Ohio to decouple the RSR would cause financial uncertainty, as truing up or down each year will create customer confusion in their rates. NFIB, OADA, and RESA correctly raise concerns that the RSR design creates no incentive for AEP-Ohio to limit its expenses and the Company may make uneconomic investments by its guaranteed level of annual income. While AEP-Ohio should have the opportunity to earn a reasonable rate of return, there is not a right to a guaranteed rate of return, and we will not allow AEP-Ohio to shift its risks onto customers. Thus, because its design may lead to a perverse outcome of AEP-Ohio making imprudent decisions, we find it necessary to remove the decoupling component from the RSR.

Although the RSR is justified by statute, AEP-Ohio has failed to sustain its burden of proving that its revenue target of $929 million is reasonable. The basis of AEP-Ohio's $929 million target is to ensure that its non-fuel generation revenues are stable and that stability may be ensured through a 10.5 percent ROE. However, as we previously established, it is inappropriate to guarantee a rate of return for AEP-Ohio, therefore, we find it more appropriate to establish a revenue target that will allow AEP-Ohio the opportunity to earn a reasonable rate of return. We note that our analysis of an ROE is not to guarantee a rate of return, as evidenced by the removal of the decoupling components but rather to determine a revenue target that adequately ensures AEP-Ohio can keep its base generation rates frozen and maintain its financial health. Although we believe the more appropriate method to balance these factors would have been through the use of actual dollar figures that relate to stability, because AEP-Ohio utilized a ROE in calculating its proposals, and parties responded with alternative ROE proposals, the record limits us to this approach. Therefore, in determining an appropriate quantification for the RSR, we will consider a ROE of the non-fuel generation revenue only for the purpose of creating an appropriate revenue target that will ensure AEP-Ohio has sufficient capital while maintaining its frozen base generation rates.

Only three witnesses, AEP-Ohio witness Avera, OEG witness Kollen, and Ormet witness Wilson, developed thorough testimony exploring how an appropriate revenue target for the RSR should be established, all of which were driven by an analysis of AEP-Ohio's ROE. Although OEG witness Kollen proposed a mechanism driven by adjusting AEP-Ohio's ROE upward or downward if it does not fall within a zone of reasonableness, Mr. Kollen established that anything between seven and 11 percent could be deemed reasonable (OEG Ex. 101 at 8-9). Mr. Kollen preferred focusing on a zone of reasonableness, but notes that if the Commission preferred to establish a baseline revenue target, it should be set at $689 million (*Id.* at 16-18). Ormet witness Wilson utilized Staff models from Case No. 11-351 including discounted cash flow and capital asset pricing models, and updated calculations in the Staff models to reflect current economic factors, reaching a conclusion that AEP-Ohio's ROE should be between eight and nine percent (Ormet Ex. 107 at 8-18). AEP-Ohio used witness Avera to rebut Dr. Wilson's testimony, noting that Dr. Wilson did not consider a sufficient number of utilities in the proxy group, and the utilities that were considered were not similarly situated to AEP-Ohio (AEP-Ohio Ex. 150 at 5-6). Based on this information, Dr. Avera recommended an ROE range of 10.24 percent to 11.26 percent (*Id.*).

The Commission finds that all three experts provide credible methodologies for determining an appropriate ROE for AEP-Ohio, therefore, we find OEG witness Kollen's zone of reasonableness of seven to 11 percent to be an appropriate starting point. We again emphasize that the Commission does not want to guarantee a ROE nor establish what an appropriate ROE would be, but rather, establish a reasonable revenue target that would allow AEP-Ohio an opportunity to earn somewhere within the seven to 11 percent range. We believe AEP-Ohio's starting point of $929 is too high, particularly in light of the fact that AEP-Ohio is entitled to a deferral recovery pursuant to the Capacity Case but that a baseline of $689 million would be too low to support the certainty and stability the RSR provides. Accordingly, we find that a benchmark shall be set in the approximate middle of this range, and the $929 million benchmark shall be adjusted downward to $826 million.

While we have revised the benchmark amount down to $826 million, we also need to revisit the figures AEP-Ohio used in determining its RSR revenue amounts. In designing the RSR benchmark, Mr. Allen focused on four areas of revenue: retail non-fuel generation revenues; CRES capacity revenues; auction capacity revenues; and credit for shopped load (AEP-Ohio Ex. at WAA-6). In calculating the inputs for these revenue figures, Mr. Allen relied on AEP-Ohio's own estimates ofshopping loads of 65 percent for residential customers, 80 percent for commercial customers, and 90 percent for industrial customers by the end of 2012 (*Id.* at 5).

However, evidence within this record indicates Mr. Allen's projected shopping statistics may be higher than actual shopping levels. On rebuttal, FES presented shopping statistics based on actual AEP-Ohio numbers provided by Mr. Allen as of March 1, 2012, and May 31, 2012 (FES Ex. 120). FES concluded that, based on AEP-Ohio's actual shopping statistics to date, Mr. Allen's figures overestimated the amount of shopping by 36 percent for residential customers, 17 percent for commercial customers, and 29 percent for industrial customers, creating a total overestimate across all customer classes of 27.54 percent. The Commission finds it is more appropriate to utilize a shopping projection which is roughly the midpoint between AEP-Ohio's shopping projections and the more conservative shopping estimates offered by FES. Therefore, we will estimate shopping in the first year at 52 percent, and then increase the shopping projections for years two and three to 62 percent and 72 percent, respectively. These numbers represent a reasonable estimate and are consistent with shopping statistics of other EDUs throughout the State (*See* FES Ex. 114).

Based upon the Commission's revised shopping projections, we need to adjust the calculation of the RSR. The record indicates that lower shopping figures will result in changes to retail generation revenues, CRES margins, and OSS margins, which affects the credit for shopped load, all resulting in an adjustment to the RSR (*See* FES Ex. 121). Our adjustments are highlighted below.

	PY 12/13	PY 13/14	PY 14/15
Retail Non-Fuel Gen Revenues	**$528**	**$419**	**$308**
CRES Capacity Revenues	**$32**	**$65**	**$344**
Credit for Shopped Load	**$75**	**$89**	**$104**
Subtotal	**$636**	**$574**	**$757**
Revenue Target	**$826**	**$826**	**$826**
Retail Stability Rider Amount	**$189**	**$251**	**$68**

All figures in millions

To appropriately correct the RSR based on more conservative shopping projections, we begin our analysis with retail non-fuel generation revenues. As the figures of $402, $309, and $182 are based on Mr. Allen's assumed shopping figures, when we adjust these figures to 52, 62, and 72 percent shopping, AEP-Ohio's revenues would increase to $528 million, $419 million, and $308 million, respectively.

Conversely, as a result of decreasing the shopping statistics, CRES capacity revenues would decrease. Assuming our shopping estimates of 52, 62, and 72 percent, as well as the use of RPM capacity prices, the CRES capacity revenues lower to $32 million, $65 million, and $344 million. Finally, we need to adjust the credit for shopped load based on the revised non-shopping assumptions. Because we assume lower shopping statistics, AEP-Ohio will have less opportunity for off-system sales due to an increased load of its non-shopping customers, which will lower the credit to $75 million, $89 million, and $104 million for each year of the modified ESP. Accordingly, upon factoring in our revised revenue benchmark based on a nine percent return on equity, we find a RSR amount of $508 million is appropriate. The $508 million RSR amount is limited only to the term of the modified ESP.

Although our corrected RSR mechanism ensures customer stability and certainty by providing a means for AEP-Ohio to move towards competitive market pricing, in addition to the $508 million RSR, which allows AEP-Ohio to maintain frozen base generation rates and an accelerated auction process, we must also address the capacity charge deferral mechanism, created in the Capacity Case. As our decision in the Capacity Case to utilize RPM priced capacity considered the importance of developing competitive electric markets, we believe it is appropriate to begin recovery of the deferral costs through AEP-

Ohio's RSR mechanism, as the RSR allows for AEP-Ohio to continue to provide certainty and stability for AEP-Ohio's SSO plan while competitive markets continue to develop as a result of RPM priced capacity. Therefore we believe it is appropriate to begin collection of the deferral within the RSR.

Based on our conclusion that a $508 million RSR is reasonable, as well as our determination that AEP-Ohio is entitled to begin recovery of its deferral, AEP-Ohio will be permitted to collect its $508 million RSR by a recovery amount of $3.50/MWh, through May 31, 2014, and $4/MWh between June 1, 2014 and May 31, 2015. The upward adjustment by 50 cents to $4/MWh reflects the Commission's modification to expedite the timing and percentage of the wholesale energy auction beginning on June 1, 2014. Of the $3.50/MWh and $4/MWh RSR recovery amounts, AEP-Ohio must allocate $1.00 towards AEP-Ohio's deferral recovery, pursuant to the Capacity Case. At the conclusion of the modified ESP, the Commission will determine the deferral amount and make appropriate adjustments based on AEP-Ohio's actual shopping statistics and the amount that has been collected towards the deferral through the RSR, as necessary. Further, although this Commission is generally opposed to the creation of deferrals, the extraordinary circumstances presented before us, which allow for AEP-Ohio to fully participate in the market in two years and nine months as opposed to five years, necessitate that we remain flexible and utilize a deferral to ensure we reach our finish line of a fully-established competitive electric market.

Any remaining balance of this deferral that remains at the conclusion of this modified ESP shall be amortized over a three year period unless otherwise ordered by the Commission. In order to ensure this order does not create a disincentive to shopping, at the end of the term of the ESP, AEP-Ohio shall file its actual shopping statistics in this docket. To provide complete transparency as well as to allow for accurate deferral calculations, AEP-Ohio should maintain its actual monthly shopping percentages on a month-by-month basis throughout the term of this modified ESP, as well as the months of June and July of 2012. All determinations for future recovery of the deferral shall be made following AEP-Ohio's filing of its actual shopping statistics.

We believe this balance is in the best interests of both customers and AEP-Ohio. For customers, this keeps the RSR costs stable at $3.50/MWh and $4/MWh, and with $1.00 of the RSR being devoted towards paying back AEP-Ohio's deferrals, customers will avoid paying high deferral charges for years into the future. In addition, our modifications to the RSR will provide customers with a stable rate that will not change during the term of the ESP due to the elimination of the decoupling components of the RSR. Further, as result of the Capacity Case, customers may be able to lower their bill impacts by taking advantage of CRES provider offers allowing customers to realize savings that may not have otherwise occurred without the development of a competitive retail market. In addition, this mechanism is mutually beneficial for AEP-Ohio because the RSR will ensure

AEP-Ohio has sufficient funds to maintain its operations efficiently and revise its corporate structure, as opposed to a deferral only mechanism.

Finally, we find that the RSR should be collected as a non-bypassable rider to recover charges per kWh by customer class, as proposed. We note that several parties pitched reasons as to why certain customers classes should be excluded, but we believe these arguments are meritless. Ormet contends that the RSR should not apply to customers like Ormet who cannot shop. Interestingly, Ormet again tries to play both sides of the table, forgetting that it is the beneficiary of a unique arrangement that results in Ormet receiving a discount at the expense of other AEP-Ohio customers. We reject Ormet's argument, and note that while Ormet cannot shop pursuant to its unique arrangement, it directly benefits from AEP-Ohio's customers receiving stability and certainty, as these customers ultimately pay for Ormet's discounted electricity. We also find Ohio Schools' request to be excluded from the RSR to be without merit, as it too would result in other AEP-Ohio customers, including taxpayers that already contribute to the schools, paying significantly higher shares of the RSR. It is unreasonable to make AEP-Ohio's customers pay the schools twice.

In addition, in light of the fact that the Commission has established a revenue target to be reached through the RSR in this proceeding, the Commission finds that it is also appropriate to establish a significantly excessive earnings test (SEET) threshold to ensure that the Company does not reap disproportionate benefits from the ESP. The evidence in the record demonstrates that a 12 percent ROE would be at the high end of a reasonable range for return on equity (OEG Ex. 101 at 4-6; Kroger 101 at 10; Ormet Ex. 107 at 8-30; Wal-Mart Ex. 101 at 8-9, FES Ex. 102 at 79-80), and even AEP-Ohio witness Allen agreed that a ROE of 10.5 percent is appropriate. Accordingly, for purposes of this ESP, the Commission will establish a SEET threshold for AEP-Ohio of 12 percent.

Likewise, multiple parties argue that either shopping customers or SSO customers should be excluded from paying the RSR. For non-shopping customers, the RSR provides rate stability and certainty, and ensures all SSO rates will be market-based by June 2015. For shopping customers, the RSR not only keeps a reasonably priced SSO offer on the table in the event market prices increase, but it also enables CRES providers to provide offers that take advantage of current market prices, which is a benefit for shopping customers. Accordingly, we find the RSR, as justified by Section 4928.143(b)(2)(d), Revised Code is just and reasonable, and should be non-bypassable.

Finally, the Commission notes that our determination regarding the RSR is heavily dependent on the amount of SSO load still served by the Company. Accordingly, in the event that, during the term of the ESP, there is a significant reduction in non-shopping load for reasons beyond the control of the Company, other than for shopping, the

Company is authorized to file an application to adjust the RSR to account for such changes.

7. Auction Process

As part of its modified ESP, AEP-Ohio proposes a transition to a fully-competitive auction based SSO format. The first part of AEP-Ohio's proposal includes an energy-only, slice-of system auction of five percent that will occur prior to AEP-Ohio's SSO energy auction. The energy-only slice-of-system auction would commence upon a final order in this proceeding and the corporate separation plan, with the delivery period to extend to December 31, 2014 (AEP-Ohio Ex. 101 at 20-21). AEP-Ohio notes that specific details would be addressed upon the issuance of final orders in this proceeding (*Id*).

AEP-Ohio's transition proposal also includes a commitment to conduct an energy auction for 100 percent of the SSO load for delivery in January 2015. By June 1, 2015, AEP-Ohio will conduct a competitive bid procurement (CBP) process to commit to an energy and capacity auction to service its entire SSO load (*Id.* at 19-21, AEP-Ohio Ex. 100 at 10-11). AEP-Ohio witness Powers explained that the June 1, 2015 energy and capacity auction will permit competitive suppliers and marketers to bid into AEP-Ohio's load, as its FRR obligation will be terminated (*Id.*). AEP-Ohio anticipates the CBP process will be similar to other Ohio utility CBP filings, and explains that specific details of the CBP will be addressed in a future filing.

AEP-Ohio explains that the June 1, 2015, date to service its entire SSO load by auction is based on the need for AEP's interconnection pool to be terminated and AEP-Ohio's corporate separation plan being approved. AEP-Ohio witness Philip Nelson explains that an SSO auction occurring prior to pool termination may expose AEP-Ohio to significant financial harm, and if the auction occurs prior to corporate separation, it is possible that AEP-Ohio's generation may not be utilized in the auction (AEP-Ohio Ex. 103 at 8). Further, AEP-Ohio points out that a full auction prior to June 1, 2015, would conflict with its FRR commitment that continues until May 31, 2015 (AEP-Ohio Reply Br. at 46).

FES and DER/DECAM argue that AEP-Ohio could hold an immediate CBP without waiting for pool termination and corporate separation. FES witness Rodney Frame testified that the AEP pool agreement contains no provisions that would prevent a CBP (FES Ex. 103 at 3). DER/DECAM provide that a delay in the implementation of the CBP process harms customers by preventing them from taking advantage of the current market rates (DECAM Ex. 101 at 5).

Other parties, including RESA and Exelon, propose modifications to AEP-Ohio's proposed auction process. Exelon believes the first energy and capacity auction for the SSO load should be accelerated to June 1, 2014, in order to permit customers to take advantage of competition. Exelon witness Fein notes the June 1, 2014 date would be six months after the date by which AEP-Ohio indicated its corporate separation and pool termination would be completed (Exelon Ex. 101 at 15-20). RESA makes a similar proposal, but that a June 1, 2014, auction be energy only, as this still allows AEP-Ohio six months to prepare for auction and provides customers with the benefits associated with a competitive market (RESA Br. at 16-17). On the contrary, OCC argues the interim auctions to be held during the first five months of 2015 would be detrimental to residential customers, and suggests that the Commission adopt a different approach (OCC Br. at 100-103). OCC contends that competitive market prices in 2015 may be higher than prices that would result from AEP-Ohio continuing to purchase energy from its affiliate, and recommends that the Commission require the agreement between AEP-Ohio and its affiliate to continue during the first five months of 2015, or, in the alternative, AEP-Ohio should purchase SSO capacity from its generation affiliate at RPM prices (*Id.* at 103).

In addition, Exelon also recommends that the Commission direct AEP-Ohio to conduct its CBP in a manner that is consistent with the processes that Duke Energy Ohio and FirstEnergy used in their most recent auctions. Exelon sets forth that establishing details of the CBP process in a timely manner will expedite AEP-Ohio's transition to competition and ensure there are no delays associated with settling these issues in later proceedings. Specifically, Exelon proposes that the CBP should be consistent with statutory directives set forth in Section 4928.142, Revised Code, and should ensure the dates for procurement events do not conflict with dates of other default service procurements conducted by other EDUs. Exelon warns that if the substantive issues of the procurement process are left open for interpretation, there may be uncertainty that could limit bidder participation and lead to less efficient prices. Exelon also recommends that the Commission ensure the CBP process is open and transparent by having substantive details established in a timely manner (Exelon Ex. 101 at 20-31).

The Commission finds that AEP-Ohio's proposed competitive auction process should be modified. First, we believe AEP-Ohio's energy only slice-of-system of five percent of the SSO load is too low, as AEP-Ohio will be at full energy auction by January 1, 2015, and the slice-of-system auctions will not commence until six months after the corporate separation order is issued. Accordingly, we find that increasing the percentage to a 10 percent slice-of-system auction will facilitate a smoother transition to a full energy auction.

Second, this Commission understands the importance of customers being able to take advantage of market-based prices and the benefits of developing a healthy competitive market, thus we reject OCC's arguments, as slowing the movement to competitive auctions would ultimately harm residential customers by precluding them from enjoying any benefits from competition. Based on the importance of customers having access to market-based prices and ensuring an expeditious transition to a full energy auction, in addition to making the modified ESP more favorable than the results that would otherwise apply under Section 4928.142, Revised Code, we find that AEP-Ohio is capable of having an energy auction for delivery commencing on June 1, 2014. Therefore, we direct AEP-Ohio to conduct an energy auction for delivery commencing on June 1, 2014, for 60 percent of its load, and delivery commencing on January 1, 2015, for the remainder of AEP-Ohio's energy load. AEP-Ohio's June 1, 2015, energy and capacity auction dates are appropriate and should be maintained. In addition, nothing within this Order precludes AEP-Ohio or any affiliate from bidding into any of these auctions.

Finally, we agree with Exelon that the substantive details of the CBP process need to be established to maximize the number of participants in AEP-Ohio's auctions through an open and transparent auction process. We direct AEP-Ohio to establish a CBP process consistent with Section 4928.142, Revised Code, by December 31, 2012. The CBP should include guidelines to ensure an independent third party is selected to ensure there is an open and transparent solicitation process, a standard bid evaluation, and clear product definitions. We encourage AEP-Ohio to look to recent successful CBP processes, such as Duke Energy-Ohio's, in formulating its CBP. Further, AEP-Ohio is ordered to initiate a stakeholder process within 30 days from the date of this opinion in order.

8. CRES Provider Issues

The modified application includes a continuation of current operational switching practices, charges, and minimum stay provisions related to the process in which customers can switch to a Competitive Retail Electric Service (CRES) provider and subsequently return to the SSO rates (AEP-Ohio Ex. 111 at 4). AEP-Ohio points out that the application includes beneficial modifications for CRES providers and customers, including the addition of peak load contribution (PLC) and network service peak load (NSPL) information to the master customer list. AEP-Ohio witness Roush testified that AEP-Ohio also eliminates the 90-day notice requirement prior to enrolling with a CRES provider, the 12 month stay requirements for commercial and industrial customers that return to SSO rates beginning January 1, 2015, and requirements for residential and small commercial customers that return to SSO rates be required to stay on the SSO plan until April 15th of the following year, beginning on January 1, 2015 (*Id.*)

Exelon argues that AEP-Ohio needs to make additional changes in order to develop the competitive market. Specifically, Exelon requests the Commission implement rate and bill ready billing and a standard purchase of receivables (POR) program, eliminate the 90-day notice requirement immediately, and implement a process to provide CRES providers with data relating to PLC and NSPL values. Exelon witness Fein recommends that, consistent with the Duke ESP order, the Commission order AEP-Ohio provide via electronic data interchange, pertinent data including historical usage and historical interval data, NSPL and PLC data, and provide a quarterly updated list for CRES providers to show accounts that are currently enrolled with the CRES provider. (Exelon Ex. 101 at 33-34). Exelon maintains that this information will allow CRES providers to more effectively serve customers and result in cost efficient competition (*Id.*) Mr. Fein further provides that clear implementation tariffs will lower costs for customers, plainly describe rules and contract terms, and allow both CRES providers and customers to easily understand AEP-Ohio's competitive process (*Id.* at 35-36).

RESA and IGS provide that AEP-Ohio's billing system is confusing to customers and creates numerous problems for CRES providers, all of which may be corrected through the implementation of a POR program that would provide customers with a single bill and collection point (RESA Ex. 101 at 12-17, IGS Ex. 101 at 15). IGS witness Parisi points out that switching statistics of natural gas utilities and Duke have increased upon the implementation of POR programs (IGS Ex. 1-1 at 18-19). RESA witness Rigenbach also recommends that the Commission direct AEP-Ohio to develop a web-based system to provide CRES providers access to customer usage and account data by May 31, 2014 (RESA Ex. 101 at 12-13). RESA and DER/DECAM also recommend that AEP-Ohio reduce or eliminate customer switching fees, as well as customer minimum stay periods (*Id.*, DER Ex. 101 at). FES witness Banks noted that the fees and minimum stay requirements hinders competition by making it difficult for customers to switch (FES Ex. 105 at 31).

While the Commission supports AEP-Ohio's provisions that encourage the development of competitive markets, modifications need to be made. AEP-Ohio witness Roush notes that customer PLC and NSPL information will be included in the master customer list, AEP-Ohio fails to make any commitment to the time frame this information would become available, nor the specific format in which customers would be able to access this data. We note that recent updates have been revised to the electronic data interchange (EDI) standards developed by the Ohio EDI Working Group (OEWG). This Commission values the efforts of OEWG in developing uniform operational standards and we expect AEP-Ohio to follow such standards and work within the group to implement solutions which are fair and reasonable, and do not discriminate against any CRES provider.

Accordingly, we direct AEP-Ohio to develop an electronic system to provide CRES providers access to pertinent customer data, including, but not limited to, PLC and NSPL values and historical usage and interval data no later than May 31, 2014. Within 30 days from the date of this opinion and order, we direct representatives from AEP-Ohio to schedule a meeting with members of the OEWG to develop a roadmap towards developing an EDI that will more effectively serve customers, and promote state policies in accordance with Section 4928.02, Revised Code. Further, as AEP-Ohio explains that it neither supports nor is opposed to the idea of a POR program (AEP-Ohio Reply Br. at 64-66), we encourage interested stakeholders to attend a workshop in conjunction with the five year rule review of Chapter 4901:1-10, O.A.C., as established in Case No. 12-2050-EL-ORD et al, to be held on August 31, 2012. In our recent order on FirstEnergy's electric security plan (*See* Case No. 12-1230-EL-SSO), we noted that this workshop would be an appropriate place of stakeholders in the FirstEnergy proceedings to review issues related to POR programs. Similarly, we believe this workshop would also provide stakeholders in this proceeding an opportunity to further discuss the merits of establishing POR programs for other Ohio EDUs that are not currently using them. The Commission concludes that the modified ESP's modification to AEP-Ohio's switching rules, charges, and minimum stay provisions that are set to take effect on January 1, 2015, are consistent with AEP-Ohio's previously approved tariffs. Further, as we previously established in our original opinion and order in this case, these provisions are not excessive or inconsistent with other electric distribution utilities, and will further support the development of competitive markets beginning in January 1, 2015. Therefore, we find these provisions to be reasonable.

9. Distribution Investment Rider

The Company's modified ESP application includes a Distribution Investment Rider (DIR), pursuant to the provisions of Section 4928.143(B)(2)(h) or (d), Revised Code, and consistent with the approved settlement in the Company's distribution rate case,[11] to provide capital funding, including carrying cost on incremental distribution infrastructure to support customer demand and advanced technologies. Aging infrastructure, according to AEP-Ohio, is the primary cause of customer outages and reliability issues. AEP-Ohio reasons that the DIR will facilitate and encourage investments to maintain and improve distribution reliability, align customer expectations and the expectations of the distribution utility, as well as streamline recovery of the associated costs and reduce the frequency of base distribution rate cases. Replacement of aging distribution equipment will also support the advanced technologies of gridSMART which will reduce the duration of customer outages based on preliminary gridSMART Phase 1 information. The Company argues that its existing capital budget forecast includes an annual investment in excess of $150 million plus operations and maintenance in distribution assets. The DIR mechanism, as proposed by the Company, includes components to recover property taxes, commercial activity tax, and to earn a return on plant in-service based on a cost of debt of 5.46 percent, a return on common equity of 10.2 percent utilizing a 47.72 percent debt and 52.28 percent common equity capital structure. The net capital additions to be included in the DIR reflect gross plant in-service after August 31, 2010, as adjusted for accumulated depreciation, because August 31, 2010, is the date certain in the Company's most recent distribution rate case and any increase in net plant that occurs after that date is not recovered in base rates. The Company proposes to cap the DIR mechanism at $86 million in 2012, $104 million for 2013, $124 million for 2014 and $51.7 million for the period January 1 through May 31, 2015, for a total of $365.7 million. As the DIR mechanism is designed, for any year that the Company's investment would result in revenues to be

[11] *In re AEP-Ohio*, Case Nos. 11-351-EL-AIR, et al., Opinion and Order at 5-6 (December 14, 2011) in reference to paragraph IV.A.3 of the Joint Stipulation and Recommendation filed on November 23, 2011.

collected which exceed the cap, the overage would be recovered and be subject to the cap in the subsequent period. Symmetrically, for any year that the revenue collected under the DIR is less than the annual cap allowance, then the difference shall be applied to increase the cap for the subsequent period. The Company notes that the DIR revenue requirement must recognize the $62.344 million revenue credit reflected in the Commission approved Stipulation in the Company's distribution rate case.[12] As proposed by the Company, the DIR would be adjusted quarterly to reflect in-service net capital additions, excluding capital additions reflected in other riders, and reconciled for over and under recovery. The Company specifically requests through the DIR project, that when meters are replaced by the installation of smart meters, that the net book value of the replaced meter be included as a regulatory asset for recovery in a future filing. The DIR mechanism would be collected as a percentage of base distribution revenues. Because the DIR provides the Company with a timely cost recovery mechanism for distribution investment, AEP-Ohio will agree not to seek a change in distribution base rates with an effective date earlier than June 1, 2015. (AEP-Ohio Ex. 116 at 9-12; AEP-Ohio Ex. 110 at 18-19.)

The Company notes that Staff continuously monitors the Company's distribution system reliability by way of service complaints, electric outage reports and compliance provisions pursuant to Chapter 4901:1-10, O.A.C. In reliance on Staff testimony, the Company offers that the reliability of the distribution system was evaluated as a part of this case. (Staff Ex. 106 at 5-6; Tr. at 4339, 4345-4346.)

Customer expectations, as determined by AEP-Ohio, are aligned with the Company's expectations. AEP-Ohio witness Kirkpatrick offered that the updated customer survey results show that 19 percent of residential customers and 20 percent of commercial customers expect their reliability expectations to increase in the next five years. AEP-Ohio points out that when those customers are considered in conjunction with the customers who expect the utility to maintain the level of reliability, customer expectations increase to 90 percent of residential customers and 93 percent of commercial customers. AEP-Ohio states it is currently evaluating, based on several criteria, various asset categories with a high probability of failure and will develop a DIR program, with Staff input, taking into consideration the number of customers affected. (AEP-Ohio Ex. 110 at 11-19.)

OHA supports the adoption of the DIR as proposed by the Company (OHA Br. at 2). Kroger, OCC and APJN, on the other hand, ask the Commission to reject the DIR, as this case is not the proper forum to consider the recovery of distribution-related costs. Kroger, OCC and APJN reason that prudently incurred distribution costs are best considered in the context of a base distribution rate case where such cost are more thoroughly reviewed by the Commission. Kroger asserts that maintaining the distribution

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12 *Id.*

system is a fundamental responsibility of the utility and the Company should continue to operate under the terms of its last distribution rate case until the next such proceeding. If the Commission elects to adopt the DIR mechanism, Kroger endorses Staff's position that the DIR be modified to account for accumulated deferred income taxes (ADIT) and accelerated tax depreciation. In addition, Kroger asserts that the DIR for the CSP rate zone and the OP rate zone are distinct and the cost of each unique service area should be maintained and the distribution costs assigned on the basis of cost causation. OCC and APJN add that the Company's reason for pursuing the DIR, as a component of the ESP rather than in the distribution case, is the expedience of cost recovery and when that rationale is considered in conjunction with the lack of detail on the projects to be covered within the DIR, suggest that the DIR is not needed. (Kroger Ex. 101 at 13-19; Kroger Reply Br. at 3-4; OCC/APJN Br. at 87-89; Tr. at 1184.)

