BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan.	)))))	Case No. 13-2385-EL-SSO
In the Matter of the Application of Ohio Power Company for Approval of Certain Accounting Authority.	)))	Case No. 13-2386-EL-AAM

SECOND ENTRY ON REHEARING

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The Commission finds:

(1) Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company)[1] is a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

(2) On December 20, 2013, AEP Ohio filed an application for a standard service offer (SSO), in the form of an electric security plan (ESP), pursuant to R.C. 4928.143.

(3) On February 25, 2015, the Commission issued its Opinion and Order, approving AEP Ohio's proposed ESP, with certain modifications (ESP 3 Order).

(4) R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

(5) On March 26, 2015, the Ohio Hospital Association filed an application for rehearing of the ESP 3 Order. On March 27, 2015, applications for rehearing were filed by Ohio Partners for Affordable Energy (OPAE) and Appalachian Peace and Justice Network (APJN) (jointly, OPAE/APJN); Industrial Energy Users-Ohio (IEU-Ohio); Interstate Gas Supply, Inc. (IGS); Ohio Manufacturers' Association Energy Group (OMAEG); Constellation NewEnergy, Inc. and Exelon Generation, LLC (jointly, Constellation); AEP Ohio; Ohio Consumers' Counsel (OCC); Environmental Law & Policy Center, Ohio Environmental Council, and Environmental Defense Fund (collectively, Environmental Advocates); and Retail Energy Supply Association (RESA). Memoranda contra the various applications for rehearing were filed by Direct Energy Services, LLC and Direct Energy Business, LLC (jointly, Direct Energy), OPAE/APJN, Environmental Advocates, IEU-Ohio, Ohio Energy Group (OEG), OMAEG,

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1 On March 7, 2012, the Commission approved and confirmed the merger of Columbus Southern Power Company (CSP) into Ohio Power Company (OP). *In re Ohio Power Co. and Columbus Southern Power Co.*, Case No. 10-2376-EL-UNC, Entry (Mar. 7, 2012).

FirstEnergy Solutions Corp., IGS, OCC, AEP Ohio, RESA, and Constellation on April 6, 2015.

(6) By Entry on Rehearing dated April 22, 2015, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing.

(7) The Commission has reviewed and considered all of the arguments raised in the applications for rehearing, with the exception of arguments pertaining to the power purchase agreement (PPA) rider, which, as discussed further below, will be addressed by subsequent entry. Any argument unrelated to the PPA rider that was raised on rehearing and that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

I. POWER PURCHASE AGREEMENT RIDER

(8) In the ESP 3 Order, the Commission concluded that a PPA met the requirements of R.C. 4928.143(B)(2)(d) to be included in an ESP and authorized the establishment of the PPA rider mechanism, as a zero placeholder rider. However, after thoroughly considering the record evidence, the Commission found the Ohio Valley Electric Corporation (OVEC) PPA would not provide a sufficiently beneficial financial hedge, or other commensurate benefits, to AEP Ohio's customers to justify approval of the OVEC PPA. Further, the Commission offered factors that the Commission will consider, but not be bound by, in its evaluation of future requests for a PPA. ESP 3 Order at 22-27.

(9) Several parties filed applications for rehearing requesting reconsideration of the ESP 3 Order regarding the PPA. In consideration of the PPA, the Commission acknowledged the considerable uncertainty with respect to pending PJM Interconnection, LLC (PJM) market reform proposals, environmental regulations, and federal litigation. ESP 3 Order at 24. Thus, the Commission acknowledges the potential impact of these matters on the financial needs of generating plants and on grid reliability. The Commission

will continue to closely monitor developments in these matters.

PJM's Capacity Performance filing is currently pending before the Federal Energy Regulatory Commission (FERC) in Docket ER15-623 (Capacity Performance Docket). On April 24, 2015, in FERC Docket ER15-1470, FERC approved PJM's request for waiver to delay the 2015 base residual auction until 30 to 75 days after the FERC issues its order on the merits of the Capacity Performance proposal, but by no later than the week of August 10-14, 2015.[2] Additionally, PJM proposes to conduct voluntary Capacity Performance Transitional Incremental Auctions (Transitional Incremental Auctions) for existing Generation Capacity Resources to convert to Capacity Performance resources for the 2016/2017 and 2017/2018 delivery years. *PJM Interconnection, LLC*, Capacity Performance Docket (Dec. 12, 2014) at 27-31. The requested PPA overlaps with the delivery years of the proposed Transitional Incremental Auctions. Additionally, we hereby take administrative notice of the U.S. Environmental Protection Agency's pending Clean Power Plan. Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 79 Fed. Reg. 34,829 (June 18, 2014). As proposed, the rule would limit carbon dioxide emissions from generating units. The U.S. Environmental Protection Agency is expected to release its final rule in the summer of 2015.

(10) As noted above, on April 22, 2015, the Commission granted rehearing for further consideration of all assignments of error, including those relating to the PPA. This Commission will defer ruling on the assignments of error related to the PPA at this time. However, while the Commission does not in this Second Entry on Rehearing rule on the arguments related to the PPA, our acknowledgement of pending PJM reform proposals and environmental regulations should not be construed as placing a limitation upon the timing of or the factors to be considered in the Commission's final resolution of the PPA. Given that R.C. 4903.10 and

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2 The Commission takes administrative notice of FERC Dockets ER15-623 and ER15-1470.

4903.11 permit any party to file an application for rehearing of any order and appeal the order of the Commission within 60 days, no party's right to appeal will be adversely affected by our decision to defer ruling on these assignments of error. *In re Columbus S. Power Co.*, 128 Ohio St.3d 402, 2011-Ohio-958, 945 N.E.2d 501; *Senior Citizens Coalition v. Pub. Util. Comm.*, 40 Ohio St.3d 329, 533 N.E.2d 353 (1988). Finally, we note that we may revisit our decision to defer ruling on these assignments of error.

II. COMPETITIVE BID PROCUREMENT PROCESS

(11) In its application for rehearing, Constellation argues that it was unjust and unreasonable for the Commission to order AEP Ohio to conduct two SSO auctions prior to June 2015. Specifically, Constellation asserts that, from a practical perspective, there is simply not enough time remaining before May 31, 2015, for two auctions to take place and that one auction would be much more reasonable. Constellation adds that the occurrence of two auctions in such a short period of time would impose significant administrative costs and impact the operational efficiencies of the auction participants, without any offsetting benefit that would justify the costs.

(12) AEP Ohio responds that the Commission's directive that two auctions occur before June 1, 2015, is not unlawful or unreasonable. AEP Ohio notes that it is well underway in making preparations for the two auctions to ensure their success and that any work completed up until this point would be a wasted effort, even assuming that the Commission's decision on rehearing is issued prior to the auctions. AEP Ohio further notes that the first two auctions have already been scheduled and that it would be unreasonable to change the auction structure or schedule at this point.

(13) The Commission finds that Constellation's request for rehearing on this issue should be denied. In the ESP 3 Order, the Commission directed that AEP Ohio's first and second auctions should occur sufficiently far in advance of the end of the current ESP term on May 31, 2015, with

delivery to commence on June 1, 2015. ESP 3 Order at 31. The ESP 3 Order was issued on February 25, 2015, providing AEP Ohio with approximately three months in which to schedule and plan for the first two auctions, which the Company confirms has already occurred. In any event, we note that Constellation's argument is moot at this point, given that the first two auctions have already occurred and AEP Ohio has been directed to file final tariffs reflecting the results of the auctions. *In re Ohio Power Co.*, Case No. 15-792-EL-UNC, Finding and Order (Apr. 29, 2015), Finding and Order (May 13, 2015).