OCC and APJN argue that in determining whether the DIR complies with the requirements of Section 4928.143(B)(2)(h), Revised Code, the Company focuses exclusively on the percentage of residential and commercial customers (71 percent and 73 percent, respectively) who do not believe that their electric service reliability expectations will increase rather than the minority of customers who expect their service reliability expectations to increase (19 percent and 20 percent, respectively). OCC and APJN note that 10 percent of residential customers and seven percent of commercial customers expect their reliability expectations to decrease over the next five years. At best, these interveners assert, the customer survey results are inconclusive regarding an expectation for reliability improvements as the majority of customers are content with the status quo. OCC and APJN state that with the lack of project details, and without providing an analysis of customer reliability expectation alignment with project cost and performance improvements, AEP-Ohio has failed to meet its burden of proof to support the DIR. Accordingly, OCC and APJN request that this provision of the modified ESP be rejected. (AEP-Ohio Ex. 110 at 11-12; OCC/APJN Br. at 987-994).

NFIB and COSE emphasize that the DIR, as AEP-Ohio witness Roush testified, would, if approved as proposed, result in General Service tariff rate customers receiving an increase of approximately 14.2 percent in distribution charges, about $2.00 monthly (NFIB/COSE Br. at 8-9;Tr. at 1162-1163).

Staff testified that consistent with the requirements of Rule 4901:1-10-10(B)(2), O.A.C., AEP-Ohio has rate zone specific minimum reliability performance standards, as measured by the customer average interruption duration index (CAIDI) and system average interruption frequency index (SAIFI).[13] According to Staff, development of each CAIDI and SAIFI takes into account the electric utility's three-year historical system performance, system design, technological advancements, the geography of the utility's

[13] See *In re AEP-Ohio*, Case No. 09-756-EL-ESS, Opinion and Order (September 8, 2010).

service territory, customer perception surveys and other relevant factors. Staff monitors the utility's compliance with the reliability standards. Staff offers that based on customer surveys, 75 to 80 percent of residential and commercial customers are satisfied overall with the Company's service reliability. However, the Company's 2011 reliability measures were below their reliability measures for 2010 for CSP and the SAIFI measure was worse in 2011 than in 2010 for OP. Accordingly, Staff determined that AEP-Ohio's reliability expectations are not currently aligned with the reliability expectations of its customers. Staff further offered that a number of conditions be imposed on the Commission's approval of the DIR, including that the Company be ordered to work with Staff to develop a distribution capital plan, that the DIR mechanism include an offset for ADIT, irrespective of the Company's asserted inconsistency with the distribution rate case settlement, and that gridSMART related cost not be recovered through the DIR, so as to better facilitate the tracking of gridSMART expenditures and savings and benefits of the gridSMART project. Further, Staff proposes that AEP-Ohio be directed to make quarterly filings to update the DIR mechanism, with the filed rate to be effective, unless suspended by the Commission, 60 days after filing. The DIR mechanism, as advocated by Staff, would be subject to annual audits after each May filing and, in addition, subject to a final reconciliation filing on or about May 31, 2015. With the final reconciliation, Staff recommends that any amounts collected by AEP-Ohio in excess of the established cap be refunded to customers as a one-time credit on customer bills. (Staff Ex. 106 at 6-11; Staff Ex. 108 at 3-4; Tr. at 4398.)

AEP-Ohio disagrees with the Staff's rationale that the Company's and customer's expectations are not aligned. The Company reasons that the Staff relies on the reliability indices and the fact that the Company performed below the level of the preceding year. AEP-Ohio notes that in the most recent customer survey results, with the same questions as the prior year, the Company received an 85 percent positive rating from residential customers and a 92 percent positive rating from commercial customers for providing reliable service. Further, AEP-Ohio points out that missing one of the eight applicable reliability standards during the two year period does not, under the rules, constitute a violation. The Company also notes that the reliability standards are affected by storms, which are not defined as major storms, and other factors like tree-caused outages. (Tr. at 4344-4345, 4347, 4366-4367; OCC Ex. 113, Att. JDW-2.)

AEP-Ohio also opposes Staff's recommendation to file the DIR plan in a separate docket, subject to an adversarial proceeding. The Company expresses great concern that this recommendation, if adopted, will result in the Commission micromanaging and becoming overly involved in the "day-to-day operations of the business units within the utility."

As to Staff's and Kroger's proposal to reduce the DIR to account for ADIT, the Company responds that such an adjustment would have resulted in a reduced DIR credit if taken into account when the distribution rate case settlement was pending. AEP-Ohio argues that the decision on the DIR in the modified ESP should continue to mirror the understanding of the parties to the distribution rate case as any change would improperly impact the overall balanced ESP package. (AEP-Ohio Ex. 151 at 9-10.)

As authorized by Section 4928.143(B)(2)(h), Revised Code, an ESP may include the recovery of capital cost for distribution infrastructure investment to improve reliability for customers. A provision for distribution infrastructure and modernization incentives may, but need not, include a long-term energy delivery infrastructure modernization plan. We find that the DIR is an incentive ratemaking to accelerate recovery of the Company's investment in distribution service. In deciding whether to approve an ESP that contains any provision for distribution service, Section 4928.143(B)(2)(h), Revised Code, directs the Commission, as part of its determination, to examine the reliability of the electric utility's distribution system and ensure that customers' and the electric utility's expectations are aligned and that the electric utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system.

In this modified ESP, there is some disagreement between Staff and the Company whether or not AEP-Ohio's reliability expectations are aligned with the expectations of its customers. The Company focuses on customer surveys to conclude that expectations are aligned while Staff interprets the slight degradation in the reliability performance measures to indicate that expectations are not aligned. Despite the different conclusions by the Company and Staff, the Commission finds that both Staff and the Company have demonstrated that indeed, customers have a high expectation of reliable electric service. Given that customer surveys are one component in the factor used to establish the reliability indices and the slight reduction in the level of measured performance on which the Staff concludes that reliability expectations are not aligned, we are convinced that it is merely a slight difference between the Company's and customers' expectations. We also recognize that customer satisfaction is dependent on whether the customer has recently experienced any service outages and how quickly service was restored.

The Commission finds that, adoption of the DIR and the improved service that will come with the replacement of aging infrastructure will facilitate improved service reliability and better align the Company's and its customers' expectations. The Company appears to be placing sufficient proactive emphasis on and will dedicate sufficient resources to the reliability of its distribution system. Having made such a finding, the Commission approves the DIR as an appropriate incentive to accelerate recovery of AEP-Ohio's prudently incurred distribution investment costs. We emphasize that the DIR mechanism shall not include any gridSMART costs; the gridSMART projects shall be separate and apart from the DIR mechanism and projects. With this clarification, we believe it is unnecessary to address the Company's request to allow the remaining net book value of removed meters to be included as a regulatory asset recoverable through the DIR mechanism.

We agree with Staff and Kroger that the DIR mechanism be revised to account for ADIT. The Commission finds that it is not appropriate to establish the DIR rate mechanism in a manner which provides the Company with the benefit of ratepayer supplied funds. Any benefits resulting from ADIT should be reflected in the DIR revenue requirement. Therefore, the Commission directs AEP-Ohio to adjust its DIR to reflect the ADIT offset.

As was noted in the December 14, 2012 Order on the ESP 2, we find that granting the DIR mechanism requires Commission oversight. We believe that it is detrimental to the state's economy to require the utility to be reactionary or allow the performance standards to take a negative turn before we encourage the electric utility to proactively and efficiently replace and modernize infrastructure and, therefore find it reasonable to permit the recovery of prudently incurred distribution infrastructure investment costs. AEP-Ohio is correct to aspire to move from a reactive to a more proactive replacement maintenance program. The Company is directed to work with Staff to develop a plan to emphasize proactive distribution maintenance that focuses spending on where it will have the greatest impact on maintaining and improving reliability for customers. Accordingly, AEP-Ohio shall work with Staff to develop the DIR plan and file the plan for Commission review in a separate docket by December 1, 2012.

With these modifications, we approve the DIR mechanism, and direct Staff to monitor, as part of the prudence review, by an independent auditor for in-service net capital additions and compliance with the proactive distribution maintenance plan developed with the assistance of the Staff. The proactive distribution infrastructure plan shall quantify reliability improvements expected, ensure no double recovery, and include a demonstration of DIR expenditures over projected expenditures and recent spending levels. The DIR mechanism will be reviewed annually for accounting accuracy, prudency and compliance with the DIR plan developed by the Staff and AEP-Ohio.

10. Pool Modification Rider

The modified ESP application includes the planned termination of the AEP East Pool Agreement (Pool Agreement). As a provision of this ESP,. AEP-Ohio requests approval of a Pool Termination Rider (PTR), initially set at zero. If the Company's corporate separation plan filed in Case No. 12-1126-EL-UNC is approved as proposed by the Company, and the Amos and Mitchell units are transferred as proposed to AEP-Ohio affiliates, then AEP-Ohio will not seek to implement the PTR irrespective of whether lost revenues exceed $35 million annually. However, if the corporate separation plan is denied or modified, then AEP-Ohio requests permission to file for the recovery of lost revenue in association with termination of the Pool Agreement via a non-bypassable rider. The PTR, according to AEP-Ohio, is designed to offset the revenue losses caused by the termination of the Pool Agreement since a significant portion of AEP-Ohio's total revenues come from sales of power to other Pool members. The Company argues that with the termination of the Pool Agreement, the Company will need to find new or additional revenue to recover the costs of operating its generating assets, or it will need to reduce the cost associated with those assets. As AEP-Ohio claims the lost revenues[14] from capacity sales to Pool Agreement members cannot be mitigated by off-system sales in the market alone. The Company agrees that it will only seek to recover lost pool termination revenues in excess of $35 million per year during the term of the ESP. (AEP-Ohio Ex. 103 at 21-23.)

OCC, APJN, FES and IEU oppose the adoption of the PTR, as they reason there is no provision of Section 4928.143(B)(2), Revised Code, which authorizes such a charge and no Commission precedent for the PTR. IEU asserts that approval of the PTR would essentially be the recovery of above-market or transition revenue in violation of state law and the electric transition plan (ETP) Stipulations.[15] As proposed, the interveners claim that the PTR is one-sided to the benefit of the Company. FES offers that there is insufficient information in the record to allow the Commission to evaluate the terms and conditions of the PTR, as a part of the modified ESP, to require ratepayers to submit $350-$400 million over the term of the ESP. Furthermore, OCC and APJN note that the Commission has disregarded transactions related to the Pool Agreement for the purpose of considering revenue or sales margins from opportunity sales (capacity and energy) as to FAC costs or consideration of off-system sales in the evaluation of significantly excessive earnings test.[16] Accordingly, OCC and APJN reason that because the Commission has previously disregarded transactions related to the Pool Agreement, that it would be unfair and unreasonable to ensure AEP-Ohio is compensated for lost revenue based on the Pool Agreement at the cost of ratepayers. For these reasons, OCC and APJN believe the PTR should be rejected or modified such that AEP-Ohio customers receive the benefits from the Company's off-system sales. IEU says the PTR provides a competitive advantage to GenResources and, therefore, violates corporate separation requirements. (OCC/APJN Br. at 85-87; IEU Br. at 69; IEU Ex. 124 at 30-31; FES Br. at 106-109; Tr. at 582, 698.)

The Company dispels the assertion that there is no statutory basis for a pool termination cost recovery provision in an ESP on the basis that the Commission has already rejected this argument in its December 14, 2011, Order on the ESP 2, where the Commission determined a pool termination rider may be approved "pursuant to Section

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[14] AEP-Ohio would determine the amount of lost revenue by comparing the lost pool capacity revenue for the most recent 12 month period preceding the effective date of the change in the AEP Pool to increases in net revenue related to new wholesale transactions or decreases in generation asset costs as a result of terminating the Pool Agreement.

[15] *In re AEP-Ohio*, Case Nos. 99-1729-EL-ETP and 99-1730-EL-ETP, Order (September 28, 2000).

[16] *In re AEP-Ohio*, ESP I Order at 17 (March 18, 2009); *In re AEP-Ohio*, Case No. 10-1261-EL-UNC, Order at 29 (January 11, 2011).

4928.143(B), Revised Code," and further concluded that establishing a rider "at a zero rate does not violate any regulatory principle or practice."[17] According to the Company, the other criticisms that these parties raise regarding the PTR are objections as to how, or the extent to which, pool termination costs should be recoverable through the rider which are not ripe and should be addressed if, and only if, AEP-Ohio actually pursues recovery of any such costs in the future as part of a separate proceeding. (AEP-Ohio Reply Br. at 59-60.)

We find statutory support for the adoption of the PTR in Section 4928.143(B)(2)(h), Revised Code. The PTR serves as an incentive for AEP-Ohio to move to a competitive market to the benefit of its shopping and non-shopping customers, without regard to the possible loss of revenue associated with the termination of the Pool Agreement with the full transition to market for all SSO customers by no later than June 1, 2015. Therefore, we approve the PTR as a placeholder mechanism, initially established at a rate of zero, contingent upon the Commission's review of an application by the Company for such costs. The Commission notes that in permitting the creation of the PTR, it is not authorizing the recovery of any costs for AEP-Ohio, but is allowing for the establishment of a placeholder mechanism, and any recovery under the PTR must be specifically authorized by the Commission. If, and when, AEP-Ohio seeks recovery under the PTR, it will maintain the burden set forth in Section 4928.143, Revised Code. In addition, the Commission finds that in the event AEP-Ohio seeks recovery under the PTR, AEP-Ohio must first demonstrate the extent to which the Pool Agreement benefitted Ohio ratepayers over the long-term and the extent to which the costs and/or revenues should be allocated to Ohio ratepayers. Further, AEP-Ohio must demonstrate to the Commission that any recovery it seeks under the PTR is based upon costs which were prudently incurred and are reasonable. Importantly, this Commission notes that AEP-Ohio will only be permitted to requests recovery should this Commission modify or amend its corporate separation plan as filed in Case No. 12-1126-EL-UNC only as to divestiture of the generation assets; we specifically deny the Company's request for recovery through the PTR based on any other amendment or modification of the corporate separation plan by this Commission or the Federal Energy Regulatory Commission (FERC) or FERC's denial or impediment to the transfer of the Amos and Mitchell units to AEP-Ohio affiliates. As such, AEP-Ohio's right to recover lost revenues under the PTR is based exclusively on the actions, or lack thereof, of this Commission.

11. Capacity Plan

Pursuant to the Commission's Entry on Rehearing issued February 23, 2012, in the ESP 2 cases, and the Entry issued March 7, 2012, in the Capacity Case, the Commission directed that the Capacity Case proceed, without further delay, to facilitate the development of the record to address the issues raised, outside of the ESP proceeding.

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17 *In re AEP-Ohio*, Case No. 11-346-EL-SSO et al., Order at 50 (December 14, 2011).

While the Capacity Case continued on an expedited schedule to determine the state compensation mechanism, AEP-Ohio nonetheless included, as a component of this modified ESP, a capacity provision different from its litigation position in the Capacity Case, which may be summarized as follows. As a component of this modified ESP, the Company proposes a two-tiered, capacity pricing mechanism, with a tier 1 rate of $145.79 per MW-day and a tier 2 rate of $255.00 per MW-day. Shopping customers, within each rate class, would receive tier 1 capacity rates in proportion to their relative retail sales level based on the Company's retail load. During 2012, 21 percent of the Company's total retail load would receive tier 1 capacity and in 2013, the percentage would increase to 31 percent. In 2014, through the end of the ESP, May 31, 2015, the tier 1 set aside percentage would increase to 41 percent of the Company's retail load. All other shopping customers would receive tier 2 capacity rates. For 2012, an additional allotment of tier 1 priced capacity will be available to non-mercantile customers who are part of a community that approved a governmental aggregation program on or before November 8, 2011, even if the set-aside has been exceeded. AEP-Ohio does not propose any special capacity set-aside for governmental aggregation programs after 2012. (AEP-Ohio Ex. 101 at 15; AEP-Ohio Ex. 116 at 6-7.)

AEP-Ohio argues that its embedded cost-based charge for capacity is $355.72 per MW-day, as supported by the Company in the Capacity Case. Further, AEP-Ohio projects, with forward energy pricing decreasing over the remainder of 2012 by approximately 25 percent and based upon the switching rates experienced by other Ohio electric utilities, that by the end of 2012 shopping rates in AEP-Ohio territory will increase to 65 percent of residential load, 80 percent of commercial load and 90 percent of industrial load (excluding one large customer). AEP-Ohio reasons that the two-tier capacity pricing mechanism is a discount from the Company's embedded cost of capacity which will provide CRES providers headroom, the ability to offer shopping customers lower competitive electric service rates and expand competition in the Company's service territory and, as a component of this modified ESP, balances the revenue losses likely to be experienced by the Company. Further, AEP-Ohio submits that the capacity pricing offered as a part of this modified ESP is intended to mitigate, in part, the financial harm the Company will potentially endure if the Company is required to provide capacity at PJM's RPM-based rate. (AEP-Ohio Ex. 116 at 4-5, 8-9; Tr. at 332-333.)

As an alternative to the two-tiered capacity mechanism, AEP-Ohio proposes as a component of the modified ESP, to charge CRES providers its embedded cost of capacity $355.72 per MW-day with a $10 per MWh bill credit to shopping customers, subject to a cap of $350 million through December 31, 2014. Shopping credits would be limited to up to 20 percent of the load of each customer class for June 2012 through May 2013, and increase to 30 percent for the period June 2013 through May 2014 and then to 40 percent for the period June 2014 through December 2014. AEP-Ohio's rationale for the alternative is to ensure shopping customers receive a direct and tangible benefit to shop that is fixed and known regardless of the CRES provider selected. (AEP-Ohio Ex. 116 at 15-17; Tr. at 427, 1434.)

On July 2, 2012, the Commission issued the Order in the Capacity Case (Capacity Order) wherein the Commission determined $188.88 per MW-day as the appropriate charge to enable the Company to recover its capacity costs pursuant to its Fixed Resource Requirements (FRR) obligations from CRES providers.[18] However, the Capacity Order also directed that AEP-Ohio's capacity charge to CRES providers shall be the auction-based rate, as determined by PJM via its reliability pricing model (RPM), including final zonal adjustments, on the basis that the RPM rate will promote retail electric competition.[19]

In the Capacity Order, the Commission also authorized AEP-Ohio to modify its accounting procedures to defer the incurred capacity costs not recovered from CRES providers, commencing June 1, 2012, through the end of this modified ESP, with the recovery mechanism to be established in this proceeding.[20]

In this Order on the modified ESP, the Commission adopts, as part of the RSR, the recovery of the difference between the RPM-based capacity rate and AEP-Ohio's state compensation mechanism for capacity as determined by the Commission.

Staff endorses the Company's recovery of the difference between the state compensation mechanism for capacity and the RPM rate (Staff Reply Br. at 13). On the other hand, IEU, OCC and APJN argue that there is no record evidence in this modified ESP case, or any other proceeding, to determine an appropriate mechanism to collect deferred capacity charges in contradiction of the requirements in Section 4903.09, Revised Code, and the parties were not afforded due process on the issue. Furthermore, OCC and APJN reason that the capacity charge deferrals cannot be a provision of an ESP as the charges do not fall within one of the specified categories listed in Section 4928.143(B)(2), Revised Code, and there is no statutory basis under Chapter 4928, Revised Code, for such charges. OCC and APJN also contend approval of the recovery of deferred capacity charges violates state policies expressed in Section 4928.02, Revised Code, at paragraph (A), which requires reasonably priced retail electric service; at paragraph (H), which prohibits anticompetitive subsidies from noncompetitive retail electric service to competitive retail service; and at paragraph (L), which requires the Commission to protect at-risk populations. (OCC/APJN Reply Br. at 18; IEU Reply Br. 6-7).

18 In re Capacity Case, Order at 33-36 (July 2, 2012).

19 In re Capacity Case, Order at 23 (July 2, 2012).

20 In re Capacity Case, Order at 23 (July 2, 2012).

Certain parties that oppose the Commission's incorporation of the Capacity Case deferrals in the modified ESP overlook the fact that the Capacity Case was opened prior to each of the ESP 2 applications filed by AEP-Ohio and that each of the applications proposed a state compensation capacity charge and plan for resolution of the issue. The Commission rejects the Company's two-tier capacity plan and rates, proposed as a part of this modified ESP 2.

Furthermore, in accordance with Section 4928.144, Revised Code, the Commission may order any just and reasonable phase-in of any rate or price established under Sections 4928.141, 4928.142, or 4928.143, Revised Code, including carrying charges. Where the Commission establishes a phase-in, the Commission must also authorize the creation of the regulatory asset to defer the incurred costs equal to the amount not collected, plus carrying charges on the amount not collected, and authorize the recovery of the deferral and carrying charges by way of a non-bypassable surcharge.

Several of the interveners argue that because the record in the modified ESP was closed when the Capacity Order was issued, the deferral of capacity charges was not made an issue in the modified ESP case, the record does not support the deferral of capacity charges or that the parties were not afforded due process on the issue. We disagree. AEP-Ohio proposed certain capacity charges and a plan as a part of this modified ESP and consistent with the Commission's authority we may approve or modify and approve an ESP. Nothing in the Section 4928.144, Revised Code, limits the Commission's authority to modify the ESP to include deferrals on its own motion. With the Commission's decision to begin collecting the deferral in part through the RSR, all other issues raised on this matter are addressed in that section of the Order.

12. Phase-in Recovery Rider and Securitization

As part of AEP-Ohio's ESP 1 case, to mitigate the impact of the rate increase for customers, the Commission ordered, pursuant to Section 4928.144, Revised Code, the Company to phase-in any increase authorized over an established percentage for each year of the ESP.[21] The Commission authorized CSP and OP to establish a regulatory asset to record and defer fuel expenses, with carrying costs at the weighted average cost of capital (WACC), with recovery through a non-bypassable surcharge to commence January 1, 2012, and continue through December 31, 2018.[22] This aspect of the ESP 1 Order is final and non-appealable. On September 1, 2011, CSP and OP filed the Phase-in Recovery Case application to request the creation of the Phase-In Recovery Rider (PIRR), a mechanism to recover the accumulated deferred fuel costs, including carrying costs, to be effective with the first billing cycle of January 2012. The Phase-in Recovery Case was a part of the proposed ESP 2 Stipulation which was initially approved by the Commission on

[21] ESP 1 Order at 22.

[22] ESP 1 Order at 20-23; First ESP EOR at 6-10.

December 14, 2011. Consistent with the Commission's directive in the February 23, 2012 Entry on Rehearing rejecting the ESP Stipulation, a procedural schedule was established for the Phase-in Recovery Case to proceed independently of any ESP. On August 2, 2012, the Commission issued its decision on the Company's PIRR application.

Notwithstanding the Phase-in Recovery Case, as a part of this modified ESP case, AEP-Ohio requests that recovery of the deferred fuel expenses be delayed, while continuing to accrue carrying cost at WACC, until June 2013. The Company does not propose to extend the recovery period. AEP-Ohio also proposes that the PIRRs of CSP and OP be combined. The rationale presented by the Company for delaying collection of the PIRR is to coincide with and offset the consolidation of the FAC, which the Company reasons will minimize customer rate impacts. According to AEP-Ohio witness Roush, combining the PIRR rates will increase the rate for customers in the CSP rate zone and reduce the rate for customers in the OP rate zone. In this modified ESP proceeding, AEP-Ohio also requests that the Commission suspend the procedural schedule in the PIRR cases. (AEP-Ohio Ex. 118 at 8; AEP-Ohio Ex. 119 at 3; AEP-Ohio Ex. 111 at 5-6.)

AEP-Ohio witness Hawkins acknowledges that legislation permitting the securitization of the PIRR was passed in December 2011 but claims that securitization of the PIRR regulatory asset will likely take about nine months to finalize after the issuance of a final, non-appealable order. AEP-Ohio admits that securitization of the PIRR regulatory assets would reduce customer costs as a result of the reduction in carrying costs and provide the Company with capital to assist with the transition to market. (AEP-Ohio Ex. 102 at 7-8.)

OCC opposes the notion that AEP-Ohio be permitted to earn a return on its own capital at WACC while the PIRR is delayed at the Company's request. Further, OCC and APJN agree with Staff that collection of the PIRR should commence as soon as possible after the Commission issues its Order, the delay in collection amounts to an additional cost of $64.5 million. OCC and APJN argue that there is no justification for the delay and the delay at WACC only serves to benefit the Company. Since the delayed collection is at the Company's request, OCC and APJN advocate that no further carrying charges accrue or the carrying charge be reduced to the long-term cost of debt. (OCC Ex. 115 at 4-7; OCC Ex. 111 at 20-22; OCC/APJN Br. at 64-72)

Similarly, IEU argues that the delay of the PIRR violates Section 4928.144, Revised Code, which requires that the delay in collection at WACC be consistent with sound regulatory practice, just, and reasonable. IEU estimates the additional carrying cost will be at least an additional $40 to $45 million and reasons that AEP-Ohio was only authorized to collect WACC on deferred fuel costs through December 31, 2011, the end of ESP 1. (IEU Ex. 129 at 30-31, 14; Tr. at 3639, 4549.)

Ormet argues that the increased carrying charge to defer the implementation of the PIRR until June 2013 is excessive and presents a number of legal and pragmatic issues. Ormet notes that the interest to be incurred by delaying the implementation of the PIRR is based on an interest rate of 11.26 percent, more than AEP-Ohio utilized to determine the RSR. Ormet encourages the Commission to reduce the carrying cost, in light of the change in economic and financial circumstances since the ESP 1 Order, to the short-term cost of debt and to delay PIRR implementation until securitization is complete or at least until June 2013. (Ormet Br. at 23-24.)

Ormet and IEU request that the Company be directed to maintain the separate PIRR mechanisms for CSP and OP to reduce the impact on ratepayers. IEU notes that CSP customers have contributed approximately one percent of the total PIRR balance. Ormet notes that the deferred fuel expenses that are the basis of the PIRR, as provided in the ESP 1 Order, is a final non-appealable order for which AEP-Ohio may rely to seek securitization. AEP-Ohio has argued such in this case in its filing of March 6, 2012, and Ormet contends that pursuant to *Nationwide Ins. Co. v. Hall*, No. 1258, 1978 WL 214906 at *3 (Ohio App. 7 Dist. Mar. 23, 1978) AEP-Ohio can not now assert a contradictory legal position. (Tr. at 4543-4548; Ormet Ex. 106B at 9; Ormet Br. at 23-27; IEU Ex. 129 at 9-11; IEU Br. at 72)

Ormet asserts that blending the PIRR rate for CSP and OP rate zones constitutes a retroactive change in fuel costs for which AEP-Ohio has failed to offer any justification. Ormet states that at the time the fuel cost were incurred, CSP and OP were not merged and that the overwhelming majority of the PIRR balance is from the OP rate zone. The rationale offered by Ormet is that the blending of the FAC rate is fundamentally different from the blending of the PIRR rate, as FAC is an ongoing look at current and future fuel costs where the PIRR is the collection of previously incurred, deferred fuel costs. Ormet argues that the Commission has previously concluded that the distinction between retrospective and prospective is key to what constitutes prohibited retroactive ratemaking. Ormet asks that, consistent with the Commission's determination in the ESP 1 Entry on Remand Order, that the Commission find the blending of the CSP and OP PIRR balances equates to changing the rate for previously incurred but deferred fuel costs. (Tr. at 1187, 4536-4537, 4540; Ormet Br. at 27-31.)

The Company reasons that the PIRR regulatory asset is on the books of OP, as the surviving entity post-merger, along with all of the other assets and liabilities of the former CSP. Therefore, it is appropriate for all AEP-Ohio customers to pay the PIRR. AEP-Ohio notes that Staff advocates that the FAC and PIRR be immediately unified and implemented, because CSP customers benefit from a rate impact perspective with the merging of both rates (Tr. at 4539-4540).

Staff opposes the Company's request to delay recovery of the merged PIRR rates and recommends that the Commission direct recovery to commence upon approval of the modified ESP to avoid increased carrying charges associated with the dely. Staff notes that with a PIRR balance of approximately $549 million, delaying PIRR recovery until June 2013 results in additional carrying charges of $71 million at the WACC. Further, Staff supports the merger of the PIRR rates. (Staff Ex. 109 at 4-5.)

AEP-Ohio answers that the difference between the Company's proposal to delay collection of the PIRR in comparison to the Staff and certain interveners opposition to the delay is essentially a balancing or prioritizing between two goals: mitigating present rate impacts and reducing the total carrying charges. The Company's proposal was aimed at addressing the first goal and the Staff's position prioritizes the second goal. The Company contends that its proposal to delay implementation of the PIRR until June 2013 to coincide with the unification of FAC rates is reasonable, results in minimal immediate rate impacts to customers, and should be approved.