III. VARIABLE PRICE TARIFFS

(14) In its application for rehearing, AEP Ohio asserts that the Commission should clarify that it did not intend, in the ESP 3 Order, to eliminate the existing provisions of the interruptible power-discretionary rider (IRP-D) tariff that require customers to contract for not less than 1 megawatt (MW) of interruptible capacity and that cap the total interruptible power contract capacity for all customers served under the IRP-D at 525 MW (specifically, 75 MW in the CSP rate zone and 450 MW in the OP rate zone). AEP Ohio points out that the 1 MW per customer minimum interruptible load commitment and the 525 MW aggregate cap for all customers remain appropriate in order to provide a reasonable limit on the costs associated with the IRP-D credit.

(15) OCC agrees with AEP Ohio that the current tariff provisions are appropriate and serve as a limit on the amount of IRP-D costs that other customers pay, while still achieving the objective of providing interruptible capacity resources. IEU-Ohio responds, however, that the Commission should reject AEP Ohio's proposed aggregate load cap of 525 MW on interruptible load. IEU-Ohio contends that the ESP 3 Order did not impose such a limitation and, in light of the expansion of the IRP-D program to include shopping customers, as well as the recognized value of interruptible service, limiting available load to 525 MW is unreasonable.

(16) IEU-Ohio, in its application for rehearing, requests clarification on a number of issues regarding the Commission's modification of the IRP-D. Specifically, IEU-Ohio requests clarification that the Commission has not expanded the conditions under which AEP Ohio may interrupt for purposes of an emergency; has not authorized the Company to retain the current provision for discretionary interruptions; and has directed the Company to remove the current load limitation, in light of the expansion of the IRP-D to new shopping and non-shopping customers. IEU-Ohio recommends that, if the Commission determines that AEP Ohio may limit the load available under the IRP-D, the Commission should both ensure that existing customers benefit from a grandfather clause and provide for a fair means of assigning any remaining available load to customers seeking to expand their current load and customers seeking to contract for load under the IRP-D.

(17) AEP Ohio replies that, with respect to IEU-Ohio's first and second requests for clarification, clarification is not necessary, given that emergency interruptions will be handled in the same manner as currently occurs under the IRP-D, while discretionary interruptions will no longer be required on a going-forward basis. Regarding IEU-Ohio's third request for clarification, AEP Ohio argues that the 525 MW aggregate cap, which equates to approximately $52.5 million in interruptible credit payments per year, should be maintained, in order to prevent an unreasonable and excessive cost burden on firm customers. According to AEP Ohio, clarification is not necessary regarding IEU-Ohio's fourth request regarding allocation of available load, because existing customers will continue to receive service to the extent of the existing interruptible load that they previously committed under the IRP-D program. AEP Ohio points out that, with regard to additional load that customers seek to commit to the program, the Company has always applied the IRP-D cap to new requests for service on a first come, first served basis, and will continue to do so in the future.

(18) In the ESP 3 Order, the Commission denied AEP Ohio's request to eliminate the IRP-D, noting that it offers numerous benefits and furthers state policy. With respect to our modifications to the IRP-D, we expanded the $8.21/kilowatt-month credit to new and existing shopping and non-shopping customers. ESP 3 Order at 39-40. However, upon review of the record in these proceedings and taking into consideration the parties' concerns regarding the potential for increased costs, which are discussed further below, we find that the IRP-D program should be continued only for customers that are currently participating in the program and should not be expanded to new customers.

Also, the Commission clarifies that, consistent with OEG's proposal, which AEP Ohio accepted in its briefs, it was our intention to modify the IRP-D to provide for unlimited emergency interruptions only. ESP 3 Order at 37-38, 40. No other modifications to the IRP-D were addressed in the ESP 3 Order and, therefore, the Commission did not intend to make other modifications to the IRP-D. However, in response to AEP Ohio's and IEU-Ohio's requests for elaboration on the IRP-D, the Commission clarifies that, to the extent necessary given our decision to limit the IRP-D program to existing customers, the 1 MW per customer minimum interruptible load commitment and the 525 MW aggregate cap for all customers should be retained, as we agree with the Company and OCC that they provide a reasonable limit on the costs associated with the IRP-D credit. With respect to interruptions under the IRP-D, the program will now consist exclusively of unlimited emergency interruptions; thus, discretionary interruptions will no longer be required. Finally, regarding allocation of the available load, existing customers should continue to receive service to the extent of the existing interruptible load that they previously committed under the IRP-D program, while requests from current customers to include additional load in the program should continue to be handled by AEP Ohio on a first come, first served basis, consistent with its current practice.

(19) AEP Ohio also argues that the Commission should modify the method through which the Company recovers its actual costs of providing the IRP-D credit from the energy efficiency and peak demand reduction (EE/PDR) rider to the economic development rider (EDR). According to AEP Ohio, reliance on the EE/PDR rider as a cost recovery mechanism will create an unreasonable and unlawful burden for customers paying the costs of the IRP-D credit, whereas recovery of the costs through the EDR is consistent with the substantial economic development purpose of the IRP-D. AEP Ohio claims that mercantile customers, some of whom participate in the IRP-D program and benefit from the credit, have the ability to opt out of payment of the EE/PDR rider, which will inequitably shift IRP-D costs to the non-mercantile customers that must pay the EE/PDR rider.

(20) Additionally, AEP Ohio requests that the Commission confirm that the Company is entitled to fully recover the costs associated with the IRP-D credit. AEP Ohio notes that the ESP 3 Order directed that the Company should continue to apply for recovery of the costs associated with the IRP-D through the EE/PDR rider until otherwise ordered by the Commission. AEP Ohio, therefore, seeks clarification that, by using the word "apply," the Commission did not intend to leave open the possibility that the Company would not be permitted to recover its actual costs of providing the IRP-D credit.

(21) Like AEP Ohio, OMAEG argues that the Commission erred in determining that the costs associated with the IRP-D should continue to be recovered through the Company's EE/PDR rider rather than be collected through the EDR. OMAEG contends that the ESP 3 Order is contrary to recent precedent in which the Commission stated its intent to remove interruptible program costs from the EE/PDR riders of the electric distribution companies in their upcoming ESP proceedings, in favor of requiring that such costs be collected through more appropriate riders. *In re Amendment of Chapters 4901:1-10 and 4901:1-21, Ohio Administrative Code*, Case No. 14-1411-EL-ORD, Finding and Order (Dec. 17, 2014) at 20. OMAEG adds that, if IRP-D costs continue to be

collected through the EE/PDR rider, there may be a disproportionate adverse impact on small and medium size commercial customers, given that more mercantile customers may elect to utilize the mercantile self-direct exemption mechanism available under the EE/PDR rider, in order to forgo paying the additional costs of the expanded IRP-D program, which will then be collected from a reduced pool of customers.

(22) Environmental Advocates also maintain that the ESP 3 Order is unreasonable and unlawful, because AEP Ohio was authorized to recover the IRP-D costs through the EE/PDR rider, which may negatively affect the Company's energy efficiency programs. According to Environmental Advocates, the IRP-D is an economic development measure and, therefore, the Commission should require AEP Ohio to collect the IRP-D costs through the EDR. Like OMAEG, Environmental Advocates note that greater numbers of industrial customers may elect to opt out of the EE/PDR rider, resulting in higher costs for the remaining customers.