AEP-Ohio's request to suspend the procedural schedule in the PIRR case is moot, as it does not appear that the Company made a similar request in the Phase-in Recovery Cases, and given that the Commission has issued its decision on the PIRR application. Consistent with the Company's limited request as to the PIRR in this modified ESP, we will address the commencement of the amortization period for the PIRR, combining the PIRR rates for the CSP and OP rate zones and securitization. Any remaining issue raised as to the deferred fuel expense or the PIRR that is not addressed in the Phase-in Recovery Order or this modified ESP Order is denied.

As AEP-Ohio correctly points out, delaying collection of the PIRR to offset against the merged FAC rates, as opposed to immediately commencing collection of the PIRR, is indeed the prioritizing between two goals. AEP-Ohio's request to delay commencement of the amortization period for the PIRR is denied. In this case, where the accrued carrying charges during the requested delay are estimated to be an additional $40 to $71 million, it is unreasonable for the Commission to approve the delay and permit carrying charges to continue to accrue merely to facilitate one charge offsetting another. AEP-Ohio is directed to commence recovery of the PIRR charges as soon as practicable after the issuance of this Order.

We agree with the recommendation of Ormet and IEU to maintain separate PIRR rates for the CSP and OP rate zones. The PIRR balance was incurred primarily by OP customers, and according to cost causation principles, the recovery of the balance should be from OP customers. Further, as discussed above, the Commission directs that FAC rates should be maintained on a separate basis.

IEU argues that the PIRR fails to address the requirements of Section 4928.20(I), Revised Code,[23] that requires non-bypassable charges arising from a phase-in deferral are applicable to customers in governmental aggregation programs only in proportionate to the benefit received. IEU's claim that the PIRR violates Section 4928.20(I), Revised Code, is misdirected. The PIRR is not part of this ESP proceeding but was the directive of the Commission in the Company's prior ESP case. Therefore, the Commission finds that IEU should have raised this issue in the ESP 1 case or when the Commission established the PIRR and that Section 4928.144, Revised Code, as to the collection of the PIRR, is not applicable to this modified ESP proceeding.

The Commission notes that AEP-Ohio witness Hawkins testified that securitization of the PIRR regulatory assets would reduce customer costs through the reduction of the carrying cost and provide AEP-Ohio with the needed capital to assist with the transition to competition. AEP-Ohio also states that recovery of the PIRR can commence before securitization is complete. Ormet supports securitization of the PIRR. (AEP-Ohio Ex. 102 at 8; Ormet Br. at 24-25.)

Finally, while AEP-Ohio does not specifically propose securitization of the PIRR in the modified ESP, AEP-Ohio notes that securitization offers a benefit to both customers and AEP-Ohio. Further, no parties opposed the idea of securitizing the PIRR. Accordingly, we direct AEP-Ohio to take advantage of this extremely useful tool our General Assembly created for electric utilities and their customers through House Bill 364 and securitize the PIRR deferral balance. Securitization not only leads to lower utility bills for all customers as a result of reduced carrying costs, but also leads to lower borrowing costs for AEP-Ohio. The Commission finds it extremely important, particularly when our State has been hit by tough economic times, to keep customer utility bills as low as possible, and securitization of the PIRR provides us with a means to ensure we protect customer interests. Therefore, AEP-Ohio shall initiate the securitization process for the PIRR deferral balance as soon as practicable..

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[23] Section 4928.20(I), Revised Code, states:

> Customers that are part of a governmental aggregation under this section shall be responsible only for such portion of a surcharge under section 4928.144 of the Revised Code that is proportionate to the benefits, as determined by the commission, that electric load centers within the jurisdiction of the governmental aggregation as a group receive. The proportionate surcharge so established shall apply to each customer of the governmental aggregation while the customer is part of that aggregation. If a customer ceases being such a customer, the otherwise applicable surcharge shall apply. Nothing in this section shall result in less than full recovery by an electric distribution utility of any surcharge authorized under section 4928.144 of the Revised Code. Nothing in this section shall result in less than the full and timely imposition, charging, collection, and adjustment by an electric distribution utility, its assignee, or any collection agent, of the phase-in-recovery charges authorized pursuant to a final financing order issued pursuant to sections 4928.23 to 4928.2318 of the Revised Code.

13. Generation Asset Divestiture

The Company describes, but does not request as a part of this modified ESP, its proposed application for full corporate separation filed in Case No. 12-1126-EL-UNC (Corporate Separation Case), pursuant to the requirements of Section 4928.17, Revised Code, and Chapter 4901:1-37, O.A.C.[24] AEP-Ohio asserts full corporate separation is a necessary prerequisite for generation asset divestiture and AEP-Ohio's transition to an auction-based SSO. Pursuant to the proposed modified ESP and the Company's proposed corporate separation plan, AEP-Ohio will retain transmission and distribution-related assets, its REPAs and the associated RECs. AEP-Ohio will transfer to its generation affiliate, GenResources, existing generation units and contractual entitlements, fuel-related assets and contracts and other assets and liabilities related to the generation business.[25] The generation assets will be transferred at net book value. AEP-Ohio proposes to retain senior notes and pollution control revenue bonds, as such long-term debt is not secured by the generation assets being transferred to GenResources. The Company expects to complete termination of the Pool Agreement and full corporate separation by January 1, 2014.[26] (AEP-Ohio Ex. 103 at 4-6, 8, 21-22.)

AEP-Ohio is a Fixed Resource Requirement (FRR) entity, pursuant to the requirements of PJM Interconnection LLC (PJM), and must remain an FRR until June 1, 2015. To meet its FRR obligations after full corporate separation and before the proposed energy auctions for delivery commencing January 1, 2015, the Company states GenResources will provide AEP-Ohio, via a full requirements wholesale agreement, its load requirements to supply non-shopping customers. Pursuant to the proposed modified ESP, AEP-Ohio proposes that for the period January 1, 2015 through May 31, 2015, GenResources will provide AEP-Ohio only capacity, no energy, at $255 per MW-day and the contract between AEP-Ohio and GenResources will terminate effective June 1, 2015, when both energy and capacity will be provided to SSO customers through an auction. While AEP-Ohio is an FRR entity, the Company states it will make capacity payments to GenResources for the energy only auctions proposed in this modified ESP at $255 per MW-day. Generation-related revenues paid to AEP-Ohio by Ohio ratepayers will be passed through to GenResources for capacity and energy received for the SSO load, and AEP-Ohio will reimburse GenResources on a dollar-for-dollar basis for transmission, ancillary, and other service charges billed to GenResources by PJM to serve AEP-Ohio's

24 See *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, filed March 30, 2012.

25 AEP-Ohio notes that after transferring the generation assets and liabilities to GenResources, GenResources will transfer Amos unit 3 and 80 percent of the Mitchell Plant to Appalachian Power Company (APCo) and transfer the balance of the Mitchell Plant to Kentucky Power Company (KYP), so the utilities can meet their respective load requirement absent the AEP East Pool Agreement (AEP-Ohio Ex. 101 at 22).

26 As a part of the modified ESP, AEP-Ohio requests approval for a Pool Termination Rider which is addressed in a separate section of this Order.

SSO load. In addition, AEP-Ohio will remit all capacity payments made by CRES providers pursuant to PJM's Reliability Assurance Agreement to GenResources as well as revenues from the Retail Stability Rider as compensation for fulfillment of AEP-Ohio's FRR obligations. (AEP-Ohio Ex. 101 at 23; AEP-Ohio Ex. 103 at 6-8; Tr. at 515-519.)

IEU, OCC and APJN argue that because AEP-Ohio has made the modified ESP filing contingent on receiving approval of the corporate separation plan yet failed to request consolidation of the Corporate Separation Case, the Commission cannot approve the corporate separation plan as a part of this proceeding. (OCC/APJN Br. at 73; IEU Br. 76-77.)

In fact, IEU argues that AEP-Ohio is not the FRR entity but, American Electric Power Service Corporation (AEPSC) is the FRR entity on behalf of all of the American Electric Power operating companies within PJM and, therefore, AEP-Ohio does not have any FRR obligation. Nor has AEP-Ohio offered into evidence, IEU notes, AEPSC's FRR capacity plan or indicated which of AEP-Ohio's generation assets are part of the capacity plan. IEU reasons that AEP-Ohio's generation assets are not dedicated to AEP-Ohio's distribution customers and may be replaced by other capacity resources. (IEU Ex. 125 at 23, AEP-Ohio Ex. 103 at 9.)

DER and DECAM argue that AEP-Ohio's proposal to contract with GenResources to serve the SSO load at the proposed capacity price after corporate separation is an illegal violation of the corporate separation laws and violates state policy causing a negative impact on the ability of unaffiliated CRES providers to compete in OP territory (Tr. at 812-813; DER/DECAM Br. at 11).

Staff opposes AEP-Ohio's request to retain $296 million in pollution control bonds, where there has not been, according to Staff, any demonstration that use of the intercompany notes would have a substantial negative affect on the generation affiliate's cost of debt. Staff proposes that AEP-Ohio be directed to make a filing with the Commission within six months after the completion of corporate separation, to demonstrate that there is not any substantial negative impact on AEP-Ohio if the debt or intercompany notes are not transferred to the generation affiliate. Therefore, Staff recommends that the Commission deny this aspect of the Company's ESP proposal at this time. Further, Staff recommends that the Corporate Organization chart be updated to reflect the legal entities that are related to American Electric Power Inc., as well as all reportable segments related to AEP-Ohio, in a format and manner similar to the information American Electric Power Inc. provides in its 10K filing to the Securities and Exchange Commission. (Staff Ex. 108 at 5-6; Tr. at 4405-4406.)

AEP-Ohio did not request consolidation of its pending corporate separation plan in conjunction with this modified ESP application, and as such the Commission will consider the corporate separation application in a separate docket. As such, the primary issues to be considered in this modified ESP proceeding is how the divestiture of the generation assets and the agreement between AEP-Ohio and GenResources will impact SSO rates.

We find IEU's arguments, that AEP-Ohio is not the entity committed to an FRR obligation with PJM to be form over substance. AEPSC entered into the FRR agreement on behalf of AEP-Ohio and other AEP-Ohio operating affiliates and the legal obligation of AEP-Ohio is no less binding than if AEP-Ohio entered into the agreement directly.

The Commission finds that sufficient information regarding the proposed generation asset divestiture and corporate separation, as reflected in more detail in the Corporate Separation Case, has been provided in this modified ESP case to allow the Commission to reasonably conclude that termination of the Pool Agreement and corporate separation facilitate AEP-Ohio's transition to a competitive market in Ohio. With the modification and adoption of the modified ESP, as presented in this Order, the Commission may reasonably determine the ESP rates, including the rate impact of the generation asset divestiture, on the Company's SSO customers for the term of the modified ESP, where upon SSO rates will subsequently be subject to a competitive bidding process. While, AEP-Ohio proposes to enter into an agreement with GenResources to provide AEP-Ohio capacity at $255 per MW-day, we emphasize that based on the Commission's decision in the Capacity Case, AEP-Ohio will not receive any more than the state compensation capacity charge of $188.88 per MW-day from Ohio customers during the term of this ESP.

As the Commission understands the Company's description of the generation divestiture, all AEP-Ohio generation facilities, except Amos and Mitchell, will be transferred to GenResources at net book value. Amos and Mitchell will ultimately be transferred to AEP-Ohio operating affiliates at net book value.

Staff raises some concern with the implementation of corporate separation and the lack of the Company's transfer of all debt and/or intercompany notes to GenResources. Despite the Staff's recommendation, the Commission approves AEP-Ohio's requests to retain the pollution control bonds contingent upon a filing with the Commission demonstrating that AEP-Ohio ratepayers have not and will not incur any costs associated with the cost of servicing the associated debt. More specifically, AEP-Ohio ratepayers shall be held harmless for the cost of the pollution control bonds, as well as any other generation or generation related debt or inter-company notes retained by AEP-Ohio. AEP-Ohio shall file such information with the Commission, in this docket no later than 90 days after the issuance of this Order. Accordingly, the Commission finds that, subject to our approval of the corporate separation plan, the electric distribution utility should divest its generation assets from its noncompetitive electric distribution utility assets by transfer to its separate competitive retail generation subsidiary, GenResources, as represented in this modified ESP. The Company states that it has notified PJM of its intention to enter PJM's auction process for the delivery year 2015-2016. The Commission will review the remaining issues presented in the Company's Corporate Separation Case.

In regards to the contract between AEP-Ohio and GenResources, FES contends that after corporate separation AEP-Ohio cannot simply pass-through the generation revenues it receives without evidence that the cost are prudent consistent with Section 4928.143(B)(2)(a), Revised Code, and AEP-Ohio has done nothing to establish that $255 per MW-day for capacity is prudent. The price of $255 per MW-day is unrelated to cost or market rates, and according to FES, appears to be well above market. Furthermore, Constellation and Exelon witness Fein testified that Exelon made an offer of energy and capacity and an offer for capacity only to serve AEP-Ohio's SSO load June 1, 2014 through May 31, 2016, at a cost lower than the Company is proposing as a part of this modified ESP. Constellation and Exelon emphasize that the PJM tariff does not prohibit an FRR entity from making bilateral purchases in the market to meet its capacity obligations. (Constellation/Exelon Ex. 101 at 17-19). FES notes that according to testimony offered by AEP-Ohio witness Nelson, the $255 MW-day for capacity is not based on costs nor indexed to the market rate. Furthermore, FES points out that AEPSC is negotiating the contract for both AEP-Ohio and GenResources. AEP-Ohio has no intent, based on the testimony of Mr. Nelson, to evaluate whether the cost of its contract with GenResources for SSO service could be reduced by contracting with another supplier. Based on the record evidence, FES argues that this aspect of the modified ESP does not comply with the requirements of Section 4928.143(B)(2)(a), Revised Code, and the contract between AEP-Ohio and GenResources, after corporate separation does not comply with the FERC *Edgar* guidelines, which direct that no wholesale sale of electric energy or capacity between a franchised public utility with captive customers and a market-regulated power sales affiliate may take place without first receiving FERC authorization for the transaction under section 205 of the Federal Power Act. (Tr. at 523-526; FES Br. at 102-105.)

The Commission finds, that once corporate separation is effective and AEP-Ohio procures its generation from GenResources that it is appropriate and reasonable for certain revenues to pass-through AEP-Ohio to GenResources. Specifically, the revenues AEP-Ohio receives, after corporate separation is implemented, from the RSR which are not allocated to recovery of the deferral, revenue equivalent to the capacity charge of $188.99/MW-day authorized in Case No. 10-2929-EL-UNC, generation-based revenues from SSO customers, and revenue for energy sales to shopping customers, should flow to to GenResources. We recognize, as AEP-Ohio acknowledges and FES discusses in its reply brief, that the contract between AEP-Ohio and GenResources is subject to prior FERC approval. We do not make, as a part of our review of the Company's modified ESP application, any expressed or implied endorsement of the terms or conditions of the AEP-Ohio contract with GenResources, as presented in this case.

14. GridSMART

The Company's modified ESP application proposes the continuation of the gridSMART rider approved by the Commission in the ESP 1 Order, with two modifications. First, AEP-Ohio requests that the gridSMART rates for the CSP rate zone be expanded to the OP rate zone. Second, AEP-Ohio requests that the net book value of meters retired as a result of the gridSMART project be deferred as a regulatory asset for accounting purposes. Currently, the net book value of meters replaced as a result of Phase 1 of the gridSMART project are charged to expense net of salvage and net of meter transfers and included in the over/under calculation of the rider. The Company expects to complete the installation of gridSMART equipment in Phase 1 and to complete gridSMART data submission to the U. S. Department of Energy on Phase 1 of the project by December 31, 2013, with the evaluation to be completed around March 31, 2014. Further, AEP-Ohio states that the Company intends to deploy elements of the gridSMART program throughout the AEP-Ohio service territory as part of the proposed DIR program proposed in this proceeding. (AEP-Ohio Ex. 107 at 10; AEP-Ohio Ex. 110 at 9-13.)

OCC and APJN submit that, to the extent that the Company proposes to include gridSMART costs in the DIR, there are numerous concerns that need to be addressed before the Company is authorized to proceed. Staff, OCC, and APJN retort that the Company's proposed expansion of the gridSMART project, before any evaluation and analysis of the success of gridSMART Phase 1, is inconsistent with sound business principles and should be rejected by the Commission. Therefore, these parties recommend that the Company not proceed with Phase 2 until evaluation of Phase 1, is complete, on or about March 31, 2014. (Staff Ex. 105 at 5-6; OCC/APJN Br. at 96-97.)

More specifically, Staff reasons that the costs of the expansion of various gridSMART technologies have not been determined, the benefits of the gridSMART expansion defined nor customer acceptance of such technologies evaluated. In addition, Staff claims that the Company has stated that certain components of the aging distribution infrastructure do not support gridSMART technologies. Despite Staff's position on the commencement of Phase 2 of the gridSMART project, Staff does not oppose the Company's installation, at the Company's expense and risk of recovery, of proven distribution technologies that can proceed independently of gridSMART, which address near term generation reliability concerns, such as integrated voltage variation control (IVVC), and do not present any security or interoperability issues or violate requirements set forth by the National Institute of Standards and Technology Interagency Report. Staff endorses the continuation of the gridSMART rider to be collected from all AEP-Ohio customers. Staff emphasizes that equipment should not be recoverable in the gridSMART rider until it is installed, has completed and passed thorough testing, and has been placed in-service. (Staff Ex. 105 at 3-6; Staff Ex. 107 at 3-13.)

AEP-Ohio points out that no intervener has expressed any opposition to the continuation and completion of gridSMART Phase 1 and, accordingly, AEP-Ohio requests approval of this aspect of the modified ESP. AEP-Ohio also requests that the Commission provide some policy guidance on whether the Company should proceed with the expansion of the gridSMART program.

As the Commission noted in AEP-Ohio's ESP 1 Order:

> [I]t is important that steps be taken by the electric utilities to explore and implement technologies... that will potentially provide long-term benefits to customers and the electric utility. GridSMART Phase 1 will provide CSP with beneficial information as to implementation, equipment preferences, customer expectations, and customer education requirements... More reliable service is clearly beneficial to CSP's customers. The Commission strongly supports the implementation of AMI [advanced metering infrastructure] and DA [distribution automation initiative], with HAN [home area network], as we believe these advanced technologies are the foundation for AEP-Ohio providing its customers the ability to better manage their energy usage and reduce their energy costs.

(ESP 1 Order at 34-35.)

The Commission is not wavering in its conviction as to the benefits of gridSMART. Thus, we direct AEP-Ohio to continue the gridSMART Phase 1 project and to complete the review and evaluation of the project. We are approving the Company's request to initiate Phase 2 of the gridSMART project, prior to the March 31, 2014, completion of the evaluation of gridSMART Phase 1, with those technologies that have to-date demonstrated success and are cost-effective. To require the Company to delay any further expansion or installation of gridSMART is unnecessarily restrictive with respect to the further deployment of successful individual smart grid systems and technologies used in the project. The Company shall file its proposed expansion of the gridSMART project, gridSMART Phase 2, as part of a new gridSMART application, including sufficient detail on the equipment and technology proposed for the Commission to evaluate the demonstrated success, cost-effectiveness, customer acceptance and feasibility of the proposed technology. However, the Company shall include, as Staff recommends, IVVC only within the distribution investment rider, as IVVC is not exclusive to the gridSMART project. IVVC supports the overall electric system reliability and can be installed without the presence of grid smart technologies, although IVVC enhances or is necessary for grid smart technology to operate properly and efficiently. Furthermore, the gridSMART Phase 1 rider was approved with specific limitations as to the equipment for which recovery could be sought, and a dollar limitation.[27] Any gridSMART investment beyond the Phase 1 pilot, which is not subject to recovery through the DIR mechanism, should be recovered through a mechanism other than the current gridSMART rider, for example, through a gridSMART Phase 2 rider. The current gridSMART rider allows for recovery on an "as spent" basis, with audits directed toward truing-up expenditures with collections through the rider rate. Keeping subsequent non-DIR, gridSMART expenditures in a new separate recovery mechanism facilitates enforcement and a Commission determination that recovery of gridSMART investment occur only after the equipment is installed, tested, and is in-service. With these clarifications, the Commission approves the Company's request to continue, as a part of this modified ESP, the current gridSMART rider mechanism, subject to annual true-up and reconciliation based on the Company's prudently incurred costs, and to extend the rate to include OP as well as CSP customers.

We note that the gridSMART Phase 1 rider was last evaluated for prudency of expenditures, reconciled for over- and under-recoveries and the rate mechanism adjusted in Case No. 11-1353-EL-RDR, with the rate effective beginning September, 1, 2011. Despite the Commission's February 23, 2012 rejection of the application in this ESP 2 proceeding, the recovery of the gridSMART rate mechanism continued consistent with the Entry issued March 7, 2012. Accordingly, the gridSMART rider rate mechanism approved in Case No. 11-1353-EL-RDR shall continue at the current rate until revised by the Commission. We also note that in Case No. 11-1353-EL-RDR, the Commission deducted an amount from the Company's claim for the loss on the disposal of electro-mechanical meters. The Commission notes, as we stated in the Order issued August 4, 2011, that we will address the meter issue in the Company's pending gridSMART rider application, Case No. 12-509-EL-RDR, and nothing in this Order on the modified ESP should be interpreted to the contrary.

15. Transmission Cost Recovery Rider

Pursuant to Commission authority, as set forth in Section 4928.05(A)(2), Revised Code, and the rules in Chapter 4901:1-36, O.A.C., electric utilities may seek recovery of transmission and transmission-related costs. Through this modified ESP, AEP-Ohio proposes only that the transmission cost recovery rider (TCRR) mechanisms of the CSP and OP rate zones be combined. The Company proposes no other changes to the TCRR mechanism as a part of this ESP. (AEP-Ohio Ex. 111 at 6-7; AEP-Ohio Ex. 107 at 8.)

The Commission notes that the current TCRR process has been in place since 2009, and operates appropriately. As structured, with the TCRR mechanism any over- or under-recovery is accounted for in the next semi-annual review of the TCRR mechanism. For this reason, we do not expect any adverse rate impact for customers with the combining of the CSP and OP TCRR rate mechanisms. Given the merger of CSP into OP, effective as of

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[27] ESP 1 Order at 37-38; ESP 1 Entry on Rehearing at 18-24 (July 23, 2009).

December 31, 2011, the Commission finds AEP-Ohio's request to combine the TCRR mechanism to be reasonable. The Commission directs that any over-recovery of transmission or transmission-related costs, as a result of combining the TCRR mechanisms, be reconciled in the over and under-recovery component of the Company's next TCRR rider update.

16. Enhanced Service Reliability Rider

As part of AEP-Ohio's ESP 1 case, AEP-Ohio proposed an enhanced service reliability rider (ESRR) program which included four components, of which only the transition to a cycle-based vegetation management program was approved by the Commission. In this modified ESP, AEP-Ohio requests continuation of the ESRR and the Company's transition to a four-year, cycle-based trimming program. Further, the Company proposes the unification of the ESRR rates for each rate zone into a single rate, adjusted for anticipated cost increases over the term of the ESP, with carrying cost on capital assets and annual reconciliation. AEP-Ohio admits that before the initiation of the transitional vegetation management program, the number of tree-related circuit outages had gradually increased. However, the Company states that with the initiation of the new vegetation management program, the number of tree-caused outages has been reduced and service reliability has improved. AEP-Ohio proposes to complete the transition from a performance-based program to a four-year, cycle-based trimming program for all of the Company's distribution circuits as approved by the Commission in the prior ESP. However, the Company notes that the vegetation management plan was implemented as a five-year transition program and, as a result of the delay in adopting a second ESP and increases in the expected costs to complete implementation of the cycle-based trimming program, it is now necessary to extend the implementation period to include an additional year into 2014. AEP-Ohio requests incremental funding for 2014 for both the completion of the transition to a cycle-based vegetation management program of $16 million and an incremental increase of $18 million annually to maintain the cycle-based program. (AEP-Ohio Ex. 107 at 8; AEP-Ohio Ex. 110 at 5-9.)

Staff supports the continuance of the ESRR through 2014 but not any cost incurred thereafter. Staff reasons that after 2014, the Company's transition to a four-year, cycle-based vegetation management program will be complete and regular maintenance pursuant to the program will be part of the Company's normal operations, the cost of which should be recovered through base rates not through the ESRR. Further, Staff argues that the ESRR funding level for the period 2012 through 2014 is overstated due to the increased ESRR baseline reflected in the Company's recent distribution rate case.[28] According to Staff, to reach the rate base in the Stipulation in the distribution rate case, Staff agreed to an increase in the revenue requirement for CSP and OP which incorporated an annual increase in vegetation management operation and maintenance expense of $17.8

28 *In re AEP-Ohio*, Opinion and Order, Case No. 11-351-EL-AIR, et al. (December 14, 2011).

million annually for 2012 through 2014 over its recommendation in the Staff Report. For that reason, Staff asserts that vegetation management operation and maintenance expense must be reduced by $17.8 million annually for the period 2012 through 2014. Further, Staff recommends that the Commission direct AEP-Ohio to file, pursuant to Rule 4901:1-10-27(E)(2) and (3), O.A.C., by no later than December 31, 2013, a revised vegetation management program which commits the Company to complete end-to-end trimming on all of its distribution circuits every four years beginning January 1, 2014 and beyond. (Staff Ex. 106 at 11-14; Tr. at 4363-4365.)

AEP-Ohio retorts that Staff ignores the fact that the Stipulation, and the Commission Order approving the Stipulation, in the Company's distribution rate case do not detail any increase in the ESRR baseline. AEP-Ohio requests that the Commission reject Staff's view of the rate case settlement as unsupported and improper, after the issuance of a final, non-appealable order in the case. As to Staff's proposed termination of funding after 2014, the Company offers that such would undermine the benefits of the cycle-based trimming. (AEP-Ohio Reply Br. at 76-77.)

The Commission concludes that while the Stipulation in the distribution rate case reflects an increase in the baseline operations and maintenance expense from the level recommended in the Staff Report, there is no evidence in the Stipulation or the Commission's Order adopting the Stipulation which specifically supports a $17.8 million increase in operations and maintenance expense for the vegetation management program. Accordingly, the Commission approves the continuation of the vegetation management program, via the ESRR, and merger of the rates, as requested by the Company for the term of the modified ESP, through May 31, 2015. Within 90 days after the conclusion of the ESRR, the Company shall make the necessary filing for the final year review and reconciliation of the rider. We direct AEP-Ohio to file a revised vegetation management program consistent with this Order and Rule 4901:1-10-27(E)(2) and (3), O.A.C., by no later than December 31, 2012. We see no need to wait until December 2013 for the filing, as requested by Staff, in light of our ruling in this Order.

17. Energy Efficiency and Peak Demand Reduction Rider

Through this modified ESP, the Company proposes the continuation of the EE/PDR Rider, with the unification of the rates into a single rate. The EE/PDR rider would continue to be, as it has been since its adoption in the ESP 1 cases,[29] updated annually. AEP-Ohio notes the proposed regulatory accounting for the EE/PDR rider, is over-under accounting with no carrying charge on the investment and no carrying charge on the over/under balance. The Company states that it has developed energy efficiency and demand response programs for all customer segments and through the implementation of the programs customers have the potential to save approximately $630

[29] ESP 1 Order at 41-48; ESP 1 EOR at 27-31.

million in reduced electric service cost over the life of the programs. Further, the EE/PDR programs cause power plant emissions to be reduced. AEP-Ohio testified that its energy efficiency and peak demand response programs for 2009 through 2011 have been very successful in meeting the benchmarks. Staff endorses the Company's request to continue the EE/PDR rider. (AEP-Ohio Ex. 107 at 8; AEP-Ohio Ex. 118 at 11-12; Staff Br. at 31.)

The Commission approves the merger of the EE/PDR rider rates for the CSP and OP rate zones and, for the term of this modified ESP, the continuation of the EE/PDR rider as adopted in the ESP 1 Order and subsequently confirmed in each of the Company's succeeding EE/PDR cases. In addition, as we established in our analysis of the IRP-D credit, because the IRP-D credit promotes energy efficiency, it is appropriate for AEP-Ohio to recover any costs associated with the IRP-D under the EE/PDR rider, as opposed to the RSR. Further, the Commission directs AEP-Ohio to take the appropriate steps necessary to bid the energy efficiency savings funded by the EE/PDR rider into the next PJM base residual auction and all subsequent auctions held during the term of the ESP.

18. <u>Economic Development Rider</u>

AEP-Ohio's modified ESP application request approval to continue, with one modification, the non-bypassable Economic Development Rider (EDR). The EDR mechanism recovers the costs, incentives, and forgone revenues associated with new or expanding Commission-approved special arrangements for economic development and job retention. As currently designed, the EDR rate is a component of each customer's base distribution rates. The Company wishes to merge the EDR rates for each of the rate zones into a single EDR rate with the EDR rate to continue in all other respects as approved by the Commission in the ESP 1 Order and the Company's subsequent EDR cases. As currently approved by the Commission, the EDR is updated periodically and the regulatory accounting for the EDR, being over-under accounting with no carrying charge on the investment and a long-term interest carrying charge on any unrecovered balance. AEP-Ohio states that the EDR supports Ohio's effectiveness in the global economy as required in Section 4928.02(N), Revised Code. AEP-Ohio asserts that the proposed EDR is reasonable and should be adopted as part of the modified ESP. (AEP-Ohio Ex. 111 at 3, 7 and Ex. DMR-5; AEP-Ohio Ex. 107 at 8; AEP-Ohio Ex. 118 at 7, 13.)

Staff supports the Company's EDR proposal (Staff Br. at 31). However, OCC and APJN argue the Company allocates the EDR rider based only on distribution revenues as opposed to current total revenues (distribution, transmission and generation) between the customer classes in compliance with Rule 4901:1-38-08(A), O.A.C.[30] OCC and APJN note

[30] Rule 4901:1-38-08(A)(4), O.A.C., states:

> The amount of the revenue recovery rider shall be spread to all customers in proportion to the current revenue distribution between and among classes, subject to change,

that the Commission approved Dayton Power & Light Company's EDR application with a similar allocation to the one they are proposing AEP-Ohio be required to adopt.[31]

The Company argues that because transmission and generation revenues are recovered only from its nonshopping customers, that OCC's and APJN's proposal would actually result in residential customers being responsible for a greater share of the delta revenues than under the current allocation method based only on distribution revenues paid by shopping and non-shopping customers. Further, AEP-Ohio notes that the Commission rejected this same proposal by OCC in the ESP 1 cases and requests that the Commission again reject the proposed change in the allocation methodology. (AEP-Ohio Reply Br. at 78.)

The Commission rejects OCC's and APJN's request to revise the basis for the EDR allocation, given the fact that the EDR is a non-bypassable rider recovered from shopping and non-shopping customers alike. We recognize that the EDR acts to attract new business and to facilitate the expansion of existing businesses in Ohio. In order to allow AEP-Ohio to effectively promote economic development to customers in its service territories, and continue its positive corporate presence in communities throughout Ohio, as evidenced by multiple witnesses at the public hearings, we find it reasonable for AEP to maintain its corporate headquarters in Columbus, Ohio, at a minimum, for the entire term of this ESP and the subsequent collection period associated with the deferral costs included in the RSR. Further, the Commission finds that, the EDR, as a non-bypassable rider, is recovered from all AEP-Ohio shopping and non-shopping customers. Therefore, we approve the Company's request to merge the EDR rates for the CSP and OP rate zones into a single rate and to otherwise continue the EDR mechanism as previously approved by the Commission in the Company's ESP 1 Order, as revised or clarified in its subsequent EDR proceedings.

Additionally, in light of the extenuating economic circumstances, the Commission hereby orders the Company to reinstate the Ohio Growth Fund, to be funded by shareholders at $2 million per year, or portion thereof, during the term of this ESP. The Ohio Growth Fund creates private sector economic development resources to support and work in conjunction with other resources to attract new investment and improve job growth in Ohio.

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alteration, or modification by the commission. The electric utility shall file the projected impact of the proposed rider on all customers, by customer class.

31 See In re Dayton Power & Light Company, Case No. 12-815-EL-RDR, Order (April 25, 2012).

19. Storm Damage Recovery Mechanism

AEP-Ohio proposes a storm damage recovery mechanism be created to recover any incremental expenses incurred due to major storm events (AEP-Ohio Ex. 110 at 20). AEP-Ohio provides that the mechanism would be created in the amount of $5 million per year in accordance with the settlement in Case Nos. 11-351-EL-AIR and 11-352-EL-AIR. In support of the storm damage recovery mechanism, AEP-Ohio witness Kirkpatrick notes that absent the mechanism, forecasted operation and maintenance (O&M) funds would be constantly diverted to cover the expense of major storms, which could disrupt planned maintenance activities and impact system reliability. The determination of what a major storm is or is not would be determined by methodology outlined in the IEEE Guide for Electric Power Distribution Reliability Indices, as set forth in Rule 4901:1-10-10(B), O.A.C. (*Id.*) Any capital costs that would be incurred due to a major storm would either become a component of the DIR or would be addressed in a distribution rate case (*Id.* at 21). Upon approval of the storm damage recovery mechanism, AEP-Ohio will defer the incremental distribution expenses above or below the $5 million storm expense beginning with the effective date of January 1, 2012 (AEP-Ohio Ex. 107 at 10).

OCC notes that while AEP-Ohio's actual storm costs expenses are currently unknown, it is likely that AEP-Ohio will incur more than $5 million based on historic data, which indicates the average annual expenses amount to approximately $8.97 million per year (OCC Ex. 114 at 20-21). In addition, OCC explains that AEP-Ohio failed to specify the carry charge rate for any storm damage deferrals, but suggests the carrying charges not be calculated using AEP-Ohio's WACC, as the mechanism does not include capital costs (OCC Br. at 97-98). OCC suggests that AEP-Ohio utilize its cost of long-term debt to calculate carrying charges (*Id.*).

In establishing its storm damage recovery mechanism, AEP-Ohio failed to specify how recovery of the deferred asset would actually work or would occur. As proposed, it is unknown when AEP-Ohio would seek recovery, or whether anything over or under $5 million would become a deferred asset or liability. As it currently stands, the storm damage recovery mechanism is open-ended and should be modified.

Therefore, we find that AEP-Ohio may begin deferral of any incremental distribution expenses above or below $5 million, per year, subject to the following modifications. Further, throughout the term of the modified ESP, AEP-Ohio shall maintain a detailed accounting of all storm expenses within its storm deferral account, including detailed records of all incidental costs and capital costs. AEP-Ohio shall provide this information annually for Staff to audit to determine if additional proceedings are necessary to establish recovery levels or refunds as necessary.

In the event AEP-Ohio incurs costs due to one or more unexpected, large scale storms, AEP-Ohio shall open a new docket and file a separate application by December 31 each year throughout the term of the modified ESP, if necessary. In the event an application for additional storm damage recovery is filed, AEP-Ohio shall bear the burden of proof of demonstrating all the costs were prudently incurred and reasonable. Staff and any interested parties may file comments on the application within 60 days after AEP-Ohio dockets an application. If any objections are not resolved by AEP-Ohio, an evidentiary hearing will be scheduled, and parties will have the opportunity to conduct discovery and present testimony before the Commission. Thus, OCC's concern on the calculation of appropriate carrying charges is premature.

20. Other Issues

(a) Curtailable Service Riders

In ESP 1, based on the lack of certain information in the record, the Commission determined that customers under reasonable arrangements with AEP-Ohio, including, but not limited to, energy efficiency/peak demand reduction arrangements, economic development arrangements, unique arrangements, and other special tariff schedules that offer service discounts from the applicable tariff rates, are prohibited from also participating in a PJM demand response program (DRP), unless and until the Commission decides otherwise (First ESP EOR at 41). While the Commission opined on the ability of customers in reasonable arrangements with AEP-Ohio to participate in PJM DRPs, the Commission did not, in the context of the ESP 1, address the ability of AEP-Ohio's retail customers to participate in PJM DRPs.

On March 19, 2010, in Case Nos. 10-343-EL-ATA and 10-344-EL-ATA, AEP-Ohio filed an application to amend its emergency curtailment service riders to permit customers to be eligible to participate in AEP-Ohio's DRPs, integrate their customer-sited resources and assign the resources to AEP-Ohio to meet with the Company's peak demand reduction mandates or conditional retail participation in PJM DRPs.

As a part of this modified ESP, AEP-Ohio recognizes customer participation in the PJM directly or through third-party aggregators and proposes to eliminate two tariff services, Rider Emergency Curtailable Services and Rider Price Curtailable Service, as no customer currently receives service pursuant to either rider. EnerNOC endorses this aspect of AEP-Ohio's modified ESP application on the basis that its supports the provisions of Section 4928.02(D), Revised Code. (AEP-Ohio Ex. 100 at 9; AEP-Ohio Ex. 111 at 9; EnerNOC Br. at 5-6.).

We concur with the Company's request. Accordingly, the Company should eliminate Rider Emergency Curtailable Services and Rider Price Curtailable Service from its tariff service offerings and Case Nos. 10-343-EL-ATA and 10-344-EL-ATA, closed of record and dismissed.

(b) Customer Rate Impact Cap

In order to ensure no customers are unduly burdened by any unexpected rate impacts, as well as to mitigate any customer rate changes, we direct AEP-Ohio to cap customer rate increases at 12 percent over their current ESP I rate plan bill schedules for the entire term of the modified ESP, pursuant to our authority as set forth in Section 4928.144, Revised Code. The 12 percent limit shall be determined not by overall customer rate classes, but on an individual customer by customer basis. The customer rate impact cap applies to items approved within this modified ESP. Any rate changes that arise as a result of past proceedings, including any distribution proceedings, or in subsequent proceedings are not factored into the 12 percent cap. Further, the 12 percent cap shall be normalized for equivalent usage to ensure that at no point any individual customer's bill impacts shall exceed 12 percent. On May 31, 2013, AEP-Ohio should file, in a separate docket, a detailed accounting of its deferral impact created by the 12 percent rate cap. Upon AEP-Ohio's filing of its deferral calculations, the attorney examiners shall establish a procedural schedule, to consider, among other things, the deferral costs created, and the Commission will maintain the discretion to adjust the 12 percent limit, as necessary, throughout the term of the ESP.

(c) AEP-Ohio's Outstanding FERC Requests

The Commission takes notice that American Electric Power Service Corporation filed a renewed motion on AEP-Ohio's behalf for expedited rulings on July 20, 2012, in FERC docket numbers ER11-2183-001 and EL11-32-000. In the event FERC takes any action that may significantly alter the balance of this Commission's order, the Commission will make appropriate adjustments as necessary. Specifically, pursuant to Section 4928.143(F), Revised Code, at the end of each annual period of this modified ESP, the Commission shall consider if any such adjustments, including any that may arise as a result of a FERC order, lead to significantly excessive earnings for AEP-Ohio. In the event that the Commission finds that AEP-Ohio has significantly excessive earnings, AEP-Ohio shall return any amount in excess to consumers.

III. IS THE PROPOSED ESP MORE FAVORABLE IN THE AGGREGATE AS COMPARED TO THE RESULTS THAT WOULD OTHERWISE APPLY UNDER SECTION 4928.142, REVISED CODE.

AEP-Ohio contends that the ESP, as proposed, including its pricing and all other terms and conditions, is more favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO. To properly conduct the statutory test, AEP-Ohio states that the proposed ESP must be viewed in the aggregate, which includes the statutory price test, other quantifiable benefits, and the consideration of non-quantifiable benefits (AEP Ex. 114 at 3-4). In evaluating all of these criteria, AEP-Ohio witness Laura Thomas concludes that the proposed ESP, in the aggregate, is more favorable that the results that would otherwise apply under an MRO by approximately $952 million (AEP-Ohio Ex. 115 at Exhibit LJT-1, page 1). In addition, Ms. Thomas states that there are numerous benefits that are not readily quantifiable (*Id.*).

In conducting the statutory price test, Ms. Thomas explains that she utilized Section 4928.20(J), Revised Code's interpretation of market prices for guidance in determining the competitive benchmark price. In establishing the competitive benchmark price, AEP-Ohio used ten components, including the capacity component, which includes the capacity cost that a supplier would incur to serve a retail customer within AEP-Ohio's service territory (AEP-Ohio Ex. 114 at 15). AEP-Ohio concluded that the capacity cost to be utilized in the statutory price test should be $355.72/MW-day, based on the notion that AEP-Ohio will be operating under its FRR obligation and the full capacity cost rate for AEP-Ohio should be utilized in the competitive benchmark price. By using $355.72/MW-day, Ms. Thomas concludes that the statutory price test shows the ESP is more favorable than an MRO by $256 million (AEP-Ohio Ex. 114 at LJT-1 page 3). Ms. Thomas also conducted an alternative price test utilizing the two-tier capacity proposal numbers of $146 and $255 as the capacity costs, and concludes that modified ESP would be more favorable than an MRO $80 million (*Id.* at LJT-5 page 2). In light of the Commission's decision in Case No. 10-2929, AEP-Ohio indicates the use of the $188.88 capacity price would result in the MRO being slightly less favorable by $12.6 million, but when factoring in AEP-Ohio's energy-only slice-of-system auction the statutory price test comes out almost even, with the MRO being slightly more favorable by approximately 2.6 million (AEP-Ohio Reply Br. at 97-99, Attachment B).

In addition, as AEP-Ohio explains that the statutory test requires the proposed ESP be reviewed in the aggregate in addition to the price test, other quantifiable benefits need to be considered. Specifically, AEP-Ohio points to capacity price discount from AEP-Ohio's $355.72/MW-day to the two-tier discounted capacity pricing for CRES provides, which results in a benefit of $988 million. In addition, in her aggregate test, Ms. Thomas acknowledges that while the RSR is a benefit of the proposed modified ESP, the RSR will cost $284 million during the term of the modified ESP. Ms. Thomas explains that the GRR should not be considered in the aggregate analysis as the results would be the same under the proposed ESP or an MRO, but notes if the Commission determines otherwise the consideration of GRR would reduce the quantifiable benefits by approximately $8 million. By taking these additional quantifiable factors into consideration in addition to the results under the statutory test, AEP-Ohio asserts that the total quantifiable benefits of the modified ESP are $952 million based on the statutory price test using $355.72/MW-day (AEP-Ohio Ex. 115 at LJT-1).

Regarding non-quantifiable benefits, AEP-Ohio states that the modified ESP will provide price certainty for SSO customers while presenting increased customer shopping opportunities. AEP-Ohio provides that the modified ESP will ensure financial stability of

AEP-Ohio and provides for a necessary transition towards the competition while acknowledging AEP-Ohio's existing contractual and FRR obligations. AEP-Ohio also opines that the modified ESP advances state policies and is consistent with Section 4928.02, Revised Code.

In addition to the statutory test conducted by AEP-Ohio witness Thomas, several other parties conducted the statutory test pursuant to Section 4928.143, Revised Code. OCC, FES, IEU, DER and Staff allege that the statutory price test actually indicates that the modified ESP produces results that are less favorable than what would otherwise apply under an MRO by figures ranging from $50 million to $1.427 billion (*See* OCC Ex. 114, DER Ex. 102, IEU Ex. 125, FES Ex. 104, and Staff Ex. 110). Specifically, OCC witness Hixon points out that AEP-Ohio's assumption of a $355.72/MW-day capacity charge is inappropriate, but rather, the capacity charge approved by the Commission in Case No. 10-2929-EL-UNC should be utilized. Further, OCC notes that any costs associated with the GRR should be included in the statutory test, as the GRR would not be available under an MRO (*Id.* at 14-17). In addition, OCC points out that in considering any non-quantifiable benefits associated with the modified ESP, the aggregate test should consider additional costs to customers associated with items such as the DIR, ESRR, and gridSMART rider, which, while not readily quantifiable, are currently known to be costs associated with the modified ESP (*Id.* at 18).

FES and IEU raise similar concerns in utilizing AEP-Ohio's $989 million as a quantifiable benefit. FES states that the Commission previously found the consideration of discounted capacity pricing cannot be considered a benefit because it is too speculative (FES Ex. 104 at 14-16, IEU Ex. at 50-53). IEU, DER, and FES provide that AEP-Ohio overstated the competitive benchmark price by failing to use a market-based capacity price, and failed to properly consider the costs associated with the modified ESP including the RSR, GRR, and possibly the PRR (FES at 16-25, IEU at 49-72, DER Ex. 102 at 3-6). Mr. Schnitzer also concluded that the statutory test indicates that the modified ESP is worse for customers than the Stipulation ESP, and approval of the modified ESP would harm the development of a competitive retail market by limiting CRES providers' ability to provide alternative offers to customers (FES Ex. 104 at 38-41).

IEU, DER, and OCC argue that Ms. Thomas incorrectly assumed the MRO's blending requirement should have been accelerated, as it is unlikely the Commission would authorize an MRO with any blending other than the fault blending provisions of 70 percent ESP pricing and 30 percent market pricing, as is consistent with Section 4928.142, Revised Code (DER Ex. at 3-6, OCC Ex. 114 at 8-9). Further, IEU suggests the Commission consider the June 2015 to May 2016 deliver year as part of the statutory test analysis, as AEP-Ohio is seeking Commission approval to conduct a CBP for the entire SSO load beginning in June 2015 under this modified application (IEU Ex. 125 at 79).

Staff witness Fortney conducted the statutory test by blending the market rate with the SSO rates pursuant to Section 4928.142(D), Revised Code, but noted that the market rate is extremely uncertain due to volatility of forward contract prices. Mr. Fortney calculated the average rates under AEP-Ohio's modified ESP and compared them to the results that would occur under an MRO on RPM price capacity, $146.41, and $255. Mr. Fortney concluded that under all three scenarios the modified ESP is less favorable, but noted there are other non-quantifiable benefits, including AEP-Ohio's transition to competitive markets, which would be achieved more quickly than through an MRO (Staff Ex. 110 at 3-7). FES revised Mr. Fortney's statutory price test using the $188.88 price of capacity and concluded an MRO would be less expensive by $277 million (FES Reply Br. at B-1).

The Commission finds that, while AEP-Ohio made multiple errors in conducting the statutory test, we believe that these errors are correctible based on evidence contained within the record. Under Section 4928.143(C)(1), Revised Code, we must determine whether AEP-Ohio's has sustained its burden of proof of indicating whether the proposed electric security plan, as we've modified it, including its pricing, other terms and conditions including any deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to results that would otherwise apply under Section 4928.142, Revised Code. Further, we must ensure our analysis looks at the entire modified ESP as a total package, as the Supreme Court of Ohio has held that Section 4928.143(C)(1), Revised Code, does not bind the Commission to a strict price comparison, but rather, instructs the Commission to consider other terms and conditions, as there is only one statutory test that looks at an entire ESP in the aggregate (*In re Columbus S. Power Co.*, 128 Ohio St. 3d 402, 407).

Therefore, as AEP-Ohio presented its analysis of this statutory test, we first look at the statutory pricing test, and then will explore other provisions, terms, and conditions of the proposed ESP that are both quantifiable and non-quantifiable. In considering AEP-Ohio's statutory price test, consistent with Section 4928.143(C)(1), Revised Code, we must look in part at the price AEP-Ohio's proposed ESP, as we've modified it, with the price of the results that would otherwise apply under Section 4928.142, Revised Code. The way AEP-Ohio calculated its statutory price test precludes us from accurately determining the results that would otherwise apply under a market rate offer, as it begins its analysis on June 1, 2012.

To accurately determine what would otherwise apply under Section 4928.142(A)(1), Revised Code, for the purposes of comparing it with this modified ESP, we begin by looking at the statute for guidance. Section 4928.142(A)(1), Revised Code, mandates that any electric distribution utility that wishes to establish its standard service offer price through a market rate offer must ensure the competitive bidding process provides for an open, fair, and transparent competitive solicitation process, with a clear product definition, standardized bid evaluation criteria, oversight of the process by an independent third party, and an evaluation of the submitted bids prior to selecting a winner. For the Commission to appropriately predict the results that would otherwise occur under this section, we cannot, in good conscience, compare prices during a time period that has elapsed prior to the issuance of this order. Nor can we, by statute, compare this modified ESP price with what would otherwise apply under Section 4928.142, Revised Code, beginning today, as it would be impossible for AEP-Ohio to immediately establish an alternate plan under Section 4928.142, Revised Code, that meets all the statutory criteria. Therefore, for the Commission to appropriately compare the price components of this modified ESP with the results that would otherwise apply under Section 4928.142, Revised Code, we must determine the amount of time it would take AEP-Ohio to implement its standard service offer price with what would otherwise apply under Section 4928.142, Revised Code.

As FES witness Banks testified, a June 1, 2013 start date would provide AEP-Ohio sufficient time to plan for auctions, develop bidding rules, and the auction structure, all of which are requirements of Section 4928.142, Revised Code (FES Ex. 105 at 20). In light of this testimony, we believe that we should begin evaluating the statutory price test analysis approximately ten months from the present, in order to determine what would otherwise apply. Therefore, in considering this modified ESP with the results that would otherwise apply under the statutory price test, we will conduct the statutory price test for the period between June 1, 2013, and May 31, 2015.

Further, in conducting the statutory price test, Ms. Thomas erred by utilizing $355.72/MW-day for the capacity component of the competitive benchmark price. This number was unilaterally determined by AEP-Ohio and justified as AEP-Ohio's cost of capacity, which is entirely inconsistent with the Commission's determination of AEP-Ohio's cost of capacity being $188.88. Although we believe AEP-Ohio's use of the $355.72/MW-day capacity figure is flawed, we are not persuaded by parties who argue the capacity component should be market based and reflect RPM prices. These parties fail to consider that AEP-Ohio, as an FRR entity, will be supplying capacity for its customers throughout the term of this ESP, whether the customer is an SSO customer or the customer takes service through a CRES provider. Thus, even under the results that would otherwise apply consistent with Section 4928.142, Revised Code, due to AEP-Ohio's remaining FRR obligations, it would still be supplying capacity to all of its customers through 2015. We find it is inappropriate to consider market prices in establishing this capacity component, even though RPM prices are consistent with the state compensation mechanism, as AEP-Ohio is and will remain an FRR entity for the immediate future. In conducting the statutory price test, we shall use AEP-Ohio's cost of capacity of $188.88, as supported by Case 10-2929, for the competitive benchmark.

Next, we need to address the appropriate blending method under the statutory price test for the period of January 1, 2015 through June 1, 2015. In light of the clearly defined statutory blending percentages contained within Section 4928.142(D), Revised Code, as well as past Commission precedent in conducting the statutory price test, we do not find it appropriate to use a 100 percent blending rate for the final five months of the modified ESP. *See* Duke Energy Ohio, Case No. 10-2586-EL-SSO (February 23, 2011). Accordingly, we need to adjust the percentages of the MRO pricing component that is indicated in AEP-Ohio's reply brief to 90 percent of the generation service price and ten percent of the expected market price for the period between June 1, 2013 to May 31, 2014, consistent with Section 4928.142(D), Revised Code, and increase the MRO pricing component to 80 percent of the generation service price and 20 percent of the expected market price for the period of June 1, 2014, to May 31, 2015. By making these modifications to the competitive benchmark price, as well as the $188.88 cost of capacity figure, we conclude that the statutory price test indicates the modified ESP is more favorable than the results that would otherwise occur under Section 4928.142, Revised Code, by approximately $9.8 million.

Our analysis does not end here, however, as we must now consider the proposed ESP's other provisions that are quantifiable. As we previously established in the December 14, 2011, Opinion and Order, we believe AEP-Ohio must address costs associated with the GRR, as it is non-bypassable pursuant to Section 4928.143(B)(2)(c), Revised Code, and thus would not occur under an MRO. Therefore, the costs of approximately $8 million must be considered in our quantitative analysis. We understand that the GRR is a placeholder rider, but we find that the costs associated with the GRR are known and should therefore be included in the quantitative benefits. Likewise, we must consider the costs associated with the RSR of approximately $388 million in our quantitative analysis.[32] The inclusion of any deferral amount does not need to be included in our analysis, as it would still be recovered under an MRO pursuant to the Commission's decision in the Capacity Case. After including the statutory price test in favor of the ESP by $9.8 million, and the quantifiable costs of $388 million under the RSR and $8 million for the GRR, we find an MRO is more favorable by approximately $386 million.

By statute, our analysis does not end here, however, as we must consider the non-quantifiable aspects of the modified ESP, in order to view the proposed plan in the aggregate. We acknowledge that there may be costs associated with distribution related

[32] The RSR determination of $388 million is calculated by taking the $508 million RSR recovery amount and subtracting the $1 figure to be devoted towards the Capacity Case deferral, as recovery of this deferral will occur under either an ESP or an MRO. Using LJT-5 in AEP-Ohio Ex. 114, when we consider the total connected load of 48 million kWh and multiply it by $1 over the term of the modified ESP, we reach a figure of $144 million to be devoted towards the Capacity Case deferral. However, as the RSR recovery amount increases to $4/MWh in the final year of the modified ESP, we also must account for an increase in the RSR of $24 million, which is also calculated by connected load in LJT-5. Therefore, the actual amount which should be included in the test is $388 million.

riders and the gridSmart and ESRR that currently are not readily quantifiable, we believe any of these costs are significantly outweighed by the non-quantifiable benefits this modified ESP leads to. Although these riders may end up having costs associated with them, they would support reliability improvements, which will benefit all AEP-Ohio customers, as well as provide the opportunity for customers to utilize efficiency programs that can lead to lower usage, and thus lower costs. Further, these costs will be mitigated by the increase in auction percentages, including the slice-by-slice auction, as we modified to ten percent each year, which will offset some of these costs in the statutory test and moderate the impact of the modified ESP. Further, the acceleration to 60 percent of AEP-Ohio's energy only auction by June 1, 2014, not only enables customers to take advantage of market based prices, but also creates a qualitative benefit which, while not yet quantifiable, may well exceed the costs associated with the GRR and RSR.

In addition, while the RSR and the inclusion of the deferral within the RSR are the most significant cost associated with the modified ESP, but for the RSR it would be impossible for AEP-Ohio to completely participate in full energy and capacity based auctions beginning in June 1, 2015. Although the decision for AEP-Ohio to transition towards competitive market pricing is something this Commission strongly supports and the General Assembly anticipated in enacting Senate Bill 221, the fact remains that the decision to move towards competitive market pricing is voluntary under the statute and in the event this ESP is withdrawn or even replaced with an MRO, there is no doubt that AEP-Ohio would not be fully engaged in the competitive marketplace by June 1, 2015.

The most significant of the non-quantifiable benefits is the fact that in just under two and a half years, AEP-Ohio will be delivering and pricing energy at market prices, which is significantly earlier than what would otherwise occur under an MRO option. If AEP-Ohio were to apply for an MRO it is not feasible to conclude that energy would be at market prices prior to June 1, 2015, even if the Commission were to accelerate the percentages set forth under Section 4928.142, Revised Code. Thirteen years ago our general assembly approved legislation to begin paving the way for electric utilities to transition towards market-based pricing, and provide consumers with the ability to choose their electric generation supplier. While the process has not been easy, we are confident that this plan will result in the outcome the general assembly intended under both Senate Bill 3 and Senate Bill 221, and this modified ESP is the only means in which this can be accomplished in less than two and a half years. Further, while the modified ESP will lead us towards true competition in the state of Ohio, it also ensures not only that customers will have a safe harbor in the event there is any uncertainty in the competitive markets by having a constant, certain, and stable option on the table, but also that AEP-Ohio maintains its financial stability necessary to continue to provide adequate, safe, and reliable service to its customers. Accordingly, we believe these non-quantifiable benefits significantly outweigh any of the costs.

Therefore, in weighing the statutory price test which favors the modified ESP by $9.8 million, as well as the quantifiable costs and benefits associated with the modified ESP, and the non-quantifiable benefits, as we find the modified ESP, is more favorable in the aggregate than what would otherwise apply under an MRO.

IV. CONCLUSION

Upon consideration of the modified ESP application filed by the Company and the provisions of Section 4928.143(C)(1), Revised Code, the Commission finds that the modified ESP, including its pricing and all other terms and conditions, including deferrals and future recovery of deferrals, as modified by this Order, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code. Therefore, the Commission finds that the proposed ESP should be approved, with the modifications set forth in this Order. As modified herein, the plan provides rate stability for customers, revenue certainty for the Company, and facilitates a transition to market. To the extent that interveners have proposed modifications to AEP-Ohio's modified ESP that have not been addressed by this Opinion and Order, the Commission concludes that the requests for such modifications are denied.

AEP-Ohio is directed to file, by August 16, 2012, revised tariffs consistent with this Order, to be effective with bills rendered as of the first billing cycle in September 2012.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) OP is a public utility as defined in Section 4905.02, Revised Code, and, as such, the Company is subject to the jurisdiction of this Commission.

(2) Effective December 31, 2011, CSP was merged with and into OP consistent with the Commission's December 14, 2011 Order in the ESP 2 cases. The merger was confirmed by entry issued March 7, 2012 in Case No. 10-2376-EL-UNC.

(3) On March 30, 2012, the Company filed modified applications for an SSO in accordance with Section 4928.141, Revised Code.

(4) On April 9, 2012, a technical conference was held regarding AEP-Ohio's modified ESP applications.

(5) Notice was published and public hearings were held in Canton, Columbus, Chillicothe, and Lima where a total of 66 witnesses offered testimony.

(6) A prehearing conference on the modified ESP application was held on May 7, 2012.

(7) The following parties filed for and were granted intervention in AEP-Ohio's modified ESP 2 proceeding: IEU, Duke Retail, OEG, OHA, OCC, OPAE, Kroger, FES, Paulding, APJN, OMAEG, AEP Retail, P3, Constellation, Compete, NRDC, Sierra Club, RESA, Exelon, Grove City, AICUO, Wal-Mart, Dominion Retail, ELPC, OEC, Ormet, Enernoc, IGS, Ohio Schools, Ohio Farm Bureau Federation, Ohio Restaurant Association; Duke, DECAM, Direct, The Ohio Automobile Dealers Association, Dayton Power and Light Company, NFIB, Ohio Construction Materials Coalition, COSE, Border Energy Electric Services, Inc., UTIE; (Summit Ethanol); city of Upper Arlington, Ohio; Ohio Business Council for a Clean Economy; city of Hillsboro, Ohio; and CPV Power Development, Inc.