(23) OEG agrees with AEP Ohio, OMAEG, and Environmental Advocates that it would be reasonable for the Company to recover the costs associated with the IRP-D credit through the EDR, given the economic development objectives served by continuing the IRP-D program during the ESP term. OCC also agrees that the IRP-D costs should be collected through the EDR, given that mercantile customers may opt out of the EE/PDR rider and pay nothing for the benefit of the IRP-D credit.

(24) IEU-Ohio argues that the proposal to recover the costs of the IRP-D credit through the EDR would constitute an untimely amendment of AEP Ohio's current EE/PDR portfolio plan that is barred by Substitute Senate Bill 310 (SB 310). IEU-Ohio adds that, if the Commission nevertheless authorizes an untimely amendment to the portfolio plan by granting rehearing on this issue, the Commission should also direct that customers may exercise the streamlined opt out of the benefits and costs of the amended plan that would have been available under SB 310, as if AEP Ohio had timely sought an amendment.

(25) The Commission finds that the requests for rehearing of AEP Ohio, OMAEG, and Environmental Advocates should be denied. In the ESP 3 Order, we directed AEP Ohio, consistent with its current practice, to continue to apply for recovery of the costs associated with the IRP-D through the EE/PDR rider, until otherwise ordered by the Commission. ESP 3 Order at 40. As the Commission has previously noted, the IRP-D reduces AEP Ohio's peak demand and encourages energy efficiency and, therefore, it is appropriate that the costs of the program are recovered through the EE/PDR rider. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-346-EL-SSO, et al. (*ESP 2 Case*), Opinion and Order (Aug. 8, 2012) at 26. We again affirm our finding that the costs of the IRP-D should be recovered through the EE/PDR rider, until otherwise ordered by the Commission. The Commission appreciates the concerns raised by several of the parties with respect to the costs associated with the IRP-D credit, and we will continue to monitor the impact of the credit on customers' EE/PDR rates. However, in light of our decision above to limit the IRP-D program to existing customers, we do not expect that the costs related to the IRP-D credit will significantly increase. Further, regarding AEP Ohio's request for clarification, the Commission finds that it is appropriate for the Company to recover its actual costs of providing the IRP-D credit and, therefore, it was not the Commission's intention to suggest otherwise.

(26) Next, AEP Ohio asserts that the Commission should modify its directive that the Company bid the capacity resources associated with the IRP-D program into PJM's capacity auctions and credit the revenues received against the costs of the IRP-D credit, because the directive is infeasible and, thus, unreasonable and unlawful. AEP Ohio notes that PJM has already conducted the base residual auctions into which such capacity resources may be bid for each of the years that span the three-year term of the ESP and, as a result, the Company will not be able to realize revenues from the sale of the capacity resources. AEP Ohio further notes that it is highly likely that existing IRP-D customers have already bid, either through contractual arrangements or on an individual basis, their IRP-D related capacity into PJM's base residual

auctions for the three delivery years of the ESP. In light of these issues, AEP Ohio recommends that, as a condition of participation, all IRP-D customers be required to certify to the Company that they have bid, or will bid in the next auction, their interruptible capacity resources into the PJM capacity market. AEP Ohio then proposes to offset against, and reduce the amount of, the interruptible credit provided to each IRP-D customer by the gross amount of capacity revenues, which would be calculated based on the weighted average auction clearing price and the amount of any emergency energy payments during events. Finally, AEP Ohio proposes that it would then recover from all customers, through the rider used to recover the costs associated with the IRP-D credit, the net amount of the IRP-D credit minus the gross amount of revenues realized from the sale of the IRP-D customers' interruptible capacity and emergency energy into the PJM market. According to AEP Ohio, its recommended approach would accomplish the Commission's objectives, enable IRP-D customers to participate in Economic and Ancillary Service Demand Response programs, and eliminate any uncertainty regarding auction participation that may exist at the end of the ESP term.

(27) OCC agrees with AEP Ohio that the directive in the ESP 3 Order is infeasible, as the auctions that coincide with the term of the ESP have already taken place. OCC states that it supports an alternative approach similar to what AEP Ohio has proposed. Specifically, OCC recommends that, when calculating any adjusted IRP-D payment, the actual PJM base residual auction clearing price for each individual delivery year be subtracted from the monthly credit, instead of AEP Ohio's proposed weighted average auction clearing price. OCC asserts that its approach would work to ensure that customers are not charged twice for the same capacity resource, as well as reduce the overall IRP-D costs paid by AEP Ohio's customers.

(28) According to IEU-Ohio, the Commission should grant AEP Ohio's request for rehearing with respect to the Company's bidding of demand resources into PJM's base residual

auctions during the ESP term, but should reject the Company's alternative approach of requiring customers to bid into future auctions. IEU-Ohio agrees with AEP Ohio's assertion that PJM has already conducted all of the base residual auctions for delivery years that coincide with the ESP term. IEU-Ohio argues, however, that AEP Ohio's proposed solution is unworkable, because it attempts to match out-of-period revenue to the current period charges. Specifically, IEU-Ohio points out that, although a customer that bids and clears its demand response capabilities into the upcoming base residual auctions would not receive any revenue from PJM until after the ESP term ends, given that the auctions occur three years in advance of the delivery year, such customer would have its IRP-D credit reduced by any revenue that the customer may receive when the delivery year begins. IEU-Ohio also points out that, as a result of a federal court decision, there is currently uncertainty regarding the role and compensation of demand response resources in future PJM auctions.

(29) OMAEG responds that the Commission should clarify that, although AEP Ohio was directed to bid the capacity resources associated with the IRP-D into PJM's base residual auctions, which have already occurred for the years that span the term of the ESP, the Company should instead bid the capacity resources into PJM's incremental capacity auctions held during the ESP term. OMAEG notes that, although bidding the capacity resources associated with the IRP-D into PJM's incremental capacity auctions may not yield as much revenue, it would at least partially offset some of the costs attributable to the IRP-D credit.

(30) In the ESP 3 Order, the Commission directed AEP Ohio to bid the additional capacity resources associated with the IRP-D into PJM's base residual auctions held during the ESP term, with any resulting revenues credited back to customers through the EE/PDR rider. ESP 3 Order at 40. However, as AEP Ohio and certain intervenors note, the Commission's directive raises a timing issue, given that PJM's base residual auctions have already occurred for the three delivery years of the ESP 3 term and, therefore, no

revenues from the sale of the IRP-D capacity resources will be realized during the term. As a means to ensure that customers receive the intended benefit during the ESP period, the Commission agrees with OMAEG that AEP Ohio should bid the IRP-D related capacity resources into PJM's incremental capacity auctions held during the ESP term, to the extent that such capacity resources have not already been bid by the customer into any of PJM's auctions for the three delivery years of the ESP 3 term. The resulting revenues should be credited back to customers through the EE/PDR rider. However, in order to ensure no disruption to customers that may have already bid their interruptible resources into PJM's auctions for the delivery years of the ESP 3 term, whether directly or through a curtailment service provider, existing IRP-D customers may retain the resulting benefits without any reduction in their IRP-D credit for imputed revenue. Although the Commission expresses no opinion on whether the IRP-D will be extended beyond ESP 3, in the event that it is, in fact, extended, for PJM delivery years after May 31, 2018, current IRP-D customers should be required to agree, as a condition of service under the IRP-D tariff, to allow AEP Ohio to bid their interruptible resources into PJM's auctions, with resulting revenues credited back to customers through the EE/PDR rider. With this clarification, we find it unnecessary to adopt AEP Ohio's proposed imputed revenue offset provision. Accordingly, we find that AEP Ohio's request for rehearing on this issue should be granted, in part, and denied, in part.