(8) Motions for protective orders were filed by AEP-Ohio on July 1, 2011, May 2, 2012, by OMAEG, IEU, FES, and Exelon on May 4, 2012, AEP-Ohio on May 11, 2012. The attorney examiners granted the motions for protective order in the evidentiary hearing on May 17, 2012.

(9) Additional motions for protective order were filed by Ormet on June 29, 2012, and July 9, 2012, by IEU on June 29, 2012, and by AEP-Ohio on July 5, 2012 and July 12, 2012.

(10) The evidentiary hearing on the modified ESP 2 was called on May 17, 2012, and concluded on June 15, 2012.

(11) Briefs and reply briefs were filed on June 29, 2012, and July 9, 2012, respectively.

(12) Oral arguments before the Commission were held on July 13, 2012.

(13) The proposed modified ESP, as modified pursuant to this opinion and order, including the pricing and all other terms and conditions, deferrals and future recovery of the deferrals, and quantitative and qualitative benefits, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code.

VI. ORDER:

It is, therefore,

ORDERED, That IBEW's and Hilliard's requests to withdraw from these proceedings are granted. It is, further,

ORDERED, That the motions for protective order as discussed herein be granted for 18 months from the date of this Order. It is, further,

ORDERED, That the Company should eliminate Rider Emergency Curtailable Services (ECS) and Rider Price Curtailable Service (PCS) from its tariff service offerings and Case Nos. 10-343-EL-ATA and 10-344-EL-ATA, closed of record and dismissed. It is, further,

ORDERED, That IEU's request to review the procedural rulings is denied. It is, further,

ORDERED, That OCC/APJN's motion to take administrative notice be denied. It is, further,

ORDERED, That OCC/APJN's motion to strike AEP-Ohio's reply brief be granted in part and denied in part. It is, further,

ORDERED, That the Company shall file proposed final tariffs consistent with this Order by August 16, 2012, subject to review and approval by the Commission. It is, further, ORDERED, That a copy of this opinion and order be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

Lynn Slaby

JJT/GNS/vrm

Entered in the Journal
AUG 08 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised 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

DISSENTING OPINION OF COMMISSIONER CHERYL L. ROBERTO

I decline to join my colleagues in finding that the quantitative advantage of $388 million dollars that an MRO would enjoy over the proposed ESP is overcome by the non-quantifiable benefit of moving to market two years and three months faster than what would have occurred under an MRO. For this reason, I do not find that the proposed modified ESP, as modified pursuant to the opinion and order, including the pricing and all other terms and conditions, deferrals and future recovery of the deferrals, and quantitative and qualitative benefits, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code. Because of this conclusion, it is unnecessary for me to discuss further any individual conclusion within the order or feature of the ESP.

Cheryl L. Roberto

Cheryl L. Roberto

CLR/sc

Entered in the Journal

AUG 08 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised 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

CONCURRING OPINION OF COMMISSIONER LYNN SLABY

I agree with the conclusions of the majority. However, I write separately to express my reservations on the use of a retail stability rider (RSR). It is my opinion that generally the use of an RSR with decoupling components lacks certain benefits to consumers. In addition, a company that receives that RSR has little, if any, incentive to look for more operating efficiencies to reduce consumer costs. Consequently, these inefficiencies could lead to additional costs to consumers in the long run. Although these concerns led to my reservations in this present case, I am also fully aware that certain cases present specific circumstances that necessitate setting aside individual concerns for the greater good.

In Case No. 10-2929-EL-UNC, the Commission agreed to defer the recovery of the difference between the market price and the companies' cost of generation. This created a need to establish a mechanism to recover those costs. Although I generally disagree with the use of RSRs for recovering deferred costs, in this case I side with the majority in order to meet our mission. Our mission is to ensure all residential and business consumers access to adequate, safe and reliable utility services at a fair price, while facilitating an environment that provides competitive choices. We as a Public Utilities Commission have to balance the rights of the consumer to ensure safe and reliable service at a fair cost while also making sure that companies receive sufficient revenues to provide that service in a safe and reliable manner.

This decision will help move the company to a fully competitive market at the end of the ESP term, which has been the overall goal of the state legislature since the adoption of Senate Bill 3 in 1999. Furthermore, by creating an RSR without decoupling components, we are stabilizing the rate structure over the next three years. This provides customers a stabilized rate or the opportunity to shop for a better rate, depending on what the market presents during the term of the ESP. Overall, this decision is not only important to the State statutory goal of free and open competition in the market place, but also to the philosophy of this Commission. Therefore, in this isolated case, I find the use of an RSR to be an appropriate mechanism to allow the Company to begin to recover its deferred costs.

Lynn Slaby

Lynn Slaby

LS/sc

Entered in the Journal

AUG 08 2012

Barcy F. McNeal

Barcy F. McNeal
Secretary

EXHIBIT B

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised 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

ENTRY ON REHEARING

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The Commission finds:

(1) On March 30, 2012, Ohio Power Company (AEP-Ohio) filed an application for a standard service offer, in the form of an electric security plan (ESP), in accordance with Section 4928.143, Revised Code.

(2) On August 8, 2012, the Commission issued its Opinion and Order, approving AEP-Ohio's proposed ESP, with certain modifications, and directed AEP-Ohio to file proposed final tariffs consistent with the Opinion and Order by August 16, 2012.

(3) Pursuant to Section 4903.10, Revised Code, any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the Opinion and Order upon the Commission's journal.

(4) On September 7, 2012, AEP-Ohio, The Kroger Company (Kroger), Ormet Primary Aluminum Corporation (Ormet), Industrial Energy Users-Ohio (IEU), Retail Energy Supply Association (RESA), OMA Energy Group and the Ohio Hospital Association (OMAEG/OHA), the Ohio Energy Group (OEG), FirstEnergy Solutions Corp. (FES), The Ohio Association of School Business Officials, The Ohio School Boards Association, The Buckeye Association of School Administrators, and The Ohio Schools Council (collectively, Ohio Schools), and the Ohio Consumers' Counsel and Appalachian Peace and Justice Network (OCC/APJN) filed applications for rehearing. Memoranda contra the various applications for rehearing were filed by Duke Energy Ohio, Inc. (Duke) and Duke Energy Commercial Asset Management Inc. (DER/DECAM), FES, OCC/APJN, IEU-Ohio, OMAEG/OHA, OEG, Ohio Schools, and AEP-Ohio on September 17, 2012.

(5) By entry dated October 3, 2012, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing of the August 8, 2012, Opinion and Order. The Commission has reviewed and considered all of the arguments on rehearing. Any arguments on rehearing not specifically discussed herein have been thoroughly and

adequately considered by the Commission and are being denied. In considering the arguments raised, the Commission will address the merits of the assignments of error by subject matter as set forth below.

I. PROCEDURAL MATTERS

(6) On September 28, 2012, OCC/APJN moved to strike portions of AEP Ohio's application for rehearing filed on September 7, 2012, as well as portions of its memorandum contra filed on September 17, 2012. Specifically, OCC/APJN allege that AEP-Ohio improperly relies upon the provisions of stipulations from the AEP-Ohio Distribution Rate stipulation in Case No. 11-351-EL-SSO, et al., and the Duke ESP stipulation in Case No. 11-3549-EL-SSO, et al., OCC/APJN opine that both stipulations preclude the use of any provisions as precedent, and that the use of any stipulation provisions is not only contrary to the inherent nature of a stipulation, but also contrary to public policy.

On October 3, 2012, AEP Ohio filed a memorandum contra OCC/APJN's motion to strike. In its memorandum contra, AEP Ohio argues that OCC/APJN should be estopped from moving to strike any provisions contained within AEP-Ohio's application for rehearing, as OCC/APJN failed to allege that the references to Duke's ESP stipulation and the AEP-Ohio distribution case were improper in its memorandum contra AEP Ohio's application. In addition, AEP-Ohio notes that the Commission already rejected OCC/APJN's argument in the Opinion and Order.

The Commission finds OCC/APJN's assignment of error should be dismissed. OCC/APJN failed to raise its objections to the use of stipulation references contained within AEP-Ohio's application for rehearing in its memorandum contra to AEP-Ohio's application for rehearing, so it is unnecessary for us to address those references. Regarding the stipulation references in AEP-Ohio's memorandum contra the applications for rehearing, we find that, consistent with our Opinion and Order in this proceeding, the references to other stipulations by AEP-Ohio were limited in scope and did not create prejudicial impact on any parties, nor were the references used to in any way bind parties to positions they had in any previous proceeding.[1] In fact, OCC/APJN referred to specific stipulation provisions from a separate proceeding in its own application for rehearing.[2] Accordingly, we find that OCC/APJN's motion to strike should be denied.

(7) In its application for rehearing, IEU contends that the Opinion and Order was unreasonable by failing to strike witness testimony that contained references to stipulations. Specifically, IEU argues that the attorney examiners improperly failed to strike testimony of two AEP Ohio witnesses and a witness for Exelon.

The Commission finds that IEU fails to raise any new arguments, and accordingly, its application for rehearing regarding references to stipulations should be denied.[3]

(8) In its application for rehearing, OCC/APJN allege that the Commission abused its discretion by denying its request to take administrative notice of the Capacity Case materials.

In its memorandum contra, FES provides that the Commission's denial of OCC/APJN's request to take administrative notice was proper. FES points out that the request for administrative notice was made after the evidentiary record was closed and post-hearing briefs were filed. FES adds that had administrative notice been taken, other parties would have been prejudiced.

In the Opinion and Order, the Commission denied OCC/APJN's request to take administrative notice, noting that administrative notice would prejudice parties and would improperly allow OCC/APJN to supplement the record in an inappropriate manner.[4] OCC/APJN fail to present any compelling arguments as to why the Commission's decision was unreasonable, therefore, we find OCC/APJN's request should be denied.

(9) On September 24, 2012, Kroger filed a reply memorandum to AEP-Ohio's memorandum contra the various applications for

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1 Opinion and Order at 10.

2 OCC/APJN Application for Rehearing (AFR) at 113-114.

3 Opinion and Order at 10.

4 *Id.* at 12-13.

rehearing. On September 25, 2012, Kroger filed a motion to withdraw its reply memorandum. Kroger's request to withdraw its reply should be granted as Rule 4901-1-35, Ohio Administrative Code (O.A.C.), does not recognize the filing of replies.

(10) On September 18, 2012, Duke Energy Ohio Inc. (Duke) filed a motion to file memorandum contra instanter to file its memorandum contra. Duke admits that it incorrectly relied on an out of date entry which directed parties to file all memoranda contra within five business days rather than a more recent entry issued April 2, 2012, which directed that memoranda contra be filed within five calendar days. No memorandum contra Duke's motion was filed.

Duke's motion to file its memorandum contra is reasonable and should be granted. The memorandum contra was filed one day late and granting the request will not prejudice any party to the proceeding or cause undue delay.

II. STATUTORY TEST

(11) FES, IEU, OCC/APJN, and OMAEG/OHA argue that the Commission improperly conducted the statutory price test by only considering the time period between June 1, 2013, and May 31, 2015. The parties contend that the Commission failed to consider the first ten months of the modified ESP. Specifically, OCC/APJN believe that the Commission has departed from its past precedent in conducting the statutory test, and that the Commission's test brought "a degree of precision that is not called for under the statute"[5] and, therefore, exceeds the scope of its authority.

AEP-Ohio responds that the Commission's decision to compare the ESP with the results that would otherwise apply under a MRO over a period when the MRO alternative could realistically be implemented was reasonable to develop an accurate prediction of costs.

The Commission notes that the General Assembly explicitly provided, in Section 4928.143(C)(1), Revised Code, that "the electric security plan so approved...is more favorable in the

5 OCC AFR at 7.

(13) OCC/APJN and IEU argue that the Commission miscalculated the impact of the various riders when conducting the statutory test. OCC/APJN and IEU state that the Commission failed to consider the costs for the Turning Point project for the entire life of the facility. Further, IEU believes the Commission wrongfully set the pool termination rider (PTR) at zero, and that the impact of the pool termination could be significant. In addition, IEU argues that the Commission did not explain why the entire RSR amount was not included in the statutory test, nor the effect of the deferral created by the Opinion and Order in Case No. 10-2929-EL-UNC (Capacity Case).

In its memorandum contra, AEP-Ohio notes that the Commission thoroughly addressed the potential costs associated with the GRR in its Opinion and Order. AEP-Ohio adds that the Commission rationally declined to include any speculative costs that may be associated with the RSR, and adds that the Commission was correct in not including the capacity deferral figures in the statutory test.

The Commission finds that the applications for rehearing filed by IEU and OCC/APJN should be denied, as the calculations contained within the statutory test do not underestimate the costs associated with the GRR. In light of the Commission's determination that parties failed to demonstrate the need for the Turning Point Solar project, the statutory test may actually contain an overestimate cost of the GRR.[7]

Regarding IEU's other arguments, we reject the claim that the Commission failed to explain the RSR determination of $388 million. In its Opinion and Order, the Commission explained:

> The RSR determination of $388 million is calculated by taking the $508 million RSR recovery amount and subtracting the $1 figure to be devoted towards the Capacity Case deferral, as recovery of this deferral will occur under either an ESP or an MRO. Using LJT-5 in AEP-Ohio Ex. 114, when we consider the total connected load of 48 million kWh and multiply it by $1 over the term of the modified ESP, we reach

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7 See *In the Matter of the Long Term Forecast Report of Ohio Power Company and Related Matters,*. Case No. 10-501-EL-FOR, et al. Opinion and Order (January 9, 2013).

> a figure of $144 million to be devoted towards the Capacity Case deferral. However, as the RSR recovery amount increases to $4/MWh in the final year of the modified ESP, we also must account for an increase in the RSR of $24 million, which is also calculated by connected load in LJT-5. Therefore, the actual amount which should be included in the test is $388 million (Opinion and Order at 75).

IEU's incorrect assertion and attempt to misrepresent the Commission's Opinion and Order is inappropriate, and its assignment of error shall be rejected. Further, the Commission reiterates that any costs that may be associated with the deferral created by the Capacity Case are unknown at this time and dependent on actual customer shopping statistics. In any event, as AEP-Ohio points out and we explained in our Opinion and Order, costs associated with the deferral would fall on either side of the statutory test, in light of the fact that the Commission has adopted a state compensation mechanism.[8] Finally, we reject IEU's assignment of error that costs associated with the PTR should have been included in the statutory test. Not only is the record void of credible numbers associated with the costs of pool termination, but also costs associated with the PTR would only arise if AEP-Ohio's corporate separation is amended, and would be subject to subsequent Commission proceedings.[9]

(14) Ohio Schools, OMAEG/OHA, IEU, and OCC/APJN allege that the modified ESP is not more favorable, in the aggregate, than the results that would otherwise apply pursuant to Section 4928.142, Revised Code. OMAEG/OHA argue that there is no evidence that the expeditious transition to market will provide any benefits to AEP-Ohio or its customers. Ohio Schools states that exempting Ohio's schools from the RSR could be a non-quantifiable benefit that would make the modified ESP more favorable under the statutory test. IEU believes that the benefits associated with the energy auctions and move to a competitive bid process do not outweigh the costs associated with the ESP and are unsupported by the record. IEU alleges

8 Opinion and Order at 75

9 *Id.* at 49

that the Commission failed to explain how the qualitative benefits outweigh the costs associated with the ESP.

OCC/APJN acknowledge that qualitative benefits set forth by the Commission may have merit, but that a MRO provides similar, and possibly greater non-quantifiable benefits. Specifically, OCC/APJN explain that the ESP's expedient transition to market may be a qualitative benefit, but assert than under a MRO, energy may also be supplied through the market in less than two and a half years, and a MRO provides a safe harbor for customers and financial security for an EDU. OCC/APJN state that Section 4928.142(D), Revised Code, permits the Commission to accelerate the blending requirements associated with a MRO to 100 percent after the second year. Further, OCC/APJN provide that the Commission has the ability to adjust the blending of market prices in order to mitigate any changes in an EDU's standard service offer (SSO). In light of these considerations, OCC/APJN contend that the modified ESP is not more favorable in the aggregate than the results that would otherwise apply under a MRO.

Similarly, FES notes that the qualitative benefits of the modified ESP do not overcome the $386 million difference between a MRO and the modified ESP. FES reasons that AEP-Ohio may participate in full auctions immediately, and that AEP-Ohio must establish competitive auctions unless it can provide that a modified ESP is more favorable than an MRO, negating the transition to market in two and a half years as a benefit.

In its memorandum contra, AEP-Ohio asserts that the Commission correctly concluded that the increased energy auctions would offset any cost impacts associated with the modified ESP, and that the qualitative benefits of the accelerated pace towards a competitive market have a significant value. AEP-Ohio notes that the statute affords the Commission significant discretion, and the Commission appropriately weighed the quantitative costs with the qualitative benefits.

The Commission affirms that under the statutory test, the modified ESP is more favorable, in the aggregate, than the

In addition, we find OCC/APJN's assertions that a MRO would provide the same qualitative benefits as the modified ESP to be without merit. OCC/APJN correctly point out that in the Duke ESP the Commission determined that, under a MRO, the Commission may alter the blending proportions beginning in the second year of a MRO, pursuant to Section 4928.142, Revised Code. However, OCC/APJN ignore the fact that modifications may only be made to "mitigate any effect of an abrupt or significant change in the electric distribution utility's standard service offer price... ." Therefore, it is entirely speculative for OCC/APJN to argue that a MRO option would allow for AEP-Ohio to engage in competitive market pricing in less than two and a half years, as it assumes that there will be an abrupt or significant change in AEP-Ohio's SSO price. The plain meaning of the text within Section 4928.142(D), Revised Code, indicates that the default provisions contained within the statute apply, absent an exigent scenario, and we find it would be foolish for the Commission to turn away a guarantee of market-based pricing for AEP-Ohio customers within two and a half years on the off chance there are abrupt or significant changes in the market. Earlier in this proceeding, OCC advocated that AEP-Ohio must carefully follow the blending provision contained within Section 4928.142(D), Revised Code, and utilize the default provisions in the statute.[12] Accordingly, we reject OCC/APJN's assignment of error. Finally, we reject Ohio Schools' assignment of error, as the Commission previously addressed their as to why the schools should not be exempt from the RSR.[13]

(15) OMAEG/OHA argue the Commission conducted the statutory test by relying on extra-record evidence, and that the analysis the Commission used in conducting the statutory price test is not verifiable or supported by any party.

In its memorandum contra, AEP-Ohio responds that the Commission only used record evidence to arrive at its conclusion, and the fact that the Commission reached a different result than what any party advocated is not unusual or improper.

12 OCC Ex. 114 at 6-7, Initial Brief at 10-11

13 Opinion and Order at 37

The Commission finds OMAEG/OHA's argument to be without merit. In conducting the statutory test, the Commission unequivocally described, in extensive record based detail, its basis in calculating the quantitative aspects of the statutory test.[14] Specifically, we began with the statutory test created by AEP-Ohio witness Thomas and made modifications to the foundation of the test.[15] While the results of the test may have been different than what any party advocated, all parties, including OMAEG and OHA, had the opportunity to cross-examine Ms. Thomas on her methodology and inputs in conducting the statutory test.[16] As this test was admitted in the record, and our corrections to the test were explained in extensive detail within the Opinion and Order describing the flow-through effect of our modifications, we find OMAEG/OHA's assignment of error should be rejected.

(16) In its assignment of error, AEP-Ohio contends that the Commission underestimated the benefits of the modified ESP in the statutory test. Specifically, AEP-Ohio argues the $386 million figure the Commission determined was the quantifiable difference between an MRO and the modified ESP considered the entire term of the ESP, after the Commission concluded that it is appropriate to consider only the period from June 2013 through May 2015. AEP-Ohio states that when looking at quantifiable items during just the two year period, the modified ESP becomes less favorable by only $266 million. AEP-Ohio concludes that the Commission underestimated the value of the modified ESP.

In its memorandum contra, IEU, OCC/APJN, OMAEG/OHA, and FES state that AEP-Ohio underestimates the cost disadvantage of the modified ESP. The parties explain that even if the Commission adopted AEP-Ohio's suggestion, any adjusted dollar figures would still not overcome the quantitative disadvantage of the modified ESP

The Commission finds that AEP-Ohio's assignment of error should be rejected. In adopting AEP-Ohio's methodology of conducting the statutory test, the Commission evaluated three

[14] *Id.* at 73-75

[15] AEP-Ohio Ex. 114

[16] Tr. at 1260-1342

parts: the statutory price test, other quantifiable considerations, and non-quantifiable factors. The two year time frame pertains only to the statutory price test, which required the Commission to determine that the ESP, as modified, is more favorable than results that would otherwise apply. In looking at just the pricing component, the Commission utilized a two year window in order to determine, with precision, what the price would be when the modified ESP was compared with the results that would otherwise apply. In our next step in conducting the statutory test, the Commission looked at components of the modified ESP that were quantifiable in nature. We evaluated these components from September 2012 through the end of the term of the modified ESP, because, as indicated in the Opinion and Order, these are costs that customers will pay regardless of when an auction would be established. The Commission was not inconsistent when it considered the statutory price test under a two year window but looked at quantifiable costs over the entire term of the ESP, because, pursuant to Section 4928.143(C)(1), Revised Code, we are to compare the modified ESP with results that would otherwise apply based on (a) its pricing, (b) other terms and conditions, including deferrals and future recovery of deferrals, and (c) it must be viewed, in the aggregate. This is consistent with how AEP-Ohio presented the statutory test in the record, and that is how the Commission, in correcting the errors made by AEP-Ohio, followed the statute with precision to determine that AEP-Ohio sustained its burden in indicating that the modified ESP was more favorable than any results that could otherwise apply.[17] Accordingly, AEP-Ohio's assignment of error should be rejected.

III. RETAIL STABILITY RIDER

(17) In its assignment of error, OCC/APJN argue the RSR is not justified by Section 4928.143(B)(2)(d), Revised Code, as it does not provide stability and certainty for retail electric service. Specifically, OCC/APJN believe the Commission failed to determine which of the six categories contained within Section 4928.143(B)(2)(d), Revised Code, it relied upon in approving the RSR. Similarly, Ohio Schools, IEU, and FES assert that

17 See Opinion and Order at 73-77.

there is no statutory basis for the RSR within Section 4928.143(B)(2)(d), Revised Code.

In its memorandum contra, AEP-Ohio provides that the RSR is clearly justified by Section 4928.143(B)(2)(d), Revised Code. AEP-Ohio points out that the statute has three distinct inquiries. Regarding the first query, AEP-Ohio explains that the RSR is clearly a charge as specified under the statute. In discussing the second query, AEP-Ohio states that the RSR is not only related to limitations on customer shopping for retail electric generation service, but also is related to bypassibility, default service, and amortization periods and accounting or deferrals. However, AEP-Ohio also requests clarification from the Commission on which items the Commission relied upon in reaching its conclusion. Finally, AEP-Ohio argues the Commission used extensive record-based findings to support its finding that the RSR provides stability and certainty regarding retail electric service.

In order to clarify the record in this proceeding, the Commission finds that OCC/APJN's application for rehearing should be granted. In approving the RSR pursuant to Section 4928.143(B)(2)(d), Revised Code, the Commission found that, the RSR, as modified, was reasonable. First, as OCC/APJN admits in its application for rehearing,[18] the RSR is indeed a charge, meeting the first component of the statute. Next, the RSR charge clearly falls within the default service category, as set forth in Section 4928.143(B)(2)(d), Revised Code. The RSR, as we specified in our Opinion and Order, freezes non-fuel generation rates throughout the term of the ESP,[19] allowing all standard service offer customers to have rate certainty throughout the term of the ESP that would not have occurred absent the RSR. As a SSO is the default service plan for AEP-Ohio customers who choose not to shop, the RSR meets the second inquiry of the statute as it provides a charge related to default service. While several parties analyze other sections the RSR charge may or may not be classified in, these issues do not need to be addressed as the RSR clearly is a charge related to default service.

18 See OCC/APJN AFR pg. 36-38

19 Opinion and Order at 31

Finally, as we discussed in extensive detail in our Opinion and Order, the RSR promotes stable retail electric service prices by stabilizing base generation costs at their current rates, ensuring customers have certain and fixed rates going forward.[20] Therefore, the RSR, as a charge for default service to ensure customer stability and certainty, is consistent with Section 4928.143(B)(2)(d), Revised Code.

In addition, we find IEU's argument that the Commission failed to provide any analysis in support of the RSR to be erroneous.[21] The Commission devoted four pages of its Opinion and Order to examining the RSR in determining its compliance with the statute. In fact, IEU actually acknowledges that the Opinion and Order made multiple justifications for the RSR,[22] and devoted six pages of its application for rehearing to the Commission's justification of the RSR. The RSR is consistent with the text contained within Section 4928.143(B)(2)(d), Revised Code, and its rationale was justified both in this entry on rehearing and in the Commission's Opinion and Order.[23] Accordingly, all other assignments of error pertaining to statutory authority for the creation of the RSR are denied.

(18) Several parties contend that the inclusion of the Capacity Case deferral in the RSR is impermissible by statute. OCC/APJN, OMAEG/OHA, and OEG believe that the deferral contained within the RSR is not lawful under Section 4928.144, Revised Code, as it does not constitute a just and reasonable phase-in. Further, OMAEG/OHA state that a deferral is not authorized as a wholesale charge under the Commission's regulatory ratemaking authority pursuant to Section 4909.15, Revised Code, as the Commission did not comply with ratemaking requirements prior to approval of the capacity charge.

In its memorandum contra, AEP-Ohio responds that the Commission properly invoked Section 4928.144, Revised Code, in implementing a phase-in recovery. AEP-Ohio points out that because the RSR is justified under Section 4928.143,

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[20] *Id.* at 31-32

[21] IEU AFR at 38.

[22] *Id.* at 41

[23] See Opinion and Order at 31-34.

Revised Code, the deferral recovery mechanism established within the RSR is clearly permissible pursuant to Section 4928.144, Revised Code.

The Commission affirms its decision that the RSR deferral is justified. In the Capacity Case, the Commission authorized that, pursuant to Section 4909.15, Revised Code, AEP-Ohio shall modify its accounting procedures to defer the difference between the state compensation mechanism (SCM) and market prices for capacity, which, as we reiterated in the Capacity Entry on Rehearing, is reasonable and lawful. Further, Section 4928.143(B)(2)(d), Revised Code, allows for the establishment of terms, conditions, or charges relating to limitations on customer shopping for retail generation service, as well as accounting or deferrals, so long as they would have the effect of stabilizing or providing certainty regarding retail electric service. Therefore, the inclusion of the deferral, which is justified by Section 4909.15, Revised Code, within the RSR is permissible by Section 4928.143, Revised Code, as it has the effect of providing certainty for retail electric service by allowing CRES suppliers to purchase capacity at market prices while allowing AEP-Ohio to continue to offer reasonably priced electric service to customers who choose not to shop.

(19) Similarly, in their assignments of error, OEG and Ohio Schools argue that the Commission does not have authority to allow AEP-Ohio to recover wholesale costs associated with the SCM from retail customers through the RSR, thus requiring that the \$1/MWh of the RSR that is earmarked towards the difference in capacity costs should be eliminated. Likewise, OMAEG/OHA opine that because wholesale capacity costs are being recovered from retail customers, there is a conflict between the Opinion and Order and the Capacity Case order.

AEP-Ohio responds that given its unique FRR status, the wholesale provision of capacity service is necessary for customers to be able to shop throughout the term of the ESP. AEP-Ohio explains that the impact of wholesale revenues on retail services offered by CRES suppliers is relevant under the ESP statute because it ensures not only that customers have the option to shop, but also it establishes reasonable SSO rates for those who choose not to shop. AEP-Ohio opines that regardless of how the capacity costs are classified, all CRES suppliers ultimately rely on AEP-Ohio's capacity resources, thereby directly affecting the retail competitive market.

FES also disagrees with the characterization of the RSR as a wholesale rate. FES believes that the deferral is a charge that provides revenue in support of all of AEP-Ohio's services, including distribution, transmission, and competitive generation. Therefore, FES states that because the deferral is made available to AEP-Ohio for all of AEP-Ohio's services, it is properly allocated to all of AEP-Ohio's customers. FES explains that as a result of AEP-Ohio's election to become a FRR entity, AEP-Ohio must bear the competitive obligation to provide the capacity to its entire load.

The Commission finds OEG and OMAEG/OHA's assignments of error to be without merit. Under Section 4928.143(B)(2)(d), Revised Code, the Commission is authorized to establish charges that would have the effect of stabilizing retail electric service. In its application for rehearing, OEG fails to cite to any provision that precludes the Commission from recovering wholesale costs through a retail charge. To the contrary, the Commission has explicit statutory authority to include these costs in the RSR because, although they are wholesale, they were established to allow CRES providers access to capacity at market prices in order to allow retail electric service providers the ability to provide competitive offers to AEP-Ohio customers. The fact that these costs not only open the door to a robust competitive retail electric market, but also stabilize retail electric service by lowering market prices and allowing AEP-Ohio to maintain a reasonable SSO price is clearly permissible under Section 4928.143(B)(2)(d), Revised Code. Accordingly, OEG and OMAEG/OHA's assignments of error should be rejected, as they narrow the plain meaning of the statute.

(20) In its application for rehearing, OCC/APJN opine that the RSR unreasonably violates cost causation principles. Specifically, OCC/APJN assert that retail customers are subsidizing CRES providers and non-shopping customers are being charged for a service they are not receiving. OCC/APJN note that Section 4928.02(H), Revised Code, prohibits anticompetitive subsidies from noncompetitive retail electric service to competitive retail electric service.

FES responds that CRES providers are not the cost causers, but rather, AEP-Ohio is as a result of its FRR status. FES explains that AEP-Ohio bears the obligation to provide capacity to its entire load, and that capacity costs would be incurred regardless of whether there were any CRES providers.

AEP-Ohio rejects OCC/APJN's argument that the RSR creates a cross-subsidy, as the Commission explicitly found in its Opinion and Order that all customers benefit from RPM pricing and the other features the RSR contains. By its very nature, AEP-Ohio asserts, the RSR cannot cause a cross-subsidy because all customers ultimately benefit from the RSR. AEP-Ohio also provides that the RSR does not violate Section 4928.02(H), Revised Code, because it is not a distribution or transmission rate recovering generation-related costs, and points out that all Ohio EDUs have generation-related SSO charges.

The Commission finds OCC/APJN's argument to be without merit. The RSR is not discriminatory in any manner, as it is permissible pursuant to Section 4928.143(B)(2)(d), Revised Code, and provides benefits to all customers in AEP-Ohio's territory, regardless of whether customers are shopping or non-shopping customers. Further, the Commission previously rejected such arguments within in its Opinion and Order, and accordingly, we affirm our decision.[24]

(21) Also in its application for rehearing, OCC/APJN raise the argument that the RAA does not authorize a state compensation mechanism in which non-shopping customers are responsible for compensating AEP-Ohio for its FRR obligations. This, OCC/APJN state, causes unduly preferential and discriminatory pricing because it forces non-shopping customers to pay twice, as they already have capacity charges built into their rates.

AEP-Ohio disagrees with OCC/APJN's contention, explaining that the statute explicitly allows for the creation of stability charges pursuant to Section 4928.143(B)(2)(d), Revised Code, and the fact that all customers benefit from the RSR makes OCC/APJN's assertion incorrect. FES notes that revenue

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24 *Id.* at 37.

included with the deferral cannot be considered a double-charge because it supports all of AEP-Ohio's services, and thus is properly allocated to all of AEP-Ohio's customers.

The Commission finds that OCC/APJN's arguments should be rejected. Both AEP-Ohio and FES agree that the RSR should be collected as a non-bypassable rider, and we agree. As set forth in our Opinion and Order, the RSR benefits all of AEP-Ohio's customers, both shopping and non-shopping in that it allows for the competitive market to continue to develop and expand while allowing AEP-Ohio to maintain a competitive SSO offer for its non shopping customers.[25] Accordingly, as we previously rejected OCC/APJN's arguments, we affirm our decision.

(22) IEU argues that the RSR is improper because it allows for above-market pricing, which the Commission lacks statutory jurisdiction to establish. IEU contends that the RSR's improper collection of above-market prices for capacity violates Section 4928.02, Revised Code, which provides that state policy favors market-based pricing.

AEP-Ohio states that the Commission appropriately addressed the SCM within the Capacity Order, noting that IEU's arguments for market pricing were properly ignored in the Commission's Opinion and Order.

The Commission finds IEU's arguments to be without merit. In its Entry on Rehearing in the Capacity proceedings, the Commission rejected these arguments, explaining that one of the key considerations was the impact of AEP-Ohio's capacity charges on CRES providers and the competitive retail markets. Further, the intent of the Commission in adopting its capacity decision was to further develop the competitive marketplace by fostering an environment that promotes retail competition, consistent with Section 4928.02, Revised Code. Accordingly, as IEU's argument has already been dismissed in the Capacity Case, we find it to be without merit.

(23) Ohio Schools, IEU, and FES allege that the RSR wrongfully allows for AEP-Ohio to collect transition revenue by recovering

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[25] *Id.*

stranded costs. Ohio Schools opine that the approval of cost-based capacity charges is irrelevant because the Commission's decision in the Capacity Case was unlawful. Further, Ohio Schools note that the non-deferral aspects of the RSR still amount to transition charges. IEU adds that the Commission is improperly ignoring its statutory obligation by allowing AEP-Ohio to collect transition revenue, and evade the Commission-approved settlement in which AEP-Ohio was obligated to forgo the collection of any lost revenues. FES and Ohio Schools believe that it is meaningless that AEP-Ohio's status as an FRR entity occurred after the ETP proceedings.

AEP-Ohio believes these arguments should be rejected, as the Commission explicitly dismissed the arguments in the Opinion and Order, as well as in the Capacity Case.

The Commission previously rejected these arguments in its Opinion and Order, noting that AEP-Ohio did not seek transition revenues, and that costs associated with the RSR are permissible in light of AEP-Ohio's status as an FRR entity.[26] We also rejected IEU's arguments again in the Entry on Rehearing in the Capacity Case, finding that AEP-Ohio's capacity costs do not fall within the category of transition costs.[27] As the Commission previously dismissed these arguments, we find that all assignments of error alleging that the RSR allows for the collection of transition revenue should be rejected.

(24) In their respective applications for rehearing, OCC/APJN, OMAEG/OHA and FES argue that even if the RSR is justified, the Commission erred by overestimating the value of the RSR to $508 million. OCC/APJN and OEG believe that the Commission improperly used assumed capacity revenues based on RPM prices, even though AEP-Ohio is authorized to collect capacity revenues at the SCM price. OCC/APJN assert that the current construct forces customers to pay twice for capacity, and if the Commission calculated the RSR based on the $188.88/MW-day figure, it would determine that the RSR is unnecessary. Also, OCC/APJN state that the RSR should have taken into account additional revenue AEP-Ohio will receive

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26 *Id.* at 32.

27 Capacity Case EOR at 56-57

for capacity associated with the energy auctions that will occur during the term of the ESP. OCC/APJN allege that collecting the capacity rate from SSO customers in the energy-only auctions will create capacity revenues that should be offset from the $508 million. In addition, OCC/APJN argue that the Commission applied too low of a credit for the shopped load without providing any rationale in support of its adoption. Ormet argues the proper credit for shopped load was $6.45/MWh, making the RSR overstated by approximately $121 million.

In response, AEP-Ohio points out that it will not book, as revenue, the entire $188.88/MW-day capacity cost. Rather, as established in the Capacity Case, AEP-Ohio explains that the regulatory asset deferral is tied to incurred costs that are not booked as revenues throughout the term of the deferral. AEP-Ohio provides that any revenue collected from CRES providers is limited only to RPM prices and the inclusion of the deferral does not alter the revenue AEP-Ohio receives. Further, AEP-Ohio notes that the Commission's modification of the RSR from a ROE-based revenue decoupling mechanism to a revenue target approach further warrants the use of RPM prices when calculating the RSR in light of the increased risk associated with a fixed RSR. AEP-Ohio also states that the inclusion of capacity revenues associated with the January 2015 energy auction should no longer be applicable, as the Commission does not incorporate any reductions in nonfuel generation revenue associated with the 2014/2015 delivery year. Finally, AEP-Ohio notes that the $3/MWh energy credit was reasonable and supported by the record, and Ormet's request to make an adjustment is speculative and should be rejected. Specifically, AEP-Ohio states that Ormet ignores pool termination concepts and the fact that energy sales margins attributed to transferred plants would become unavailable after pool termination.

The Commission finds that the applications for rehearing should be denied. Claims that the RSR overcompensates AEP-Ohio fail to consider the actual construct of the $188.88/MW-day capacity price, as the deferral established in the Capacity Case will not be booked as a revenue during the deferral period.[28] The revenue AEP-Ohio will collect for capacity is limited only to the RPM price of capacity. Therefore, all assertions that parties make about AEP-Ohio receiving sufficient revenue from the capacity deferral alone are incorrect and should be rejected. Further, we note that OCC/APJN again mischaracterize the function of the RSR, because, as we have emphasized both in the Opinion and Order and again in this Entry, the RSR allows for stability and certainty for AEP-Ohio's non-shopping customer prices, while the deferral relates to capacity, thereby making it inappropriate to claim customers are being forced to pay twice for capacity.

Finally, we find that OCC/APJN and Ormet's applications for rehearing regarding the $3/MWh energy credit should be denied. In approving the RSR, we determined that off-system sales for AEP-Ohio will be lower than anticipated based on our estimation that AEP-Ohio's shopping statistics were overestimated. In light of the likelihood that AEP-Ohio will not see significant off-system sales as OCC/APJN and Ormet allege, we found it was unreasonable to raise the energy credit. Further, we find AEP-Ohio presented the most credible testimony about the energy credit, as it took into consideration the impacts pool termination would have on energy sales margins.[29] On brief, Ormet introduces extra-record evidence that not only should be rejected, but also even if considered fails to rebut the reasonableness of AEP-Ohio's testimony. Therefore, we affirm our determination that the energy credit calculation of $3/MWh is reasonable.

(25) Also in its application for rehearing, OEG argues that, in the alternative, if the Commission does not use the $188.88/MW-day capacity price in the RSR calculation, then the Commission should include the amount of the capacity deferral for the purposes of enforcing the 12 percent earnings cap. OEG points out that this appears to be consistent with what the Commission intended in its Opinion and Order, and is consistent with Commission precedent. OEG also suggests that the Commission clarify that the earnings cap was an ESP provision adopted pursuant to Section 4928.143(B)(2)(d), Revised Code.

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28 *In re AEP-Ohio*, Case No. 10-2929-EL-UNC, (Opinion and Order) July 2, 2012.

29 See AEP-Ohio Ex. 116 at 13, Ex. WAA-6.

AEP-Ohio responds by stating that it is not opposed to including the deferral earnings as deferred capacity revenue when enforcing the 12 percent earnings cap, as it is consistent with the Commission's prior decision regarding AEP-Ohio's fuel deferrals under AEP-Ohio's ESP I.[30]

The Commission finds that OEG's application for rehearing correctly indicated that it was the Commission's intent in its Opinion and Order to include the deferred capacity revenue in AEP-Ohio's 12 percent earnings cap. We believe the inclusion of the deferred capacity revenue is important to ensure AEP-Ohio does not reap a disproportionate benefit as a result of the modified ESP.[31] Therefore, the Commission clarifies that, in the 12 percent SEET threshold established within the Opinion and Order, the complete regulatory accounting of the threshold should include the entire \$188.88/MW-day capacity price as current earnings, not just the RPM component, as well as the \$3.50 and \$4.00 per MWh RSR. The \$1.00/MWh of the RSR charge that is to be devoted towards the capacity deferral shall be off-set with an amortization expense of \$1.00/MWh. However, we reject OEG's request to include the 12 percent threshold as a condition to the RSR, as the Commission can and will adequately analyze AEP-Ohio's earnings consistent with Section 4928.143(F), Revised Code, without creating an unnecessary regulatory burden, as reiterated in our SEET analysis below. Accordingly, OEG's application for rehearing should be granted in part and denied in part.

(26) In its application for rehearing, OCC/APJN assert that the Commission should not have found that AEP-Ohio may file an application to adjust the RSR in the event that there is a significant reduction in its non-shopping load. OCC/APJN argue that this unreasonably transfers the risks associated with economic downturns from AEP-Ohio and onto customers.

The Commission finds OCC/APJN's application for rehearing should be denied. The Commission has the discretion to take appropriate action, if necessary, in the event there are significant changes in the non-shopping load for reasons beyond AEP-Ohio's control. Further, we note that in the event

30 *In re AEP-Ohio*, Case No. 10-1261-EL-UNC, (Opinion and Order) January 11, 2011.

31 Opinion and Order at 37.

there are significant changes in the non-shopping load, any adjustments to the RSR are still subject to an application process where parties will be able to appropriately advocate for or against any adjustments.

(27) In addition, OCC/APJN argue that the Commission violated Section 4903.09, Revised Code, by failing to allocate the RSR by the percentage of customers shopping in each class. OCC/APJN believe that cost causation principles dictate that the RSR should be allocated among the different customer classes based on their share of total switched load. To the contrary, Kroger asserts that the Commission's Opinion and Order unreasonably requires demand-billed customers to pay for RSR costs through an energy charge, despite the fact that the costs are capacity based but allocated on the basis of demand. Kroger requests that the Commission eliminate the RSR's improper energy charge to demand-billed customers on rehearing.

In its memorandum contra, AEP-Ohio states that OCC/APJN are misguided in their approach, as shopping customers are not the only cost-causers of the RSR, because all customers have the right to shop at any time. If the Commission were to accept rehearing on this area, AEP-Ohio argues that the cost of the RSR would be dramatically shifted from residential customers to industrial and commercial customers. AEP-Ohio also states that Kroger's proposal would unduly burden smaller load factor customers in commercial and industrial classes. AEP-Ohio reiterates that the RSR benefits for all customer classes.

The Commission rejects arguments raised by OCC/APJN and Kroger. As AEP-Ohio correctly points out, and as we emphasized in our Opinion and Order, all customers, residential, commercial, and industrial, and both shopping and non-shopping, benefit from the RSR, as it encourages competitive offers from CRES providers while maintaining an attractive SSO price in the event market prices rise. Were the Commission to adopt suggestions by either party, these benefits would be diminished, as industrial and commercial customers would be harmed by a reallocation of the RSR if we took up OCC/APJN's application, and smaller commercial and industrial customers would face an undue burden of the RSR were we to adopt Kroger's recommendation. We believe the

Opinion and Order struck the appropriate balance through recovery per kWh by customer class, as it spreads costs associated with the RSR charge among all customers, as all customer ultimately benefit from its design.

(28) Furthermore, IEU, FES, and OCC/APJN contend that the fact that the RSR revenues will continue to be collected after corporate separation and flow to AEP-Ohio's generation affiliate violates Section 4928.02(H), Revised Code. OCC/APJN opine that when the RSR is remitted to AEP-Ohio's affiliate, AEP-Ohio will be acting to subsidize its unregulated generation affiliate. IEU states that the Opinion and Order will provide an unfair competitive advantage to AEP-Ohio's generation affiliate, evading corporate separation requirements.

AEP-Ohio responds that, as it is the captive seller of capacity to support its load consistent with its FRR obligations, it must continue to fulfill its FRR obligations even after corporate separation is completed. Due of the nature of its FRR status, AEP-Ohio points out that it must pass through generation related revenues to its subsidiary in order to provide capacity and energy for its SSO load. While AEP-Ohio acknowledges that it will be legally separated from its affiliate, the fact that it remains obligated to provide SSO service for the term of the ESP and the SSO agreement between AEP-Ohio and its affiliate is subject to FERC approval shows the cross-subsidy allegations are improper.

The Commission rejects the arguments raised by IEU, FES, and OCC/APJN, and finds their applications for rehearing should be denied. As previously addressed in the Commission's Opinion and Order, AEP-Ohio, as an FRR entity, must continue to fulfill its obligations by providing adequate capacity to its entire load. Therefore, in order for AEP-Ohio, and the newly created generation affiliate to continue to provide capacity consistent with its FRR obligations, we maintain our position that AEP-Ohio is entitled to its actual cost of capacity, which will in part, be collected through the RSR in order for AEP-Ohio to begin paying off its capacity deferral. As we previously established, parties cannot claim that AEP-Ohio's generation affiliate is receiving an improper subsidy when in fact, it is only receiving its actual cost of service.[32]

(29) In addition, Ormet and Ohio Schools renew their request for exemptions from the RSR in their applications for rehearing.

In its memorandum contra, AEP-Ohio asserts that Ormet and Ohio Schools second-guess the Commission's discretion and expertise, noting that the Commission already dismissed such requests in its Opinion and Order.

Again, the Commission rejects arguments raised by Ormet and Ohio Schools, as both have previously been rejected with ample justification in the Opinion and Order.[33]

(30) In its application for rehearing, AEP-Ohio opines that it was unreasonable for the Commission to use nine percent as a starting point in determining the RSR revenue target. AEP-Ohio argues that nine percent ROE is unreasonably low, as evidenced by the recently approved ROEs of 10 and 10.3 percent, respectively, in AEP-Ohio's distribution rate case. AEP-Ohio also points to the recent Capacity Case decision in which the Commission found it appropriate to establish a ROE of 11.15 percent. AEP-Ohio states that the witness testimony the Commission relied upon in reaching its conclusion did not reflect any consideration of AEP-Ohio's actual cost of equity.

In its memorandum contra, IEU explains that AEP-Ohio has failed to present anything new and its request should therefore be rejected. FES argues that AEP-Ohio's request is meaningless, as Ohio law requires AEP-Ohio's generation service to be independent within the competitive marketplace. OCC/APJN state that the use of a nine percent ROE is not unreasonable, and AEP-Ohio cannot rely on the Capacity Case as precedent because it previously asserted that the state compensation mechanism does not apply to SSO service or the capacity auctions. OCC/APJN also argue that AEP-Ohio's reliance on stipulated cases is improper.

The Commission finds that AEP-Ohio has failed to present any additional arguments for the Commission to consider. IEU

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32 *Id.* at 60

33 *Id.* at 37.

correctly points out that AEP-Ohio previously made these arguments both in the record and on brief. In its Opinion and Order, the Commission determined that there was compelling evidence in regards to an appropriate ROE, and the Commission adopted its target of nine percent based on such testimony.[34] Accordingly, as we provided sufficient justification for our establishment of a nine percent ROE to establish AEP-Ohio's revenue target, we find AEP-Ohio's arguments to be without merit, and its application for rehearing should be denied.

(31) In its assignment of error, AEP-Ohio requests that the Commission clarify that all future recovery of the deferral refers only to the post-ESP deferral balance process. AEP-Ohio also seeks a clarification that the remaining deferral balance that is not collected through the RSR during the term of the ESP will be collected over the three years following the ESP term.

OMAEG/OHA responds that at a minimum, the Commission should continue to make the determinations on cost recovery when more information on the delta is available. OCC/APJN also notes that any clarification is unnecessary because the Commission unreasonably found that deferrals could be collected from both shopping and non-shopping customers.

As the Commission emphasized in its Opinion and Order, the remainder of the deferral will be reviewed by the Commission throughout the term of this ESP, and no determinations on any future recovery will be made until AEP-Ohio provides its actual shopping statistics.[35] Accordingly, as the Commission will continue to monitor the deferral process, and as set forth in the Opinion and Order, we will review the remaining balance of the deferral at the conclusion of the modified ESP, we find that AEP-Ohio's application for rehearing has no merit and should be denied.

(32) In addition, AEP-Ohio requests that the Commission establish a remedy in the event the Ohio Supreme Court overturns the RSR. Specifically, AEP-Ohio argues that it would be subject to increased risk without such a backstop, and proposes a

34 *Id.* at 33.

35 *Id.* at 36.

provision that CRES providers would automatically be responsible for the entire $188.88/MW-day capacity charge if either the capacity deferral or deferral recovery aspect of the RSR is reversed or vacated on appeal.

Ohio Schools, DER/DECAM, and OMAEG/OHA argue that AEP-Ohio's request is an unlawful request for rehearing of the Capacity Case, as the level of capacity charges was not determined in this proceeding on the modified ESP. OMAEG/OHA and Ohio Schools also point out that the creation of a backstop would cause instability and uncertainty, as CRES providers paying the delta between RPM and the cost-based rate may pass costs on to customers. IEU asserts that the mechanism, if approved, would result in an unlawful retroactive rate increase.

The Commission agrees with Ohio Schools, DER/DECAM, OMAEG/OHA, and IEU, and finds that AEP-Ohio's request for a backstop in the event the Commission's deferral mechanism is overturned to be an inappropriate request for rehearing that should have been raised in the Capacity Case. Therefore, AEP-Ohio's application for rehearing should be denied.

IV. FUEL ADJUSTMENT CLAUSE

(33) AEP-Ohio asserts that the Commission's failure to establish a final reconciliation and true-up for the fuel adjustment clause (FAC) was unreasonable. AEP-Ohio notes that the Opinion and Order specifically directed reconciliation and true-up for the enhanced service reliability rider (ESRR), and other riders that will expire prior to or in conjunction with the end of the ESP term. Regarding the FAC, AEP-Ohio contends the Commission failed to account for reconciliation and true-up when the AEP-Ohio's SSO load is served through the auction process. AEP-Ohio reasons that the Commission is clearly vested with the authority to direct reconciliation of the rider and has done so in other proceedings.[36]

FES contends that the Opinion and Order unreasonably maintains separate FAC rates for Ohio Power Company (OP)

[36] Case No. 11-3549-EL-SSO, Duke Energy Ohio Inc., Opinion and Order at 32 (November 22, 2011).

and Columbus Southern Power Company (CSP) rate zones. FES argues that AEP-Ohio has merged and there is no basis to continue separate FAC rates. Based on the testimony of FES witness Lesser and AEP-Ohio witness Roush, FES states that OP customers will pay artificially reduced fuel costs, discouraging competition, and beginning in 2013, OP customers will be subject to drastic increases, as compared to CSP customers.[37] With individual FAC rates, FES reasons that CSP customers are discriminated against in comparison to OP customers for the same service in violation of Sections 4905.33 and 4905.35, Revised Code. As such, FES states that the Opinion and Order is unreasonable in its anti-competitive and discriminatory rate design without providing any rational basis.

IEU offers that nothing in the record of supports FES' claim that separate FAC rates for each rate zone causes artificially reduced fuel costs for the OP rate zone. IEU notes that at the briefing phase of these proceedings no party opposed maintaining separate FAC rates for each rate zone.

OCC/APJN also argue that the decision to maintain separate FAC rates for each rate zone is arbitrary and inconsistent, particularly as to the projected time of consolidation for customers in each rate zone, while approving immediate consolidation for the transmission cost recovery rider (TCRR). Further, OCC/APJN believes that the Commission's failure to consolidate the FAC rates while immediately consolidating the TCRR rates, negatively impacts OP customers. OCC/APJN submits that the Opinion and Order does not explain why consistency is necessary between the FAC and PIRR but not with the TCRR. OCC/APJN note that delaying the merger of the FAC rates causes OP customers to incur a $0.02/Mwh increase in rates. OCC/APJN state that the Commission failed to offer any explanation for the inconsistent treatment in the merger of the various rates and continuing separate FAC and PIRR rates, as required by Section 4903.09, Revised Code.

First, we grant rehearing on two issues raised in regard to the FAC. First, we grant OCC/APJN's request for rehearing only to clarify that the Commission did not intend to establish June

[37] FES Ex. 102A at 45-46; FES Ex. 102B; Tr. at 1075-1077, 1082-1084.

2013, as the date by which the FAC rates of each service zone would be merged. The Commission will continue to monitor the deferred fuel balance of each rate zone to determine if, and when, the FAC rates should be consolidated. Second, we grant AEP-Ohio's request for rehearing to facilitate a final reconciliation and true-up of the FAC upon termination of the FAC rates. We deny the other requests for rehearing in regards to the FAC.

It is necessary to maintain separate FAC rates until the deferred fuel expense incurred by OP rate zone customers has been significantly reduced. Consistent with the Commission's decision in AEP-Ohio's prior ESP, the deferred fuel expenses incurred by each rate zone will be collected through December 31, 2018. We note that a significant portion of the deferred fuel expense incurred by CSP rate zone customers, over $42 million, was offset by significantly excessive earnings paid by CSP rate zone customers.[38] Further, as noted in the Opinion and Order, in addition to delaying the consolidation of the FAC rates to be consistent with the recovery of the PIRR, the Commission noted pending Commission proceedings will likely affect the FAC rate for each rate zone.[39] Furthermore, the Commission notes that the pending 2010[40] and 2011 SEET proceedings for CSP and OP could affect the PIRR for either rate zone. Because of the remaining balance of deferred fuel expense was incurred primarily by OP customers, as noted in the Opinion and Order, the Commission reasoned that maintaining distinct and separate FAC rates for each rate zone would facilitate transparency and review of any ordered adjustments in the pending FAC proceedings as well as any PIRR adjustments.[41]

The deferred fuel charges were incurred prior to the merger of CSP and OP and form the basis for the PIRR rates applicable to CSP and OP rate zone customers. If FES believes that the deferred fuel charges incurred by CSP or OP were discriminatory or imposed an undue or unreasonable prejudice, the appropriate time to address the claim would

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38 *In re AEP-Ohio*, Case No. 10-1261-EL-UNC, Opinion and Order (January 11, 2011); Entry on Rehearing

39 Opinion and Order at 17.

40 *In re AEP-Ohio*, Case Nos. 11-4571-EL-UNC and 11-4572-EL-UNC.

41 *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, Case No. 09-872-EL-FAC, et al., Opinion and Order (January 23, 2012).

have been in the FAC audit proceedings. In this proceeding the Commission has determined that it would be an unreasonable disadvantage for former CSP customers to be required to incur the significant outstanding deferred fuel expense incurred by former OP customers, particularly when possible adjustments to the FAC and PIRR rates for each rate zone are pending. The TCRR is analyzed and reconciled independent of the FAC the PIRR for each rate zone, and is not affected by the outcome of SEET or FAC proceedings. For these reasons, the Commission finds it reasonable and equitable to continue separate FAC and PIRR rates for each rate zone although we merged other components of the CSP and OP rates where we determined the consolidated rate did not impose an unreasonable disadvantage or demand on customers in either rate zone. On that basis, the Opinion and Order complies with Sections 4905.33 and 4905.35, Revised Code. Accordingly, we affirm the decision not to merge the FAC and deny the request of FES and OCC/APJN to reconsider this aspect of the Opinion and Order.

V. <u>BASE GENERATION RATES</u>

(34) In its assignment of error, OCC/APJN contend that the modified ESP's base generation plan does not benefit customers. OCC/APJN point to the testimony indicating that auction prices have gone down and CRES providers have been providing lower priced electric service. In light of these lower prices, OCC/APJN opine that freezing base generation prices is not a benefit because the market may be producing rates at lower prices. OCC/APJN allege that the Commission failed to ensure nondiscriminatory retail rates are available to customers, as the base generation rates were not properly unbundled into energy and capacity components, creating the risk of customers paying different prices for AEP-Ohio's capacity costs.

In its memorandum contra, AEP-Ohio responds that the Commission properly determined that freezing base generation rates for non-shopping SSO customers is beneficial because it allows for a stable and reasonably priced default generation service that will be available to all customers. AEP-Ohio further explains that OCC/APJN do not present any evidence to support its assertion that the base generation rate design makes it difficult for the Commission to ensure that all SSO customers are receiving non-discriminatory generation service, and points out that OCC/APJN wrongfully attempt to extrapolate the Commission's Capacity order. AEP-Ohio adds that any accusations of the base generation rates being discriminatory are also improper because AEP-Ohio offers different services to its SSO customers than it does to CRES providers. Specifically, AEP-Ohio explains that it only offers capacity service to CRES providers, but it offers a bundled supply of generation service to its SSO customers, thereby eliminating any claim of AEP-Ohio providing discriminatory services.

The Commission affirms its decision in the Opinion and Order, as the frozen base generation rates amount to a reasonably priced, stable alternative that will remain available for all customers who choose not to shop. Further, OCC/APJN failed to provide any foundation in the evidentiary hearing and in its application for rehearing that the base generation rates were not properly unbundled. To the contrary, AEP-Ohio's base generation rates were almost unanimously unopposed by all parties who intervened in this proceeding, which included intervenors representing small business customers, commercial customers, and industrial customers.[42] Further, OCC/APJN fail to recognize that AEP-Ohio is not offering discriminatory rates between its non-shopping customers and those customers who shop, as AEP-Ohio provides different services to the shopping and non-shopping customers. Therefore, OCC/APJN's arguments fail, as Section 4905.33, Revised Code, prohibits discriminatory pricing for like and contemporaneous service, which does not apply here. AEP-Ohio provides capacity service to CRES providers, and provides a bundled generation service to its SSO customers.

VI. INTERRUPTIBLE POWER-DISCRETIONARY SCHEDULE CREDIT

(35) OCC/APJN state that the Commission failed to provide that the interruptible power-discretionary schedule (IRP-D) credit costs should not be collected from residential customers, which was necessary in order for the Commission to be consistent with the intent of the approved stipulation in Case No. 11-5568-EL-POR. Specifically, OCC/APJN argue that the stipulation in

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42 See Opinion and Order at 15-16.

that case provides that program costs for customers in a nonresidential customer class will not be collected from residential customers, and residential program costs will not be collected from non-residential customers.

In its memorandum contra, OEG argues that the credit adopted under the IRP-D is a new credit established in this proceeding, and therefore should not be governed by the EE/PDR stipulation. OEG opines that the Commission acted lawfully and reasonably in approving the IRP-D credit.

The Commission finds OCC/APJN's arguments should be rejected. As OEG correctly points out, the IRP-D credit was established in the modified ESP proceeding, therefore, it is not proper for OCC/APJN to use a stipulation that is only contemplated the programs set forth in the EE/PDR stipulation.