(31) RESA argues that it was unjust and unreasonable to expect competitive retail electric service (CRES) providers to begin offering time-of-use and other dynamic products without taking the necessary steps to ensure that the interval data needed for such products is made available to CRES providers in a meaningful manner. RESA proposes that access to historical interval data be made available for download through AEP Ohio's new portal; be timely provided and in bill-quality form; and be sent via electronic data interchange. RESA also asserts that the Commission should resolve the open issue regarding the means by which

customer authorization for accessing the interval data may be provided to the electric distribution utility.

(32) AEP Ohio replies that RESA's request for access to interval data is beyond the scope of issues under review in these proceedings and, while there is a time and place for a discussion regarding interval data, RESA's attempt to incorporate the issue into the rehearing process is improper and should be denied.

(33) The Commission finds that RESA's request for rehearing on this issue should be denied, as it is beyond the scope of these proceedings, and given that interval data is a matter being addressed through the Market Development Working Group (MDWG). *In re Comm. Investigation of Ohio's Retail Elec. Serv. Market*, Case No. 12-3151-EL-COI (*CRES Market Case*), Finding and Order (Mar. 26, 2014) at 35-38.

IV. DISTRIBUTION INVESTMENT RIDER

(34) In these proceedings, the Commission approved AEP Ohio's request to continue the distribution investment rider (DIR), with certain modifications. As approved in the ESP 3 Order, the modified DIR cap levels are $124 million for 2015, $146.2 million for 2016, $170 million for 2017, and $103 for January through May 2018. The Commission further modified the DIR to permit the balance of each category of plant to incur an applicable associated carrying charge, as proposed by AEP Ohio; revised the property tax calculation, as proposed by OCC; and to incorporate the six recommendations proposed by Staff regarding the submission of detailed account information, jurisdictional allocations and accrual rates, reconciliation between functional ledgers and FERC form filings, to require the submission of DIR revenue collected by month, direct that the Company notify, highlight, and quantify any proposed DIR capitalization policy amendments, and to require the filing of an updated depreciation study by November 2016. ESP 3 Order at 46-47.

(35) In its application for rehearing, AEP Ohio requests that, to the extent that the Commission does not issue a full rehearing decision within the 30-day timeframe set forth in

R.C. 4903.10, the Commission issue an expedited rehearing decision on the DIR, due to the immediate and substantial impact on the Company's capital commitments and investment in Ohio. AEP Ohio states that a prompt decision regarding the DIR annual revenue caps would enable the Company to continue to make improvements to its distribution infrastructure without significant disruption in the field in the short term, while also avoiding impairment of the Company's capabilities to continue to make improvements in an efficient manner over the long term.

(36) OMAEG argues that AEP Ohio's request for an expedited rehearing decision on the DIR issues is unreasonable and should be denied. OMAEG submits that the confusion that may result from an ad hoc approach to the rehearing process outweighs the alleged urgency for Commission action regarding the DIR. OCC also contends that the Commission should not address the DIR issues on rehearing on an expedited basis apart from the other issues raised by the parties. Noting that the Commission lacks statutory authority in this respect, OCC asserts that, if AEP Ohio's request is approved, the Commission will establish a dangerous precedent in which certain issues receive special treatment over others. Additionally, OCC asserts that it is always AEP Ohio's obligation to spend whatever capital is necessary to provide appropriate service reliability. OCC further asserts that the existence of the DIR does not preclude AEP Ohio from seeking recovery of distribution related investments through a distribution rate case, which would afford the Commission the opportunity to ensure that customers have actually received the service reliability improvements and efficiencies claimed by the Company.

(37) The Commission finds AEP Ohio's request for an expedited decision, while not prohibited under the rehearing process set forth in R.C. 4903.10, to be moot.

(38) In its application for rehearing, AEP Ohio contends that the Commission's modifications to the Company's DIR proposal are unreasonable and should be changed or clarified on rehearing. AEP Ohio, therefore, requests that the Commission adopt one or more of a number of options to

better align the Company's and customers' reliability expectations and interests, consistent with R.C. 4928.143(B)(2)(h). First, AEP Ohio asserts that the Commission should reconsider its decision to reduce the Company-proposed DIR annual revenue caps and its denial of the Company's proposal to include general plant within the DIR. AEP Ohio points out that neither intervenors nor Staff recommended specific reductions to the annual revenue caps and, consequently, there is no evidence in the record regarding the resulting impacts from the reductions adopted by the Commission in the ESP 3 Order. AEP Ohio requests that the Commission reinstate the Company's proposed annual revenue caps or, alternatively, grant rehearing and receive further testimony to better gauge and understand the actual impacts of various levels of DIR revenue cap reductions on the Company's incremental reliability infrastructure investments. In support of its request, AEP Ohio notes that a static revenue cap as between 2014 and 2015, at the level of $124 million, will have significant implications for capital reliability spend, while it will be logistically difficult and harmful to customers if the Company must abruptly pull back on pending capital projects that are already in progress. AEP Ohio explains that, due to the timing of the Commission's issuance of the ESP 3 Order, the Company was required to estimate the DIR revenue cap for 2015, establish its capital budget, and make contractual commitments to implement projects, and did so with the presumption that some additional revenue growth would be provided in 2015. With respect to AEP Ohio's proposal to include general plant in the DIR, the Company requests that the Commission grant rehearing and approve the expansion of the DIR to include infrastructure characterized by the Company as targeted general plant, most of which relates to the Company's service centers and radio communications system.

(39) In its memorandum contra, OMAEG responds that the Commission's decision not to include general plant in the DIR was reasonable, because, as noted by the Commission, the types of general plant expenses that AEP Ohio seeks to include in the DIR do not directly relate to the reliability of

the distribution system. OMAEG also argues that the Commission should not adopt AEP Ohio's proposed annual revenue caps for the DIR on rehearing, given that the Company failed to present any analysis to support its claims that service reliability will deteriorate without the DIR, while the Company's proposed caps are excessive as compared with those currently in place, are unsupported by the evidence, and, in significant part, do not directly relate to distribution service reliability.

(40) OCC, in its memorandum contra, asserts that the Commission correctly rejected the inclusion of general plant in the DIR as beyond the intent of the statute. OCC notes that AEP Ohio had ample opportunity to present evidence in support of its claim that general plant has a direct impact on customer service and reliability, but nevertheless failed to meet its burden of proof on this issue.

(41) Alternatively, AEP Ohio requests that the Commission correct what the Company believes are mistaken DIR annual revenue caps. AEP Ohio points out that, in the ESP 3 Order, the Commission stated its intention to establish the annual revenue caps based on the level of growth of three to four percent as permitted for the DIR in the *ESP 2 Case*. AEP Ohio notes that the annual revenue caps approved by the Commission result in a zero percent growth in distribution revenue for 2015, followed by a more reasonable 2.9 percent growth in 2016 and 3 percent growth in 2017. According to AEP Ohio, if left unchanged, this situation will require the Company to pull back on capital investment in Ohio, which not only involves a reduced investment and potential reliability impacts but also could mean loss of contractor jobs currently sustained by the DIR funding. AEP Ohio states that, if the Commission elects to adopt DIR annual revenue caps at the lower end of its stated intention, meaning 3 percent, the annual caps would be $147 million in 2015, $171 million in 2016, $195 million in 2017, and $92 million for the first five months in 2018.

(42) OCC replies that AEP Ohio offers no evidence or documentation that indicates that the Commission erred in setting the DIR annual revenue caps. OCC maintains that

the Commission's decision is consistent with the *ESP 2 Case*, while there is nothing in the ESP 3 Order to support AEP Ohio's assumption that the Commission intended to increase the DIR revenue cap from 2014 to 2015 by two to three percent. OCC argues that AEP Ohio's contention that there should be two to three percent growth from 2014 to 2015 requires the DIR program to be viewed as a single continuous six-year program instead of two distinct three-year programs that were proposed, considered, and approved in two separate ESP proceedings.

(43) Next, AEP Ohio asserts that another option to partially offset the adverse effects of the annual revenue cap reductions would be for the Commission to clarify its intention in the *ESP 2 Case* regarding the annual revenue cap for 2012. AEP Ohio maintains that it is not clear whether the Commission intended to prorate the $86 million revenue cap for 2012, based on an effective date of August 2012, such that the actual revenue cap for 2012 could either be $86 million as stated in the *ESP 2 Case* or $35.8 million (5/12 of $86 million). AEP Ohio notes that, as a result, the cumulative underspend that carries over to 2015 and beyond could be either $77.1 million or $26.9 million. AEP Ohio concludes that, if the Commission clarifies on rehearing that its intention in the *ESP 2 Case* was to adopt an $86 million revenue cap for 2012 without proration, it will produce a significant carryover amount that would help to alleviate the current problem for 2015 and beyond.

(44) IEU-Ohio responds, in its memorandum contra, that the Commission should reject AEP Ohio's request for clarification. IEU-Ohio notes that, because AEP Ohio failed to seek rehearing in the *ESP 2 Case* concerning the calculation of the annual revenue caps, the Company waived review of that provision of the Commission's decision in the *ESP 2 Case*. IEU-Ohio further notes that AEP Ohio did not seek rehearing of the revenue calculations that the Commission reviewed during the audit of the DIR for 2012 in Case No. 13-419-EL-RDR, which confirmed that a revenue cap of $86 million for 2012 was used to determine the carryover amount and, thus, there is no reasonable basis for

the Commission to allow the Company to further increase its cap for 2015. IEU-Ohio concludes that AEP Ohio's request for clarification constitutes an untimely request for rehearing of the *ESP 2 Case*, is barred by the doctrines of res judicata and collateral estoppel, and, if granted, would result in unlawful retroactive ratemaking.

(45) OCC also argues that AEP Ohio's request for clarification regarding the DIR revenue cap for 2012 constitutes an unlawful attempt by the Company to relitigate aspects of the *ESP 2 Case* that are not at issue in the present proceedings. OCC requests that the Commission reject AEP Ohio's untimely effort to seek rehearing of the *ESP 2 Case*. OCC adds that there is nothing in the record or in the ESP 3 Order to support AEP Ohio's request that the cumulative underspend from the *ESP 2 Case* be permitted to carry over to 2015 and beyond.

(46) In their memorandum contra, OPAE/APJN contend that AEP Ohio's request for clarification regarding the DIR cap for 2012 should be considered an unlawful request for retroactive ratemaking. OPAE/APJN also point out that the level of DIR funding authorized by the Commission for the ESP 3 term is in addition to any carryover amounts. OPAE/APJN believe that the fact that AEP Ohio's DIR spending was below the DIR annual revenue caps established in the *ESP 2 Case* explains the level of the caps approved by the Commission for the ESP 3 term. Finally, OPAE/APJN assert that distribution service charges should be considered in the context of a distribution rate case and that the Commission appropriately encouraged AEP Ohio to seek base rate recovery of its distribution investments.

(47) In its application for rehearing, OMAEG argues that the Commission erred in allowing AEP Ohio to recover $543.2 million through the DIR over the course of the ESP, as recovery of distribution investments of that order of magnitude is not supported by record evidence and recovery of such costs is more appropriately addressed in the context of a base distribution rate case. Specifically, OMAEG maintains that nothing in the record indicates that the caps approved by the Commission represent a necessary

level of recovery under the DIR for AEP Ohio to be able to continue to provide customers with reliable service. OMAEG, therefore, requests that the Commission revisit the caps established in the ESP 3 Order. OMAEG also requests that the Commission reverse its decision to relieve AEP Ohio of its responsibility to work with Staff to develop a DIR plan throughout the ESP term, particularly given that the Company did not file testimony or other documentation demonstrating any service reliability improvements related to specific distribution investments, in connection with the proposed ESP.

(48) In response, AEP Ohio points out that OMAEG's arguments are related to the statutory basis of riders and standards pertaining to the DIR result that are not found in statute. AEP Ohio contends that, contrary to OMAEG's claim, there is no requirement that the Company demonstrate the benefit of each yearly DIR. AEP Ohio further contends that OMAEG's concerns regarding the reporting and quantification of reliability improvements have been resolved by the Commission in prior cases. With respect to OMAEG's request that AEP Ohio be required to continue to develop a DIR work plan with the assistance of Staff each year, the Company states that, while a formal requirement is no longer necessary, the Company intends to continue to obtain Staff's input and understand Staff's expectations when finalizing the DIR plan.

(49) OPAE/APJN assert that the Commission acted unreasonably and unlawfully when it approved the continuation of the DIR and maintained the rider's current cost allocation. OPAE/APJN claim that AEP Ohio's request to continue the DIR should have been rejected, because the Company did not consider the affordability of the DIR and did not demonstrate any quantifiable reliability benefits from the rider. OPAE/APJN contend that distribution related charges should be considered in distribution rate case proceedings and that riders should be limited to recovery of costs that are large, volatile, and outside of the utility's control, which, according to OPAE/APJN, AEP Ohio has not shown is the case for the DIR.

(50) AEP Ohio replies that the Commission has the authority to approve recovery of distribution related costs through riders and has often done so through ESP proceedings pursuant to R.C. 4928.143(B)(2)(h). AEP Ohio believes that the time for a policy debate on whether riders should be included in an ESP filing has passed. Regarding the affordability of the DIR, AEP Ohio responds that its testimony reflects that, considering the impact of the entire ESP proposal, residential customers with typical usage are expected to see a monthly rate decrease beginning in June 2015.

(51) In the ESP 3 Order, the Commission denied AEP Ohio's request to increase the amount to be recovered via the DIR, at the level proposed in the Company's application, as well as the Company's request to include general plant in the DIR. The Commission found that the evidence of record does not support an expansion of the DIR to the extent proposed by AEP Ohio and that the Company's distribution investments, at the level requested in these proceedings, would be better considered and reviewed in the context of a distribution rate case. ESP 3 Order at 46. The Commission further found that, because AEP Ohio is performing at or above its established reliability standards and its reliability expectations appear to be aligned with its customers, it is no longer necessary for the Company to work with Staff to develop a DIR plan, as long as the Company continues to perform at or above its reliability standards. ESP 3 Order at 47. Finally, in order to facilitate AEP Ohio's continued proactive investment in its aging distribution infrastructure, the Commission approved the Company's request to continue the DIR at $124 million for 2015, $146.2 million for 2016, $170 million for 2017, and $103 million for January through May 2018. The Commission stated that the annual DIR revenue caps are based on a level of growth of three to four percent, consistent with the *ESP 2 Case*, and are intended to enable AEP Ohio to continue to replace aging distribution infrastructure as a means to maintain and improve service reliability over the course of the ESP. ESP 3 Order at 47.