VII. AUCTION PROCESS

(36) In its assignment of error, OEG requests that the Commission clarify that separate energy auctions be held for each AEP-Ohio rate zone. OEG explains that this would be consistent with the FAC and PIRR recovery mechanisms, and without separate energy auctions, the auction may result in unreasonably high energy charges for Ohio Power customers. OEG also suggests that the Commission clarify that it will not accept the results from AEP-Ohio's energy auctions if they lead to rate increases for a particular rate zone, and points out that the Commission maintains the discretion and flexibility to reject auction results.

In its memorandum contra, AEP-Ohio submits that it is not necessary to determine the details relating to the competitive bid procurement (CBP) process, as these issues would be more appropriately addressed in the stakeholder process established pursuant to the Commission's Opinion and Order. In addition, AEP-Ohio opposes the proposal for the Commission to reject any unfavorable auction results, as the General Assembly's plan for competitive markets is not based on short-term market results, but rather based on full development of the competitive marketplace. FES notes in its memorandum contra that OEG presented no evidence in support of its arguments, and that its proposal would actually limit supplier participation and hinder competition. FES explains that if the Commission were to adopt the ability to nullify auction results, it would discourage suppliers who invest significant time and resources into the auction from participating in any future auctions.

The Commission finds OEG's arguments on separate energy auctions should not be addressed at this time, and are better left to the auction stakeholder process that was established in the Commission's Opinion and Order.[43] We believe that the stakeholder process will allow for a diverse group of stakeholders with unique perspectives and expertise to establish an open, effective, and transparent auction process. However, we agree with FES and AEP-Ohio, who, in a rare showing of unity, oppose OEG's request to reject auction results. The Commission will not interfere with the competitive markets, and accordingly, we believe it is inappropriate to establish a mechanism to reject auction results. Accordingly, OEG's application for rehearing should be denied.

(37) In its application for rehearing, FES contends that Commission's Opinion and Order slows the movement of competitive auctions by only authorizing a 10 percent slice of system of auction and an energy only auction for 60 percent of its load in June 2014. FES argues that this delay is unnecessary as AEP-Ohio cannot show any evidence of substantial harm by earlier auction dates, and that AEP-Ohio is capable of holding an auction in June 2013.

The Commission rejects FES's arguments, as they have been previously raised and dismissed.[44] Further, the Commission reiterates that it is important for customers to be able to benefit from market-based prices while they are low, as evidenced by our decision to expand AEP-Ohio's slice-of-system auction, as well as accelerating the time frame for AEP-Ohio's energy auctions, but it is also important to take time to establish an effective CBP process that will maximize the number of auction participants.

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43 *Id.* at 39-40.

44 *Id.* at 38-40.

(38) In its application for rehearing, AEP-Ohio requests a modification to provide that, in light of the acceleration of AEP-Ohio's proposed CBP, base generation rates will be frozen throughout the entire term of the ESP, including the first five months after the January 1, 2015, 100 percent energy auction. AEP Ohio explains that it would flow all energy auction procurement costs through the FAC. Further, AEP-Ohio believes it would be unreasonable to adjust the SSO base generation rates for the first five months of 2015, as proposed in AEP-Ohio's application,[45] in light of the substantial modifications made by the Commission to accelerate and expand the scope of the energy auctions. AEP-Ohio warns that absent a clarification on rehearing, there could be adverse financial impacts of AEP-Ohio based on the Opinion and Order's auction modifications.

In its memorandum contra, FES explains that the Commission's Opinion and Order does not allow for AEP-Ohio to recover additional auction costs through the FAC. FES notes that AEP-Ohio's proposal would have the effect of limiting customer opportunities to lower prices, noting that if auction results were lower than SSO customer generation charges, customers would have to pay the base generation difference on top of the auction price, making the effects of competition meaningless. OMAEG/OHA add that costs associated with the auction are not appropriate for the FAC because it will disproportionately impact larger customers.

We find that AEP-Ohio's request to continue to freeze base generation rates through the auction process is inappropriate and should be rejected. The entire crux of the Opinion and Order was the value in providing customers with the opportunity to take advantage of market-based prices and the importance of establishing a competitive electric marketplace. AEP-Ohio's proposal is completely inconsistent with the Commission's mission and would preclude AEP-Ohio customers from realizing any potential savings that may result from its expanded energy auctions. This is precisely the reason why the Commission expanded and accelerated the CBP in the

[45] In its application, AEP Ohio proposed that the 2015 100 percent energy auction costs be blended with the cost of capacity and the clearing price from the energy auction, which would establish new SSO rates. See AEP-Ohio Ex. 101 at 19-21.

first place. Further, we find AEP-Ohio's fear of adverse financial impacts is unfounded, as the RSR will in part ensure AEP-Ohio has sufficient funds to efficiently maintain its operations. Therefore, we find AEP-Ohio's application for rehearing should be denied.

(39) AEP-Ohio opines that the Opinion and Order should be clarified to confirm that the Capacity Order's state compensation mechanism does not apply to the SSO energy auctions or non-shopping customers. DER/DECAM also request further clarification that auctions conducted during the term of the ESP pertain to full service requirements, with any difference between market-based charges and the cost-based state compensation mechanism to be included in the deferral that will be recovered from all customers.

The Commission finds that AEP-Ohio's application for rehearing should be denied. In its modified ESP application, AEP-Ohio originally offered to provide capacity for the January 1, 2015 energy auction at $255 per MW-day. In light of the Commission's decision in the Capacity Case, which determined $188.88 per MW-day would allow AEP-Ohio to recover its embedded capacity costs without overcharging customers, it would be unreasonable for us to permit AEP-Ohio to recover an amount higher than its cost of service. Further, we disagree with AEP-Ohio's assertion that the Commission should not rely on the Capacity Case in determining the cost of capacity for non-shopping customers beginning January 1, 2015, because, as previously stated, the Commission was able to determine that AEP-Ohio's that $188.88 per MW-day establishes a just and reasonable rate for capacity. Therefore, consistent with our Opinion and Order,[46] the use of $188.88 per MW-day allows for AEP-Ohio to be adequately compensated and ensures ratepayers will not face excessive charges over AEP-Ohio's actual costs. In addition, we reject DER/DECAM's request for clarification, as it is not necessary to address the difference between market-based charges and AEP-Ohio's capacity offer for the limited purpose of the January 1, 2015, energy only auction, since the cost of capacity is AEP-Ohio's cost of service.

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[46] See Opinion and Order at 57

(40) In addition, AEP-Ohio argues that it was unreasonable for the Commission to establish early auction requirements and to update to its electronic systems for CRES providers without creating a mechanism for recovery of all prudently incurred costs associated with auctions and the electronic system upgrades.

OCC/APJN respond that AEP-Ohio failed to request any recovery mechanism for these costs within its original application in this proceeding, and that any costs associated with conducting the auction should have been accounted for within its application. Further, OCC/APJN point out that AEP-Ohio has not indicated that the modified auction process would increase its costs over the original auction proposal. Should the Commission grant AEP-Ohio's request, OCC/APJN opine that all costs should be paid by CRES providers, as the costs are caused by the need to accommodate CRES providers.

We agree with OCC/APJN, as AEP-Ohio failed to present any persuasive evidence that it would incur unreasonable and excessive costs in conducting its auction and upgrading its electronic data systems. AEP-Ohio's request is too vague and ambiguous to be addressed on rehearing, and we find that AEP-Ohio's request for an additional recovery mechanism for auction costs should be rejected.

(41) AEP-Ohio requests that the Commission clarify that the auction rate docket will only incorporate revenue-neutral solutions. In support of its request, AEP-Ohio notes that the Commission reserved the rate to implement a new base generation rate design on a revenue neutral basis for all customer classes, and should therefore attach the same condition of revenue neutrality for auction rates.

OCC/APJN argue that the Commission should reject the request for a clarification, as the Commission cannot anticipate all issues that may arise regarding a disparate impact on customers, and encourages the Commission to not box itself into any corners by granting AEP-Ohio's request.

The Commission rejects AEP-Ohio's request to incorporate revenue-neutral solutions within the auction rate docket. However, in the event it becomes apparent that there may be disparate rate impacts amongst customers, the Commission reserves that right to initiate an investigation, as necessary, as set forth in the Opinion and Order.

(42) In addition, AEP-Ohio seeks clarification regarding costs associated with the CBP process. AEP-Ohio believes that because it is required update its CRES supplier information as well as the fact that it will need to hire an independent bid manager for its auction process, among other costs, AEP-Ohio should be entitled to recover its costs incurred.

In its memorandum contra, OMAEG/OHA oppose AEP-Ohio's request, arguing the Commission should not authorize AEP-Ohio to recover an unspecified amount of revenue without an estimate as to whether any costs actually exist. OMAEG/OHA state that it is not necessary for the Commission to make a preemptive determination about speculative costs.

As we previously determined with AEP-Ohio's previous request for auction related costs associated with electronic system data and the expanded auction process, the Commission finds that AEP-Ohio has not shown any estimates on what the auction related costs would be, nor has it provided any evidence as to what the costs may be. We agree with OMAEG/OHA, and find it is premature for the Commission to permit recovery on costs that are unknown and speculative in nature.

VIII. CUSTOMER RATE CAP

(43) OCC/APJN and OMAEG/OHA contend that the Commission's Opinion and Order regarding the customer rate cap is unlawfully vague. OCC/APJN provide that the Opinion and Order should clarify what it intends the rate cap to cover, and should establish a process to address situations where a customer's bill is increase by greater than 12 percent. Further, OCC/APJN request additional information on who will monitor the percentage of increase, and who will notify customers that they are over the twelve percent cap.

AEP-Ohio also suggests the Commission clarify the 12 percent rate cap, and requests a 90 day implementation period for programming and testing its customer billing system to account for the 12 percent cap. AEP-Ohio notes if the

Commission clarifies that AEP-Ohio shall have time to implement its new program, AEP-Ohio will still run calculations back to September 2012 and provide customer credits, if necessary. AEP-Ohio also seeks clarification that its calculation be based on the customer's total billing under AEP-Ohio's SSO rate, as it does not have the rate that certain customers pay CRES providers, and cannot perform a total bill calculation on any other basis other than SSO rates. Further, AEP-Ohio seeks clarification that it be directly authorized to create and collect deferrals pursuant to Section 4928.144, Revised Code, as well as authorization for carrying charges.

The Commission finds that OCC/APJN, OMAEG/OHA, and AEP-Ohio's applications for rehearing should be granted in regards to the customer rate cap in order to clarify the record. As set forth in the Opinion and Order, the customer rate impact cap applies to items that were established and approved within the modified ESP, and does not apply to any previously approved riders or tariffs that are subject to change throughout the term of the ESP. Specifically, the riders the 12 percent cap intends to safeguard against include the RSR, DIR, PTR and GRR. In addition, the 12 percent rate cap shall apply throughout the entire term of the ESP.

Further, we find that AEP-Ohio should be given 90 days to implement its customer billing system to account for the 12 percent rate increase cap. To clarify OCC/APJN's concerns, by allowing AEP-Ohio 90 days to implement its customer billing system, AEP-Ohio will be able to monitor customer rate increases and provide credits, also if necessary, going back to September 2012. Further, upon AEP-Ohio's implementation of its updated customer billing system, we direct AEP-Ohio to update its bill format to include a customer notification alert if a customer's rates increase by more than 12 percent, and indicate that the bill amount has been decreased in accordance with the customer rate cap.

Finally, as the customer rate impact cap is a provision of the ESP pursuant to Section 4928.143, Revised Code, we authorize the deferral of any expenses associated with the rate cap pursuant to Section 4928.144, Revised Code, inclusive of carrying charges, so we can ensure customer rates are stable for consumers by not increasing more than 12 percent.

IX. SEET THRESHOLD

(44) In its application for rehearing, AEP-Ohio argues that the Commission should eliminate the 12 percent SEET threshold. AEP-Ohio explains that the return on equity (ROE) values contained within the record are forward-looking estimates of its cost of equity, and do not reflect the ROE earned by companies with comparable risks to AEP-Ohio. AEP-Ohio provides that even if the values were from firms with comparable risks, the SEET threshold must be significantly in excess of the ROE earned. Further, AEP-Ohio points to the SEET threshold that the Commission approved for Duke, where the Commission approved a stipulation establishing a SEET threshold of 15 percent.[47] In addition, AEP-Ohio contends that the threshold does not provide any opportunity for the Commission to consider issues such as capital requirements of future committed investments, as well as other items contained within Section 4928.143(F), Revised Code.

In its memorandum contra, OCC/APJN note that the Commission not only followed Section 4928.143(F), Revised Code, but also that the SEET threshold is nothing more than a rebuttable presumption that any earnings above the threshold would be significantly excessive. IEU argues that AEP-Ohio unreasonably relies upon settlements in other proceedings to attempt to resolve contested issues contained within the Commission's Opinion and Order.

The Commission finds AEP-Ohio's application for rehearing should be denied. Under Section 4928.143(F), Revised Code, the Commission shall annually determine whether the provisions contained within the modified ESP resulted in AEP-Ohio maintaining excessive earnings. The rule further dictates that the review shall consider whether the earnings are significantly in excess of the return on equity of other comparable publicly traded companies with similar business and financial risk. The record in the modified ESP contains extensive testimony from three expert witnesses who testified in length on what an appropriate ROE would be for AEP-Ohio, and all considered comparable companies with similar risk in

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[47] *In re Duke*, Case No. 08-920-EL-SSO (Opinion and Order) December 17, 2008 and Case No. 11-3549-EL-SSO (Opinion and Order) November 22, 2011.

reaching their conclusions.[48] In addition, three other diverse parties also presented evidence in the record that was consistent with the recommendations presented by the three expert witnesses, which when taken as a whole, demonstrates that a 12 percent ROE would be at the high end of a reasonable range for AEP-Ohio's return on equity.[49] Further, we believe that the SEET threshold of 12 percent is not only consistent with state policy provisions, including Section 4928.02(A), Revised Code, but also reflects an appropriate rate of return in light of the modified ESP's provisions that minimize AEP-Ohio's risk.[50]

X. CRES PROVIDER ISSUES

(45) In its application for rehearing, FES argues that the Commission unreasonably authorized AEP-Ohio to continue its anti-competitive barriers to shopping, including minimum stay requirements and switching fees without justification. FES asserts that both are contrary to state policies contained within Section 4928.02, Revised Code.

AEP-Ohio responds that FES's assertions present no new arguments, and the record fully supports the findings by the Commission. Further, AEP-Ohio explains that the modified ESP actually offered improvements to CRES providers, further indicating that rehearing is not warranted on this issue.

The Commission finds FES's application for rehearing relating to competitive barriers should be granted. Upon further consideration, we believe AEP-Ohio's switching rules, charges, and minimum stay provisions are inconsistent with our state policy objectives contained within Section 4928.02, Revised Code, as well as recent Commission precedent. The Commission recognizes that the application eliminates the current 90-day notice requirement, the 12-month minimum stay requirement for large commercial and industrial customers, and AEP-Ohio's seasonal stay requirement for residential and smaller commercial customers on January 1, 2015, however, we find that these provisions should be

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48 Opinion and Order at 33

49 *Id.* at 37.

50 *In re Application of Columbus S. Power Co.*, Slip Opinion No. 2012-Ohio-5690, (Pfeifer, J., dissenting).

eliminated earlier. We believe it is important to ensure healthy retail electric service competition exists in Ohio, and recognize the importance of protecting retail electric sales consumers right to choose their service providers without any market barriers, consistent with state policy provisions in Sections 4928.02(H) and (I), Revised Code. We are confident that these objectives are best met by eliminating AEP-Ohio's notice and stay requirements in a more expeditious manner, therefore, we direct AEP-Ohio to submit within 60 days, for Staff approval, revised tariffs indicating the elimination of AEP-Ohio's minimum stay and notice provisions effective January 1, 2014, from the date of this entry. Further, these changes are consistent with provisions in both Duke and FirstEnergy's recent ESPs.[51]

Further, we note that, in Duke's most recent ESP, not only did the Commission approve a plan devoid of any minimum stay provisions, but also it granted a reduction in Duke's switching fee to $5.00.[52] Accordingly, we also find that AEP-Ohio's switching fee should be reduced from $10.00 to $5.00, which CRES suppliers may pay for the customer, as is consistent with Commission precedent.[53]

(46) In its application for rehearing, IEU argues the Opinion and Order failed to ensure that AEP-Ohio's generation capacity service charge will be billed in accordance with a customer's peak load contribution (PLC) factor. IEU acknowledges that the Opinion and Order directed AEP-Ohio develop an electronic data system that will allow CRES providers access to PLC data by May 31, 2014, but states that Opinion and Order will allow the PLC allocation process to be unknown for two years until that deadline. IEU proposes that the Commission adopt the uncontested recommendation of its witness to require immediate disclosure of AEP-Ohio's PLC factor.

AEP-Ohio states that IEU is merely trying to rehash arguments previously made. Further, AEP-Ohio points out that because the PLC value is something AEP-Ohio passes on to CRES

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51 *In re Duke Energy Ohio,* Case No. 11-3549-EL-SSO, (November 22, 2011) Opinion and Order, *In re FirstEnergy,* Case No. 12-1230-EL-SSO (July 18, 2012) Opinion and Order.

52 *In re Duke Energy Ohio,* Case No. 11-3549-EL-SSO, (November 22, 2011) Opinion and Order at 39-40.

53 *Id.*

providers, IEU's concerns about transparency in the PLC value allocation process is something IEU should address with any CRES provider from which it or its customers purchase energy.

The Commission rejects IEU's arguments, as the Opinion and Order already directed AEP-Ohio to develop an electronic system that will include PLC values, historical usage, and interval data.[54] Although we did not adopt IEU's recommendation of an immediate system, our intent in setting a May 31, 2014, deadline was to allow for members of the Ohio Electronic Date Interchange Working Group to develop uniform standards for electronic data that will be beneficial for all CRES providers. While IEU may not be pleased with the Commission's decision to develop a uniform program to the benefit of CRES providers, and ultimately customers, as well as to allow for due process in accordance with our five-year rule review of Chapter 4901:1-10, O.A.C., by allowing interested stakeholders to explore the possibility of a POR program, we affirm our decision and find that these provisions are reasonable.

XI. DISTRIBUTION INVESTMENT RIDER

(47) AEP-Ohio asserts that the Commission's failure to establish a final reconciliation and true-up for the distribution investment rider (DIR), which will expire with at the conclusion of the ESP, was unreasonable. AEP-Ohio reasons that it is unable to determine whether the DIR will have a zero balance upon expiration of the rider such that final reconciliation is necessary to address any over-recovery or under-recovery. AEP-Ohio adds that the Commission is clearly vested with the authority to direct reconciliation of the DIR, as was done for the ESRR and in other proceedings. Accordingly, AEP-Ohio contends that it was unreasonable for the Commission to not provide for reconciliation and true-up for the DIR.

We grant AEP-Ohio's request for rehearing to facilitate a final reconciliation and true-up of the DIR at the end of the ESP. Accordingly, within 90 days after the expiration of this ESP, AEP-Ohio is directed to file the necessary information for the

54 *Id.* at 41

Commission to conduct a final review and reconciliation of the DIR.

(48) AEP-Ohio asserts that the Opinion and Order unreasonably adjusted the revenue requirement for accumulated deferred income taxes (ADIT). AEP-Ohio claims that the ADIT offset is inconsistent with the Commission approved stipulation filed in the Company's latest distribution rate case, Case No. 11-351-EL-AIR et al., (Distribution Rate Case) as the revenue credit did not take into account an ADIT offset which, as calculated by AEP-Ohio, results in the distribution rate case credit being overstated by $21.329 million. AEP-Ohio notes that the DIR was used to offset the rate base increase in the distribution rate case and included a credit for residential customers and a contribution to the Partnership with Ohio fund and the Neighbor-to-Neighbor program. AEP-Ohio argues that it is fundamentally unfair to retain the benefits of the distribution rate case settlement and subsequently impose the cost of ADIT offset through the DIR in the ESP when AEP-Ohio cannot take action to protect itself from the risk. On rehearing, AEP-Ohio asks that the Commission restore the balance struck in the distribution rate case settlement by eliminating the ADIT offset to the DIR.[55]

OCC/APJN reminds the Commission that AEP-Ohio's distribution rate case was resolved by Stipulation and the Stipulation does not include any provision for AEP-Ohio to adjust the revenue credit to customers contingent upon Commission approval of the DIR. OCC/APJN notes that the Distribution Rate Case Stipulation details the DIR revenues and the distribution of the revenue credit and also specifically provides AEP-Ohio the opportunity to withdraw from the Stipulation if the Commission materially modifies the DIR in this proceeding. Finally, OCC/APJN asserts that AEP-Ohio was the drafter of the Distribution Rate Case Stipulation and, pursuant to Ohio law, any ambiguities in the document must be construed against the drafting party.

The Commission has considered the appropriateness of incorporating the effects of ADIT on the calculation of a revenue requirement and carrying charges in several

55 AEP-Ohio Ex. 151 at 9-10, Tr. at 2239

proceedings. In regard to determination of the revenue requirement for the DIR, we emphasize, as we stated in the Opinion and Order:

> The Commission finds that it is not appropriate to establish the DIR rate mechanism in a manner which provides the Company with the benefit of ratepayer supplied funds. Any benefits resulting from ADIT should be reflected in the DIR revenue requirement.

None of the arguments made by AEP-Ohio convinces the Commission that its decision in this instance is unreasonable or unlawful. As such, we deny AEP-Ohio's request for rehearing of this issue.

(49) Kroger contends that the Opinion and Order notes, but does not directly address or incorporate, Kroger's argument not to combine the DIR for the CSP and OP rate zones without offering any rationale. Kroger reiterates its claims that the DIR costs are unique and known for each rate zone and blending the DIR rates will ultimately require one rate zone to subsidize the costs of service for the other. Kroger requests that the Commission grant rehearing and reverse its decision on this issue.

AEP-Ohio opposes Kroger's request to maintain separate DIR rates and accounts for each rate zone. AEP-Ohio argues that the Commission specifically noted and explained why certain rider rates were being maintained separately. Given that AEP-Ohio's merger application was approved, AEP-Ohio states that it is unreasonable for the Company to establish separate accounts for the DIR.

The Commission notes that the DIR is a new plan approved by the Commission in the ESP and the distribution investment plan will take into consideration the service needs of the AEP-Ohio as a whole. Kroger's request to establish separate and distinct DIR accounts and rates would result in maintaining and essentially continuing CSP and OP as separate entities. Kroger has not provided the Commission with sufficient justification to continue the distinction between the rate zones or demonstrated any unreasonable disadvantage or burden to either rate zone. The focus of the DIR will be on replacing infrastructure, irrespective of rate zone, that will have the greatest impact on improving reliability for customers. The Commission denies Kroger's request to reconsider adoption of the DIR on a rate zone basis.

(50) OCC/APJN argue on rehearing that the Commission failed to apply the appropriate statutory standard in Section 4928.143(B)(2)(h), Revised Code. As OCC/APJN interpret the statute, it requires the Commission to determine that utility and customer expectations are aligned.

AEP-Ohio retorts that OCC/APJN misinterpret that statute and ignore the factual record in the case to make the position which was already rejected by the Commission. AEP-Ohio reasons that in their attempt to attack the Opinion and Order, OCC/APJN parsed words and oversimplified the purpose of the statute.

The Opinion and Order discusses AEP-Ohio's reliability expectations and customer expectations as well as OCC/APJN's interpretation of the requirements of Section 4928.143(B)(2)(h), Revised Code.[56] OCC/APJN claim that the statutory requirement is that customer and electric distribution utility expectations be aligned at the present time. We reject their claim that the Opinion and Order focused on a forward-looking statutory standard and, therefore, did not apply the standard set forth in Section 4928.143(B)(2)(h), Revised Code. The Commission interprets Section 4928.143(B)(2)(h), Revised Code, to require the Commission to examine the utility's reliability and determine that customer expectations and electric distribution utility expectations are aligned to approve an energy delivery infrastructure modernization plan. The key for the Commission is not, as OCC/APJN assert, to find that customer and utility expectations were aligned, are currently aligned or will be aligned in the future but to maintain, to some degree, the reasonable alignment of customer and utility expectations continuously. As noted in the Opinion and Order, and in OCC/APJN's brief, over 70 percent of customers do not believe their electric service reliability expectations will increase and approximately 20 percent of customers expect

56 Opinion and Order at 42-47.

their service reliability expectations to increase. AEP-Ohio emphasized aging utility infrastructure and the Commission expects that aging utility infrastructure increases outages and results in the eroding of service reliability. The Commission found it necessary to adopt the DIR to maintain utility reliability as well as to maintain the general alignment of customer and utility service expectations. Thus, the Commission rejects the arguments of OCC/APJN and denies the request for rehearing.

(51) OCC/APJN also assert that the DIR component of the Opinion and Order violates the requirements of Section 4903.09, Revised Code, because it did not address Staff's request for details on the DIR plan. In addition, OCC/APJN contend that the Opinion and Order failed to address details about the DIR plan as raised by Staff, including quantity of assets, cost for each asset class, incremental costs and expected improvement in reliability.

We disagree. The Opinion and Order specifically directed AEP-Ohio to work with Staff to develop the plan, to focus spending where it will have the greatest impact and quantify reliability improvements expected, to ensure no double recovery, and to include a demonstration of DIR expenditures over projected expenditures and recent spending levels.[57] Therefore, we also deny this aspect of OCC/APJN's request for rehearing of the Opinion and Order. Finally, the Commission clarifies that the DIR quarterly updates shall be due, as proposed by Staff witness McCarter, on June 30, September 30, December 30 and May 18, with the final filing due May 31, 2015, and the DIR quarterly rate shall be effective, unless suspended by the Commission, 60 days after the DIR update is filed.

(52) OCC/APJN contend that in their initial brief they argued that adoption of the DIR would impact customer affordability without the benefit of a cost benefit analysis.[58] With the adoption of the DIR, OCC/APJN reason that the Opinion and Order did not address customer affordability in light of the state policies set forth in Section 4928.02, Revised Code, and,

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57 *Id.* at 47

58 OCC/APJN Initial Brief at 96-114.

therefore, the Opinion and Order violates Section 4903.09, Revised Code.

We reject the attempt by OCC/APJN to focus exclusively on the DIR as the component of the ESP that must support selective state policies. First, we note that the Ohio Supreme Court has ruled that the policies set forth in Section 4928.02, Revised Code, do not impose strict requirements on any given program but simply expresses state policy and function as guidelines for the Commission to weigh in evaluating utility proposals.[59] Nonetheless, we note that the ESP mitigates customer rate increases in several respects. The provisions of which serve to mitigate customer rate increases include, but are not limited to, stabilizing base generation rates until the auction process is implemented, June 1, 2015; requiring that a greater percentage of AEP-Ohio's standard service offer load be procured through auction sooner than proposed in the application; continuance of the gridSMART project so that more customers will benefit from the use of various technologies to allow customers to better control their energy consumption and costs; and developing electronic system improvements to facilitate more retail competition in the AEP-Ohio service area. Thus, while the adoption of the DIR supports the state policy to ensure reliable and efficient retail electric service to consumers in AEP-Ohio service territory, the above noted provisions of the approved ESP serve not only to mitigate the bill impact for at-risk consumers but all AEP-Ohio consumers. On that basis, the Opinion and Order supports the state policies set forth in Section 4928.02, Revised Code. Thus, we reject OCC/APJN's attempt to narrowly focus on the DIR as the component of the ESP that must support the state policies and deny the request for rehearing.

XII. PHASE-IN RECOVERY RIDER

(53) IEU asserts that the Opinion and Order is unlawful and unreasonable as it authorized recovery of the PIRR without taking into consideration IEU's arguments on the effect of ADIT. IEU argues that the decision is inconsistent with generally accepted accounting principles, regulatory principles,

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59 *In re Application of Columbus Southern Power Co. et al.*, 128 Ohio St.3d 512, at 525, 2011-Ohio-1788

and violated IEU's due process by approving the PIRR without an evidentiary hearing.

AEP-Ohio offers that IEU's claims ignore that the deferred fuel expenses were established pursuant to the Commission's authority under Section 4928.144, Revised Code, in the Company's prior ESP Opinion and Order. The ESP 1 proceeding afforded IEU, and other parties due process when this component of the ESP was established. The purpose of the PIRR Case is to establish the recovery mechanism via a non-bypassable surcharge. AEP-Ohio argues that the ESP 1 order is final and non-appealable on this issue. AEP-Ohio notes that the Supreme Court of Ohio has held that there is no constitutional right to a hearing in rate-related matters if no statutory right to a hearing exists.[60] AEP-Ohio concludes that hearing was not required to implement the PIRR mechanism. Specifically as to IEU's ADIT related objections to the Opinion and Order, AEP-Ohio contends that IEU has made these arguments numerous times and the doctrine of res judicata estops IEU from continuing to make this argument.[61]

The Commission notes as a part of the ESP 1 proceeding, an evidentiary hearing was held on the application and the Commission approved the establishment of a regulatory asset to consist of accrued deferred fuel expenses, including interest. IEU was an active participant in the ESP 1 evidentiary hearing and was afforded the opportunity to exercise its due process rights. However, there is no statutory requirement for a hearing on the application to initiate the PIRR mechanism to recover the regulatory asset approved as a component of the ESP 1 order, as IEU claims. Interested persons were nonetheless afforded an opportunity to submit comments and reply comments on the Company's PIRR application. IEU was also an intervener in the PIRR Case and submitted comments and reply comments. The Commission agrees, as AEP-Ohio states, that IEU and other parties have argued and reargued that deferred fuel expenses should accrue net of taxes. The issue was raised but rejected by the Commission in the ESP 1 proceeding and the issue was raised, reconsidered and again rejected by the Commission in the PIRR Case Opinion and

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60 *Consumers' Counsel v. Pub Util. Comm.* (1994), 70 Ohio St.3d 300, 856 N.E.2d 213.