Upon review of AEP Ohio's grounds for rehearing with respect to the DIR, the Commission finds that the DIR annual revenue caps should be modified, as it was not the Commission's intent to provide for no growth in the annual cap from 2014 to 2015. We, therefore, find that the DIR annual revenue caps should be set at $145 million for 2015 (including amounts previously authorized in the *ESP 2 Case*), $165 million for 2016, $185 million for 2017, and $86 million for January through May 2018. We find that the adjusted caps shall reflect annual growth in the DIR, as a percentage of customer base distribution charges, of three to four percent, which was our objective in modifying the DIR annual revenue caps proposed by AEP Ohio for the ESP 3 term so that they more closely track the progression from the *ESP 2 Case*. Accordingly, the Commission grants rehearing with respect to AEP Ohio's request that the DIR annual revenue caps established in the ESP 3 Order be adjusted, in order to enable the Company to continue to implement the DIR plan that is already underway for 2015. We find no merit in AEP Ohio's remaining grounds for rehearing regarding the DIR, which should, thus, be denied.

(52) Further, the Commission finds no merit in the alleged grounds for rehearing raised by OMAEG and OPAE/APJN with respect to the DIR. We find that the arguments raised by OMAEG and OPAE/APJN have already been thoroughly considered and rejected. ESP 3 Order at 43-45, 95. Regarding OMAEG's request that AEP Ohio be required to continue to work with Staff to develop an annual DIR work plan, we affirm our finding that it is no longer necessary to impose such a requirement, given the Commission's finding that the Company's reliability expectations appear to be aligned with its customers, as well as the fact that the Company has been meeting or exceeding its reliability standards. ESP 3 Order at 47. Additionally, as AEP Ohio acknowledges, the Company intends to continue to coordinate with Staff in the process of finalizing each annual DIR plan, which the Commission believes is a reasonable approach that should be implemented throughout the ESP term. For these reasons, OMAEG's and OPAE/APJN's

applications for rehearing regarding the DIR should be denied.

V. ENHANCED SERVICE RELIABILITY RIDER

(53) OPAE/APJN submit that the ESP 3 Order is unreasonable to the extent that it approved the enhanced service reliability rider (ESRR) and DIR cost recovery allocation, outside the context of a distribution rate case and contrary to sound ratemaking practices. Further, OPAE/APJN argue the riders do not incentivize the utility to control costs and should be limited to instances where the costs are large, volatile, and outside of the utility's control. AEP Ohio did not, according to OPAE/APJN, demonstrate that the ESRR or the DIR meet these criteria or that the financial integrity of the Company would be compromised if such costs were considered in the context of a distribution rate case. Further, OPAE /APJN argue ESRR and DIR costs to be recovered should be allocated to the customer classes consistent with cost causation principles and AEP Ohio's most recent cost of service studies as opposed to contribution to distribution revenues.

(54) AEP Ohio replies that this issue was raised by the intervenors and rejected by the Commission in the ESP 3 Order. Further, AEP Ohio notes the Commission resolved the recovery of incremental distribution investments in these cases in precisely the same manner as in other recent cases where the issue was considered. *In re Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 56. AEP Ohio submits that the Commission has the authority to approve recovery of distribution related costs through riders in ESP proceedings pursuant to R.C. 4928.143(B)(2)(h). Accordingly, AEP Ohio requests that OPAE/APJN's request for rehearing be denied.

(55) The Commission finds that OPAE/APJN's arguments on the continuation of the distribution riders and the cost allocation method for the DIR and ESRR were raised, thoroughly considered, and rejected in the ESP 3 Order. ESP 3 Order at 49, 95. Intervenors assert no new arguments that persuade

the Commission that the riders and the cost recovery allocation method should be revised on rehearing. The DIR and ESRR relate to the provision of distribution service and it is reasonable to allocate the cost of such riders on the basis of distribution revenues. In this ESP, the Commission continues the cost recovery allocation method previously adopted by the Commission in AEP Ohio's prior ESP proceedings. *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 43-44, 77. Therefore, OPAE/APJN's request for rehearing should be denied.

VI. NERC COMPLIANCE AND CYBERSECURITY RIDER

(56) In the ESP 3 Order, the Commission denied AEP Ohio's proposal to implement a new, non-bypassable mechanism, the North American Electric Reliability Corporation (NERC) compliance and cybersecurity rider (NCCR). Acknowledging the importance of NERC compliance and cybersecurity, the Commission found that AEP Ohio failed to sustain its burden of proof for the Commission to authorize the establishment of a NCCR placeholder rider. ESP 3 Order at 59-62.

(57) AEP Ohio requests rehearing on this aspect of the ESP 3 Order on the basis that the decision was unreasonable and unlawful. AEP Ohio asserts, like prior zero placeholder riders approved as a component of an ESP, when the Company requests recovery of costs through the rider in a future proceeding, the costs are reviewed for prudency and appropriateness by the Commission before any costs are recovered. *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 24-25; *In re Duke Energy Ohio, Inc.*, Case No. 08-920-EL-SSO, et al., Opinion and Order (Dec. 17, 2008) at 17; *In re Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co.*, Case No. 08-935-EL-SSO, et al., Second Opinion and Order (Mar. 25, 2009) at 15. In fact, AEP Ohio notes three such zero placeholder riders were approved in the ESP 3 Order, specifically the PPA rider, the bad debt rider (BDR), and the pilot demand response rider. ESP 3 Order at 25, 81, 86-87. AEP Ohio submits that the costs for which the Company may request recovery in the NCCR mechanism are no more speculative than those recovered through the

storm damage recovery rider and the EE/PDR rider. AEP Ohio argues that, while the Commission may not find it evident that the Company will incur costs for NERC compliance, it is clear that the Company will incur cybersecurity costs to address ever-increasing cybersecurity risk. In the alternative, AEP Ohio requests, if the Commission declines to grant rehearing and approve the establishment of the NCCR, that the Commission grant the Company accounting authority to create a deferral for NERC compliance and cybersecurity costs incurred during the term of this ESP, to permit the Company to seek Commission approval for recovery in a future proceeding.

(58) OCC, OMAEG, and IEU-Ohio oppose AEP Ohio's application for rehearing on the NCCR. IEU-Ohio submits AEP Ohio fails to offer any basis for the Commission to reverse its decision on rehearing. OCC, IEU-Ohio, and OMAEG insist that AEP Ohio failed to sustain its burden to demonstrate the lawfulness and reasonableness of the NCCR mechanism, as the Commission determined, and to offer into evidence the types of investments, identifiable costs, and how costs would be allocated. For that reason, OMAEG avows establishment of the NCCR entirely too speculative to be reasonable. Further, OCC notes that, while AEP Ohio claims the NCCR decision is unlawful, the Company fails to cite any specific law violated. Accordingly, OCC, OMAEG, and IEU-Ohio request that the Commission deny AEP Ohio's request for rehearing on the NCCR.

(59) As OCC notes, while AEP Ohio alleges that the ESP 3 Order is unlawful in its denial to establish the NCCR, the Company fails to explain how the ESP 3 Order is unlawful. Thus, the Commission has no basis on which to consider that aspect of AEP Ohio's claim on rehearing. Further, AEP Ohio has failed to present any persuasive argument, not previously considered by the Commission, which justifies reversal of the ESP 3 Order. For the same reasons the Commission refused to establish the NCCR, it was our intent to also deny AEP Ohio's request to permit the creation of a deferral account for NERC compliance and cybersecurity costs so that the Company may request recovery at some point in the

future during the term of this ESP. AEP Ohio failed to offer into evidence sufficient information for the Commission to determine the types or magnitude of investments for which the Company would seek recovery pursuant to the proposed NCCR or to demonstrate the allocation of any potential cost between generation, transmission, and distribution functions. Accordingly, the Commission affirms its decision on this aspect of the ESP 3 Order and denies AEP Ohio's request for rehearing.

VII. RESIDENTIAL DISTRIBUTION CREDIT RIDER

(60) In its ESP 3 application, AEP Ohio proposed to continue the residential distribution credit rider (RDCR) of $14,688,000. As requested by OPAE and APJN, the Commission modified AEP Ohio's ESP to direct the Company to contribute $1 million annually to fund the low-income bill payment assistance program, Neighbor-to-Neighbor. In their application for rehearing, OPAE/APJN again recommend AEP Ohio be required to add $1 million annually from shareholder funds to increase the Company's funding commitment, to a total of $2 million, as a means to ensure adequate funding for the Neighbor-to-Neighbor program, consistent with the state policy to ensure consumers adequate, reliable, safe, and efficient retail electric service at reasonable prices, and to protect at-risk populations. R.C. 4928.02(A) and (L). OPAE/APJN argue at-risk populations, Ohio households living at or below the federal poverty level, may need bill payment assistance to maintain or gain access to electric service. OPAE/APJN assert the Commission should have required the additional shareholder contribution, to ensure adequate funding and more closely approximate the amount ordered in AEP Ohio's first ESP cases. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 08-917-EL-SSO, et al. (*ESP 1 Case*), Opinion and Order (Mar. 18, 2009) at 48.

(61) AEP Ohio declares that the policy provisions listed in R.C. 4928.02 are goals that must be balanced and are not independent requirements for each component of an ESP. Further, AEP Ohio notes the benefits this ESP provides to all customers, including at-risk customers: the purchase of

receivables program (POR) to support CRES providers' pursuit of at-risk customers; distribution riders such as the DIR and ESRR that support investment in utility infrastructure and vegetation clearing, which prevent outages; and the Company's voluntary extension of the residential distribution credit. Accordingly, AEP Ohio reasons these provisions of the ESP, among other provisions, protect at-risk populations and ensure adequate, reliable, and safe electric service. For these reasons, AEP Ohio asks that OPAE/APJN's request for rehearing on this issue be denied.

(62) As referenced by OPAE/APJN, in the *ESP 1 Case,* the Commission ordered AEP Ohio's shareholders to endow the Partnership with Ohio fund at a minimum of $15 million, over the three-year ESP period, with all of the funds going to low-income, at-risk customer programs. *ESP 1 Case,* Opinion and Order (Mar. 18, 2009) at 48. The continuation of the RDCR, as amended in the ESP 3 Order, to include $1 million in funding from AEP Ohio equates to a total RDCR and Neighbor-to Neighbor program of $15.688 million. As a part of this modified ESP 3, all residential customers, including at-risk customers, continue to receive a credit on their bill. In addition, the Neighbor-to-Neighbor program is available to aid at-risk customers with bill payment assistance. The Commission finds that, through the residential distribution credit, an at-risk customer may be able to avoid the need for bill payment assistance. We also note that, since the Opinion and Order in the *ESP 1 Case* was issued in March 2009, the Commission has revised the Percentage of Income Payment Plan (PIPP) Plus for low-income, at-risk customers. Effective as of November 2010, the PIPP Plus program reduced participant payment percentage from 10 percent of household income to 6 percent, and the PIPP Plus participant was eligible to receive credits and other benefits for on-time payment. The Commission will continue to explore and focus on various means to ensure electric utility service is affordable for Ohio's residential customers, including at-risk populations. The Commission finds maintaining the Neighbor-to-Neighbor program contribution for AEP Ohio at $1 million,

in addition to the residential credit, to be a fair and balanced means of complying with the requirements of R.C. 4928.02. Accordingly, the Commission is not persuaded that this aspect of the ESP 3 Order is unreasonable and, therefore, OPAE/APJN's request for rehearing should be denied.

VIII. BASIC TRANSMISSION COST RIDER

(63) IEU-Ohio argues that the Commission's authorization of the basic transmission cost rider (BTCR) was unlawful and unreasonable, because the Commission has invaded a field of regulation within FERC's exclusive jurisdiction. Specifically, IEU-Ohio contends that the Commission is preempted from authorizing a transmission related rider that precludes customers eligible to secure transmission services from PJM, pursuant to the FERC-approved tariff, from doing so. IEU-Ohio believes that customers are now captive to AEP Ohio for transmission services at prices and terms and conditions that are different from those contained in the PJM tariff. According to IEU-Ohio, the BTCR will interfere with customers' ability to contract directly with PJM for transmission services and will not flow through the amounts assignable to customers in the same manner as occurs under the PJM tariff.

(64) Constellation and RESA respond that, pursuant to R.C. 4928.05(A)(2), approval of the BTCR is within the Commission's jurisdiction. AEP Ohio points out that there is no factual support in the record for IEU-Ohio's claims, which were raised for the first time on rehearing. AEP Ohio adds that it is irrelevant whether a customer can contract directly with PJM, because if the customer does so, the basic transmission charges will be billed back to the Company and allocated and billed through the BTCR, as the Commission ordered. Finally, AEP Ohio asserts that collateral estoppel precludes IEU-Ohio from advancing its preemption argument, because IEU-Ohio was a party to the proceedings in which the Commission approved comparable transmission riders for the other Ohio electric distribution utilities. AEP Ohio maintains that IEU-Ohio should not be permitted to relitigate the same issues that were raised by

IEU-Ohio and rejected by the Commission in the prior proceedings.

(65) In discussing the PPA rider in the ESP 3 Order, the Commission declined to address constitutional issues raised by the parties in these proceedings. ESP 3 Order at 26. The Commission likewise declines to address IEU-Ohio's preemption argument with respect to the BTCR, as constitutional issues are best reserved for judicial determination.

(66) IEU-Ohio also argues that the ESP 3 Order is unreasonable, because the BTCR reduces the options available to customers seeking to secure transmission services, in violation of R.C. 4928.02(B), and frustrates price signals that may assist in providing transmission system reliability, because AEP Ohio does not plan to use a demand-metered customer's individual contribution to the one coincident peak as the demand billing determinant. IEU-Ohio asserts that the Commission failed to address the reasonableness of the rate design and incorrectly noted that the BTCR is comparable to a similar transmission rider approved for The Dayton Power and Light Company.