61 *Office of the Consumers' Counsel v. Pub. Util Comm.* (1984), 16 Ohio St.3d 9.

Order and the Fifth Entry on Rehearing. The Commission finds, as it relates to the PIRR, that the issues in this modified ESP 2 proceedings were appropriately limited to the merger of the PIRR rates and the effective date for collection of the PIRR rates. IEU has been afforded an opportunity to present its position in both the ESP 1 and PIRR proceedings and, as such, there is no need to reconsider the matter as a part of this proceeding. Accordingly, we deny IEU's request for rehearing of the issue.

(54) OCC/APJN argue that the Opinion and Order is inconsistent to the extent that it approves the request to merge the CSP and OP rates for several of the other riders under consideration in the ESP application but maintained separate PIRR riders for the CSP and OP rate zones. OCC/APJN emphasize that the Stipulation initially filed in this proceeding advocated the merger of the PIRR rates and in the December 14, 2011, Opinion and Order the Commission approved the merger of the rates. The Commission's decision not to merge the CSP and OP PIRR rates, according to OCC/APJN, is a reversal of its earlier ruling on the same issue without the justification required pursuant to Section 4903.09, Revised Code.

OEG notes that continuing to maintain separate FAC and PIRR rates for each of the rate zones will cause the need to conduct two separate specific energy-only auctions since the price to beat is different for each rate zone. OEG offers that one way for the Commission to address the issues raised on rehearing as to FAC and PIRR, is to immediately merge the FAC and PIRR rates.

As OCC/APJN explain, the Commission approved without modification, the merger of the PIRR rider rates. However, the Commission subsequently rejected the Stipulation on rehearing. The Commission notes that in regard to the FAC, the vast majority of deferred fuel expenses were incurred by OP rate zone customers, and a significant portion of the deferred fuel expense of former CSP customers was recovered through SEET evaluations. Upon further consideration of the PIRR and FAC rates issues, the Commission has determined that maintaining separate rates for the OP and CSP rate zones, given the significant difference in the outstanding deferred fuel expenses per rate zone, is reasonable, as discussed in the

Opinion and Order and advocated by IEU and Ormet. Accordingly, the Commission affirms its decision and denies OCC/APJN's request for rehearing as to the merger of the PIRR rates.

(55) OEG expresses concern that the PIRR rates will be in effect until December 31, 2018, while the FAC rate will expire with this ESP on May 31, 2015. OEG reasons that as of June 1, 2015, the rates for energy and capacity will be the same for OP and CSP rate zones. OEG requests that the Commission clarify that it is not precluding the merging of the PIRR rates after the current ESP expires. OEG reasons that merging the FAC and PIRR rates for each rate zone would reduce the administrative complexity and burden, increase efficiency, and align the structure of the FAC and PIRR with the other AEP-Ohio rider rates.

Simplification of the auction process for auction participants does not justify ignoring the deferred fuel expense balance incurred for the benefit of OP customers at the expense of CSP customers. The Commission will continue to monitor AEP-Ohio's outstanding deferred fuel expense balance and may reconsider its decision on the merger of the PIRR and FAC rates. However, at this time, we are not convinced by the arguments of OEG to reverse our decision in the Opinion and Order. Accordingly, we deny the request for rehearing.

XIII. ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION RIDER

(56) OCC/APJN offer that the Commission adversely affected the rights of the signatory parties to the EE/PDR Stipulation in Case No. 11-5568-EL-POR et al. by merging the EE/PDR rates in this proceeding. OCC/APJN assert that the parties envisioned separate EE/PDR rates for the CSP and OP rate zones after the merger of CSP and OP.

AEP-Ohio reasons that OCC/APJN's argument to maintain separate EE/PDR rates is without merit and notes that the Commission specifically stated that tariff amendments, as a result of the merger, would be reviewed and rate matters resolved in this proceeding.[62] AEP-Ohio supports the

[62] *In re AEP-Ohio*, Case No. 10-2376-EL-UNC, Entry at 7 (March 7, 2012).

Commission's decision and asks that the Commission deny this request for rehearing

In light of the fact that the Commission reaffirmed AEP-Ohio's merger on March 7, 2012, OCC/APJN should have been aware of the Commission's plan to consider the merging of CSP and OP rates as part of the ESP proceeding. Further, the Commission notes that nothing in the EE/PDR Stipulation or the Opinion and Order approving the Stipulation confirms the assertions of OCC/APJN that the parties expected the EE/PDR rates to be separately maintained after the merger of CSP and OP. In addition, OCC/APJN assert in their application for rehearing that combining the EE/PDR rates prevents the parties from receiving the benefit of the bargain reached in the EE/PDR Stipulation. We therefore deny the request for rehearing.

XIV. GRIDSMART

(57) AEP-Ohio asserts that the Commission's failure to establish a final reconciliation and true-up for the gridSMART rider which will expire prior to or in conjunction with the end of this ESP term, May 31, 2015, was unreasonable.

We grant AEP-Ohio's request for rehearing. Accordingly, the Commission clarifies and directs that within 90 days after the expiration of this ESP 2, AEP-Ohio shall make a filing with the Commission for review and reconciliation of the final year of the Phase I gridSMART rider.

XV. ECONOMIC DEVELOPMENT RIDER

(58) OCC/APJN renew their request on rehearing that the Commission Order AEP-Ohio shareholders maintain the Partnership with Ohio (PWO) fund at $5 million per year and to designate $2 million for the Neighbor-to-Neighbor program. OCC/APJN argue that the Commission's failure to address their request to fund the PWO and Neighbor-to-Neighbor funds, without explanation, is unlawful under Section 4903.09, Revised Code. Further, OCC/APJN reiterate that it is unjust and unreasonable for the Commission not to order AEP-Ohio to fund the PWO program in light of the fact that the Opinion and Order directed the Companies to reinstate the Ohio Growth Fund. OCC/APJN note that the Commission ordered

the funding of the Ohio Growth Fund in its December 14, 2011 order approving the Stipulation. OCC/APJN argue that the at-risk population is also facing extenuating economic circumstances, particularly in southeast Ohio served by AEP-Ohio. OCC/APJN offer that at-risk populations are to be protected pursuant to the policy set forth in Section 4928.02(L), Revised Code.

The Commission notes that provisions were made for the PWO to the benefit of residential and low-income customers, as part of the Company's distribution rate case.[63] The PWO fund directly supports low-income residential customers with bill payment assistance. The Commission concluded, therefore, that the funding in the distribution rate proceeding was adequate and additional funding of the PWO fund, as requested by OCC/APJN was unnecessary. However, as noted in the Opinion and Order, the Ohio Growth Fund, "creates private sector economic development resources to support and work in conjunction with other resources to attract new investment and improve job growth in Ohio" to support Ohio's economy. For these reasons, the Commission did not revise the Opinion and Order and we deny OCC/APJN's application for rehearing.

XVI. STORM DAMAGE RECOVERY MECHANISM

(59) In its application for rehearing, AEP-Ohio suggests that the Commission clarify that, under the storm damage recovery mechanism's December 31 filing procedure, a cutoff of September 30 be established for all expenses incurred. AEP-Ohio opines that the clarification would allow any qualifying expenses that occur after September 30 of each year to be added to the deferral balance and carried forward. AEP-Ohio notes that absent a cut off date, if an incident occurs late in the reporting year, expenses may not be accounted for at the time of the December 31 filing.

In its memorandum contra, OCC/APJN point out that AEP-Ohio's request for clarification would result in customers accruing carrying costs for any costs that may be incurred between October 1 and December 31. As an alternative,

63 *In re AEP-Ohio*, Case No. 11-351-EL-AIR, Opinion and Order at 6, 9 (December 14, 2011).

OCC/APJN suggest the Commission consider a provision allowing AEP-Ohio to amend its filing up to 30 days after the December 31 deadline to include any storm costs from the month of December that were not included in the original filing.

The Commission finds that AEP-Ohio's application for rehearing should be granted. We believe it is important to account for any expenses that may occur just prior to the December 31 filing, however, we are also sensitive to OCC/APJN's concern about carrying costs being incurred over a three-month period as a result of AEP-Ohio's request. Accordingly, we find that under the storm damage recovery mechanism, in the event any costs are incurred but not accounted for prior to the December 31 filing deadline, AEP-Ohio may, upon prior notification to the Commission in its December 31 filing, amend the filing to include all incurred costs within 30 days of the December 31 filing.

XVII. GENERATION RESOURCE RIDER

(60) FES and IEU argue, as each did in their respective briefs, that the dictates of Sections 4928.143(B) and 4928.64(E), Revised Code, require the GRR be established as a bypassable rider. FES, IEU and OCC/APJN request rehearing on the approval of the GRR on the basis that all the statutory requirements of Section 4928.143(B)(2)(c), Revised Code, have not been met as a part of this ESP. FES contends that Sections 4928.143(B)(2)(c) and 4928.64(E), Revised Code, are irreconcilable and the specialized provision of Section 4928.64, Revised Code, prevails. OCC/APJN adds that the Commission's creation of the GRR, even at zero, abrogated Ohio law. For these reasons, FES, IEU, and OCC/APJN submit that the GRR is unreasonable and unlawful.

Each of the above-noted requests for rehearing as to the GRR mechanism was previously considered by the Commission and rejected in the Opinion and Order. Nothing offered in the applications for rehearing persuades the Commission that the Opinion and Order is unreasonable or unlawful. Accordingly, the applications for rehearing on the establishment of the GRR are denied. Further, the Commission notes that we recently concluded that AEP-Ohio and Staff failed to make the requisite demonstration of need for the Turning Point project.[64]

(61) IEU argues that the language in Section 4928.06(A), Revised Code, imposes a duty on the Commission to ensure that the state policies set forth in Section 4928.02, Revised Code, are effectuated. *Elyria Foundry v. Public Util. Comm.*, 114 Ohio St3d. 305 (2007). IEU contends the adoption of the GRR violates state policy and conflicts with the Capacity Order, in which where the Commission determined that market-based capacity pricing will stimulate true competition among suppliers in AEP-Ohio's service territory and incent shopping, thus, implicitly rejecting that above-market pricing is compatible with Section 4928.02, Revised Code.[65]

The Commission notes that the Supreme Court of Ohio determined that the policies set forth in Section 4928.02, Revised Code, do not impose strict requirements on any given program but simply express state policy and function as guidelines for the Commission to weigh in evaluating utility proposals.[66] IEU does not specifically reference a particular paragraph in Section 4928.02, Revised Code, supporting that the GRR is unlawful. Nonetheless, the Commission reiterates, as stated in the Opinion and Order, that AEP-Ohio would be required to share the benefits of the project with all customers, shopping and non-shopping to advance the policies stated in paragraph (H), Section 4928.02, Revised Code.

XVIII. POOL MODIFICATION RIDER

(62) FES argues that the application did not include a description or tariffs reflecting a PTR and, accordingly, did not request a PTR to be initially established at zero. FES submits that there is no evidence and no justification presented in support of a PTR and, therefore, the Commission's approval of the PTR is unreasonable.

AEP-Ohio responds that FES's claims are misleading and erroneous. AEP-Ohio cites the testimony of witness Nelson

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64 *In re AEP-Ohio*, Case Nos. 10-501-EL-FOR and 10-502-EL-FOR, Opinion and Order at 25-27 (January 9, 2013).

65 *In re AEP-Ohio*, Case No. 10-2929-EL-UNC, Opinion and Order at 23 (July 2, 2012).

66 *In re Application of Columbus Southern Power Co. et al.*, 128 Ohio St.3d 512 , at 525, 2011-Ohio-1788.

which included a complete description of the PTR. AEP-Ohio notes that the Commission was able to discern the structure of the PTR and approved the request. AEP-Ohio asserts that FES's claims do not provide a basis for rehearing.

FES's arguments as to the description of the PTR in the application overlook the testimony in the record and the directives of the Commission. As specifically stated in the Opinion and Order, recovery under the PTR is contingent upon the Commission's review of an application by the Company for such costs and any recovery under the PTR must be specifically authorized by the Commission.[67] Furthermore, the Opinion and Order emphasized that if AEP-Ohio seeks recovery under the PTR, it will maintain the burden set forth in Section 4928.143, Revised Code.[68] Accordingly, the Commission denies the request of FES for rehearing on this issue.

(63) IEU also submits that the PTR (as well as the capacity deferral and RSR) violates corporate separation requirements in that it operates to allow AEP-Ohio to favor its affiliate and ignore the strict separation between competitive and non-competitive services. Specifically, IEU contends that Section 4928.02(H), Revised Code, prohibits the recovery of any generation-related cost through distribution or transmission rates after corporate separation is effective.

We find that IEU made similar arguments as to generation asset divestiture. For the same reasons stated therein, the Commission again denies IEU's requests for rehearing.

(64) IEU also contends that the PTR[69] is unreasonable and unlawful as its approval permits AEP-Ohio to recovery generation-related transition revenue when the time period for recovery of such costs as passed, and where the Company agreed to forgo recovery of such costs in its Commission-approved settlement of its electric transition plan (ETP) cases.[70]

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67 Opinion and Order at 49.

68 *Id.*

69 IEU raises the same argument as to the RSR and the capacity charge.

70 *In the Matter of the Applications of Columbus Southern Power Company and Ohio Power Company for Approval of Their Electric Transition Plans and for Receipt of Transition Revenues*, Case Nos. 99-1729-EL-ETP and 99-1730-EL-ETP, Opinion and Order (September 28, 2000).

As to IEU's claim that the PTR is unlawful under the agreement in the ETP cases, the Commission rejects this argument. As we stated in the Opinion and Order, approval of the PTR mechanism does not ensure any recovery to AEP-Ohio. AEP-Ohio can only pursue recovery under the PTR if this Commission modifies or amends its corporate separation plan, filed in Case No. 12-1126-EL-UNC (Corporate Separation Case), as to divestiture of the generation assets only. Further, if the conditions precedent for recovery under the PTR are met, AEP-Ohio has the burden under Section 4928.143, Revised Code, to demonstrate that the Pool Agreement benefitted Ohio ratepayers over the long-term, any PTR costs and/or revenues were allocated to Ohio ratepayers, and that any costs were prudently incurred and reasonable.[71] IEU made substantially similar claims regarding transition cost and the ETP cases in the Capacity Case.[72] The type of transition costs at issue in the ETP cases are set forth in Section 4928.39, Revised Code. We find that recovery for forgone revenue associated with the termination of the Pool Agreement is permissible under Section 4928.143(B)(2)(d), Revised Code, as discussed more fully below. Thus, we find IEU's arguments incorrect and premature. In addition, for the same reasons we rejected these arguments by IEU on rehearing in regard to the RSR and capacity charge, we reject these claims as to the PTR. IEU's request for rehearing is denied.

(65) FES, IEU and OCC/APJN reason that the Commission based its approval of the PTR on Section 4928.143(B)(2)(h), Revised Code, which applies only to distribution service and does not include incentives for transitioning to the competitive market. FES, IEU and OCC/APJN offer that the PTR is generation based and has no relation to distribution service. Further, FES offers that by the time the AEP Pool terminates, the generation assets will be held by AEP-Ohio's generation affiliate and any revenue loss experienced will be that of a competitive generation provider. According to FES and OCC/APJN, nothing in Section 4928.143(B)(2), Revised Code, or any other provision of Ohio law, permits a competitive generation provider to recover lost revenue or to incent the electric distribution utility to transition to market. Furthermore, FES

71 Opinion and Order at 49.

72 *In re AEP-Ohio*, Case No. 10-2929-EL-UNC, Opinion and Order at (date).

reasons that Section 4928.02(H), Revised Code, specifically prohibits cross-subsidization. IEU likewise claims that Section 4928.06, Revised Code, obligates the Commission to effectuate the state policies in Section 4928.02, Revised Code.

AEP-Ohio replies that despite the claims of FES, IEU and OCC/APJN, statutory authority exists for the adoption of the PTR falls under Section 4928.143(B)(2)(h), Revised Code, as the Commission determined in its Opinion and Order. The PTR, is also authorized, according to AEP-Ohio, under Section 4928.143(B)(2)(d), Revised Code. AEP-Ohio reasons that the purpose of the Pool Agreement is to stabilize the rates of Ohio customers, thus division (B)(2)(d) of Section 4928.143, Revised Code, also supports the recovery of Pool Agreement cost. AEP-Ohio states, in regards to the argument on cross-subsidies, that a significant portion of AEP-Ohio's revenues result from sales of power to other AEP Pool members. With the termination of the Pool Agreement, if there is a substantial decrease in net revenue, under the provisions of the PTR, the Company could be compensated for lost net revenue from retail customers. Based upon this reasoning, AEP-Ohio argues that the PTR is an authorized component of an ESP and was correctly approved by the Commission.

The Commission notes that the Opinion and Order specifically limited AEP-Ohio's right to recover under the PTR, only in the event this Commission modified or amended its corporate separation plan as to the divestiture of its generation assets.[73] The Opinion and Order also directed, subject to the approval of the corporate separation plan, that AEP-Ohio divest its generation assets from its electric distribution utility assets by transfer to its generation affiliate.[74] Further by Finding and Order issued on October 17, 2012, in the Corporate Separation Case, AEP-Ohio was granted approval to amend its corporate separation plan to reflect full structural corporate separation and to transfer its generation assets to its generation affiliate. Applications for rehearing of the Finding and Order in the Corporate Separation Case were timely filed and the Commission's decision on the applications is currently pending. The Commission reasons, however, that if we affirm

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[73] Opinion and Order at 49.

[74] *Id.* at 50.

our decision on rehearing, as to the divestiture of the generation assets, AEP-Ohio has no basis to pursue recovery under the PTR.

Nonetheless, we grant rehearing regarding the statutory basis for approval of the PTR. We find that Section 4928.143(B)(2)(d), Revised Code, supports the adoption of the PTR.[75] The termination of the Pool Agreement is a pre-requisite to AEP-Ohio's transition to full structural corporate separation. With AEP-Ohio's move to full structural corporate separation and CRES providers securing capacity in the market, the number of service offers for SSO customers and shopping customers will likely increase and improve. On that basis, termination of the Pool Agreement is key to the establishment of effective competition and authorized under the terms of Section 4928.143(B)(2)(d), Revised Code. We are not dissuaded from this position by the claims of OCC/APJN and FES. As OCC/APJN correctly assert, revenues received as a result of the Pool Agreement are not recognized in the determination of significantly excessive earnings. However, OCC/APJN fails to recognize that the language of Section 4928.143(F), Revised Code, specifically exclude such revenue. We also note, that while effective competition is indeed the goal of the Commission, Section 4928.02(H), Revised Code, does not strictly prohibit cross-subsidization. The Ohio Supreme Court has ruled that the policies set forth in Section 4928.02, Revised Code, do not impose strict requirements on any given program but simply express state policy and function as guidelines for the Commission to weigh in evaluating utility proposals.[76]

(66) IEU claims that Section 4928.06, Revised Code, raises the state policies set forth in Section 4928.02, Revised Code, to requirements. *Elyria Foundry v. Public Util. Comm.*, 114 Ohio St.3d 305 (2007). We note, that more recently, the Ohio Supreme Court determined that the policies set forth in Section

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[75] Section 4928.143(B)(2)(d), Revised Code, states:

> Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service.

[76] *In re Application of Columbus Southern Power Co. et al.*, 128 Ohio St.3d 512, at 525, 2011-Ohio-1788

4928.02, Revised Code, do not impose strict requirements on any given program but simply express state policy and function as guidelines for the Commission to weigh in evaluating utility proposals.[77] Consistent with the Court's ruling we approved the establishment of the PTR subject to the Company making a subsequent filing for the Commission's review including the effectuation of state policies.

XIX. GENERATION ASSET DIVESTIURE

(67) In its application for rehearing, AEP-Ohio asserts that the Commission should have approved the corporate separation application at the same time that it issued the Opinion and Order or made approval of the Opinion and Order contingent on approval of the Company's corporate separation application filed in Corporate Separation Case. AEP-Ohio argues that structural corporate separation is a critical component of the ESP which is necessary for AEP-Ohio to transition to implementing an auction-based SSO. Thus, AEP-Ohio requests that the Commission clarify on rehearing, that the ESP will not be effective until the Commission approves AEP-Ohio's corporate separation application.

The Opinion and Order was issued August 8, 2012. The order in AEP-Ohio's Corporate Separation Case was issued October 17, 2012, approving the corporate separation plan subject to certain conditions. The Commission denies AEP-Ohio's request to make the ESP effective upon the approval of the corporate separation plan. AEP-Ohio had the option of designing its modified ESP application to incorporate its corporate separation plan or to timely request consolidation of the Corporate Separation Case and the ESP cases. AEP-Ohio did not undertake either option. Furthermore, the rates and tariffs in compliance with the Opinion and Order were approved and have been effective since the first billing cycle of September 2012. Accordingly, it would be unreasonable and unfair to make the effective date of the ESP the date the corporate separation case was approved. AEP-Ohio's request for rehearing is denied.

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[77] *In re Application of Columbus Southern Power Co. et al.*, 128 Ohio St.3d 512 , at 525, 2011-Ohio-1788.

(68) IEU argues that the Opinion and Order is unlawful and unreasonable to the extent that the Commission approved the conditional transfer of the generation assets without determining that the transfer complied with Sections 4928.17, 4928.02, and 4928.18(B), Revised Code, and Chapter 4901:1-37, O.A.C.

As we previously acknowledged, AEP-Ohio did not request that the Corporate Separation Case and the ESP proceedings be consolidated. Therefore, as was noted in the Opinion and Order, the primary considerations in the ESP proceeding was how the divestiture of the generation assets and the agreement between AEP-Ohio and its generation affiliate would impact SSO rates and customers. The requirements for corporate separation contained in Sections 4928.17 and 4928.18(B), Revised Code, and the applicable rules in Chapter 4901:1-37, O.A.C., were addressed in the Corporate Separation Case which was issued subsequent to the Opinion and Order in this matter. As the issues raised by IEU have subsequently been addressed, we deny the request for rehearing.

(69) AEP-Ohio also requests that the Commission reconsider and modify the directives as to the pollution control revenue bonds (PCRB). AEP-Ohio requests that, at a minimum, the Commission clarify that the 90-day filing be limited to a demonstration that AEP-Ohio customers have not and will not incur any additional costs caused by corporate separation, and that the hold harmless obligation pertains to the additional costs caused by corporate separation. AEP-Ohio requests permission to retain the PCRB or, in the alternative, authorize AEP-Ohio to transfer the PCRB to its generation affiliate consistent with the Corporate Separation Case. AEP-Ohio suggest that the PCRBs be retained by AEP-Ohio until their respective tender dates and transfer the liabilities to its generation affiliate with inter-company notes during the period between closing of corporate separation and the respective tender dates of the PCRB. AEP-Ohio attests that either option offered would not cause customers to incur any additional costs that could arise from corporate separation and eliminate the need for any 90-day filing.

We grant rehearing on the issue of the PCRB to clarify and reiterate, consistent with the Commission's decision in the

Corporate Separation Case, that ratepayers be held harmless. In the Corporate Separation Case, in recognition of the Company's request for rehearing in this matter and as a condition of corporate separation, the Commission directed the Company utilize an intercompany note between AEP-Ohio and its generation affiliate wherein AEP-Ohio could retain the PCRB and avoid any burden on AEP-Ohio EDU ratepayers.[78] Thus, with the Commission's decision in the Corporate Separation Case, the 90-day filing previously ordered in this proceeding was no longer necessary.

(70) IEU argues that the Opinion and Order is unreasonable and unlawful as it allows AEP-Ohio, the electric distribution utility, to evade strict separation between competitive and non-competitive services and, as such insulates AEP-Ohio's generation affiliate, in violation of Section 4928.17(A)(3), Revised Code, affording its generation affiliate an undue preference or advantage. Similarly, FES argues that the Opinion and Order, to the extent that it permits AEP-Ohio, to pass revenue to AEP-Ohio's generation affiliate, violates Section 4928.143(B)(2)(a), Revised Code, as the statute requires that any cost recovered be prudently incurred, including purchased power acquired from an affiliate. According to FES, the record evidence demonstrates that the capacity price of $188.88 per MW-day is significantly higher than the price that can be acquired in the market and AEP-Ohio has not evaluated the arrangement with AEP-Ohio's generation affiliate or considered options available in the competitive market. As to the pass-through of generation based revenues from SSO customers, FES claims there is no record evidence to support an "arbitrary" price for energy and capacity from SSO customers. FES asserts that AEP-Ohio's base generation rate is not based on cost or market and that AEP-Ohio argued that the base generation rate reflects a $355 per MW-day charge for capacity. For these reasons, FES reasons that the base generation revenues reflect an inappropriate cross-subsidy and are a detriment of the competitive market.

Finally, IEU, FES, and OCC/APAC submits that the pass-through of revenues from AEP-Ohio to its generation affiliate,

78 *In re Ohio Power Company*, Case No. 12-1126-EL-UNC, Order at 17-18 (October 17, 2012).

violates the state policy set forth in Section 4928.02(H), Revised Code.

AEP-Ohio replies that AEP-Ohio is a captive seller of capacity to support shopping load under its FRR obligations and is required to fulfill that obligation during the term of this ESP after corporate separation. AEP-Ohio states four primary reasons why payments to its generation affiliate are not illegal cross subsidies and should be passed to its generation affiliate after corporate separation during this ESP. First, the Commission approved functional separation and AEP-Ohio is presently a vertically-integrated utility. Second, during a portion of the term of this ESP, AEP-Ohio will be legally, structurally separated but remain obligated to provide SSO service at the tariff rates for the full term of the ESP. Third, after corporate separation, AEP-Ohio's generation affiliate will be obligated to support SSO service (energy and capacity) and AEP-Ohio reasons it is only appropriate that its generation affiliate receive the same generation revenue streams agreed to by AEP-Ohio for such service. Finally, there will be an SSO agreement between AEP-Ohio and its generation affiliate for the services, which is subject to the jurisdiction and approval by the Federal Energy Regulatory Commission (FERC). Furthermore, AEP-Ohio warns that without the generation revenues the arrangement between AEP-Ohio and its generation affiliate will not take place. AEP-Ohio also notes that FES has supported this approach on behalf of the First Energy operating companies for several years. AEP-Ohio concludes that the interveners' cross-subsidy arguments are not a basis for rehearing.

First, as we have noted at other times in this Entry on Rehearing, the Ohio Supreme Court has ruled that the policies set forth in Section 4928.02, Revised Code, do not impose strict requirements on any given program but simply expresses state policy and function as guidelines for the Commission to weigh in evaluating utility proposals.[79]

The Commission recently approved AEP-Ohio's application for structural corporate separation to facilitate the Company's transition to a competitive market. Given that the term of this

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79 *In re Application of Columbus Southern Power Co. et al.*, 128 Ohio St.3d 512, at 525, 2011-Ohio-1788.

ESP, corporate separation of the generation assets, and AEP-Ohio's FRR obligations are not aligned, in the Opinion and Order the Commission recognized that revenues previously paid to AEP-Ohio for SSO service will be paid to its generation affiliate for the services provided. However, while we believe it is appropriate and reasonable for revenues to pass thru AEP-Ohio to its generation affiliate for the services provided by no means will we ignore Section 4928.143(B)(2)(a), Revised Code. The costs incurred by AEP-Ohio for SSO service will be evaluated for prudence as a part of AEP-Ohio's FAC/Alternative Energy Rider audit. None of the arguments presented by FES, IEU or OCC/APJN convince the Commission that this decision is unreasonable or unlawful and, therefore, we deny the requests for rehearing of this issue.

It is, therefore,

ORDERED, That Duke's motion to file memorandum contra instanter is granted. It is, further,

ORDERED, That Kroger's request to withdraw its reply memorandum filed on September 24, 2012, is granted. It is, further,

ORDERED, That AEP-Ohio's motion to consolidate is moot. It is, further,

ORDERED, That OCC/APJN's motion to strike is denied. It is, further,

ORDERED, That IEU's request to review the procedural rulings is denied. It is, further,

ORDERED, That the applications for rehearing of the Commission's August 8, 2012, Opinion and Order, be denied, in part, and granted, in part, as set forth herein. It is, further, ORDERED, That a copy of this opinion and order be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Lynn Slaby

GNS/JJT/vrm

Entered in the Journal
JAN 3 0 2013

Barcy F. McNeal

Barcy F. McNeal
Secretary