(67) Constellation and RESA disagree with IEU-Ohio's position. According to Constellation and RESA, it is appropriate for AEP Ohio to collect non-market based transmission costs, which will enable CRES providers to base their offers on market related costs. Constellation argues that, as a result, retail customers will benefit from greater price transparency, given that they will be able to easily determine the exact amount of the non-market based costs. RESA contends that the Commission's approval of the BTCR will properly eliminate CRES providers' responsibility to collect non-market based transmission charges. AEP Ohio notes that the Commission has already fully considered and rejected IEU-Ohio's arguments.

(68) In the ESP 3 Order, the Commission approved AEP Ohio's proposal to eliminate the current transmission cost recovery rider (TCRR) and implement the BTCR, finding that the new rider is comparable to the transmission riders approved for

the other electric utilities. In approving the BTCR, the Commission also thoroughly considered and rejected the same arguments that IEU-Ohio has raised in its application for rehearing. ESP 3 Order at 66-68, 95. As IEU-Ohio has raised no new arguments for our consideration, its request for rehearing on this issue should be denied.

(69) Next, IEU-Ohio argues that the ESP 3 Order is unreasonable, as the Commission did not order the inclusion of affected customers in the resolution process to ensure that such customers do not pay twice for the same transmission related expenses. IEU-Ohio points out that neither AEP Ohio nor the CRES providers have any incentive to prevent double billing and, therefore, customer representatives should be part of the resolution process.

(70) Constellation replies that CRES providers have every incentive to ensure that their customers are properly billed. Constellation and RESA point out that nothing in the ESP 3 Order precludes customers from working directly with their CRES providers to verify that proper billing for transmission charges has occurred. Constellation and RESA add that other Ohio electric distribution utilities have implemented similar transmission riders and that these utilities and CRES providers worked together, without incident, to avoid any double billing of transmission charges. AEP Ohio points out that the Commission already addressed IEU-Ohio's concern, in noting in the ESP 3 Order that customers have existing means to address double-billing issues.

(71) The Commission finds that IEU-Ohio's request for rehearing on this issue should be denied. In the ESP 3 Order, we directed AEP Ohio, CRES providers, and, if necessary, Staff to work together to ensure that customers do not pay twice for the same transmission related expenses. ESP 3 Order at 68. As Constellation and RESA note, nothing precludes customers from taking steps to address double-billing issues, if they arise, with their CRES providers. Further, as we emphasized in the ESP 3 Order, affected customers have existing means to seek the Commission's assistance, either informally by contacting Staff or through the formal

complaint process set forth in R.C. 4905.26. ESP 3 Order at 68.

(72) Finally, IEU-Ohio claims that the ESP 3 Order is unlawful, because it presumed that the BTCR's rate design, as proposed by AEP Ohio, is reasonable and shifted the burden of demonstrating the unreasonableness of the proposed tariff to the intervenors, in violation of R.C. 4928.143(C)(1), which places the burden of proof on the Company. IEU-Ohio maintains that AEP Ohio did not provide any evidence regarding the effect of its proposed rate design on shopping customers, which the Commission nevertheless approved, while rejecting IEU-Ohio's alternative proposals. IEU-Ohio claims that its proposed rate design is presumptively reasonable, as it is consistent with PJM's billing determinants, which FERC has determined are just and reasonable.

(73) Constellation notes that, with respect to the BTCR, AEP Ohio put forth a proposal with supporting testimony, which was supported by some parties and opposed by others, including IEU-Ohio's recommended modifications to the rate design. Constellation asserts that, in adopting AEP Ohio's proposal, the Commission properly weighed the evidence and was simply not persuaded by IEU-Ohio's arguments or rate design recommendations. RESA also contends that the Commission properly evaluated all of the evidence and appropriately determined that IEU-Ohio's recommendations should not be adopted. For its part, AEP Ohio asserts that it provided ample evidence to support its BTCR proposal, including evidence that shows that the Company specifically designed the BTCR to be consistent with the current treatment of costs under the TCRR approved in the *ESP 2 Case*, as well as with the transmission riders of the other electric distribution utilities. AEP Ohio concludes that the Commission correctly found that the Company satisfied its burden of proof and that IEU-Ohio's proposed rate design was not supported by adequate analysis and would have an unknown impact on customer bills.

(74) In the ESP 3 Order, the Commission thoroughly considered and rejected IEU-Ohio's recommendations regarding the

rate design of the BTCR. As we noted, the impact of IEU-Ohio's proposals is unknown and, without any analysis, we determined that it would be inappropriate to modify the Company's cost allocation methodology, which is comparable to the treatment of costs under the TCRR. In adopting AEP Ohio's proposed BTCR, we cited the considerable evidence of record provided by the Company, as well as several other parties, that supports our decision to approve the rider. ESP 3 Order at 66-68. For these reasons, the Commission finds no merit in IEU-Ohio's contention that the burden of proof was shifted to the intervenors and, therefore, rehearing on this issue should be denied.

(75) RESA asserts that it was unjust and unreasonable to establish the new non-bypassable BTCR without first setting forth a specific process to ensure that bypassable transmission costs incurred prior to the beginning of the ESP 3 term are properly reconciled and excluded from the new rider. RESA adds that the Commission should establish a process to ensure that the BTCR is based on the correct costs at the beginning of the ESP 3 term.

(76) AEP Ohio points out, in response, that the Commission already has adequate safeguards in place to address RESA's concerns. AEP Ohio notes that, as the ESP 3 Order acknowledged, the TCRR will be reconciled in Case No. 14-1094-EL-RDR after it is eliminated effective June 1, 2015. AEP Ohio further notes that there is no need for the creation of a cost reconciliation process with respect to the BTCR, because Ohio Adm.Code Chapter 4901:1-36 already provides such a process, with carrying charges applicable to any over- or under-recovery of costs.

(77) The Commission finds that RESA's request for rehearing is unnecessary and should be denied. As we specifically noted in the ESP 3 Order, any remaining over/under recovery balance associated with the TCRR, which will be eliminated effective June 1, 2015, will be addressed in Case No. 14-1094-EL-RDR, consistent with our recent decisions in that proceeding. ESP 3 Order at 68, citing *In re Ohio Power Co.*, Case No. 14-1094-EL-RDR, Finding and Order (Aug. 27, 2014) at 3, Finding and Order (Jan. 28, 2015) at 3. Further, as

AEP Ohio points out, Ohio Adm.Code Chapter 4901:1-36 sets forth a process for the reconciliation of transmission costs.

IX. PURCHASE OF RECEIVABLES PROGRAM AND BAD DEBT RIDER

(78) AEP Ohio raises a number of arguments with respect to the Commission's modification of the Company's proposed POR program and BDR. First, AEP Ohio asserts that it was unreasonable for the Commission to defer several critical aspects of the POR program, which were already fully litigated in these proceedings, for further debate within the MDWG. AEP Ohio believes that there is no value in revisiting opposing positions through the MDWG. According to AEP Ohio, the Commission's modifications will raise costs, increase the risk of recovery for the Company, decrease operational efficiencies, and potentially increase customer frustration with inconsistent billing from year to year. AEP Ohio maintains that, because a POR program is not required under Ohio law and the Company will ultimately decide whether to implement the program, the Commission should approve the Company's program and BDR as proposed. Alternatively, AEP Ohio requests that the Commission direct that the Company be held harmless to any cost impact of the modified POR program and that the discussions of the MDWG not be subject to use against a party as an official position in the future.

(79) OPAE/APJN respond that, although the Commission should have simply rejected the proposed POR program and BDR, the Commission acted reasonably when it deferred resolution of the details of the approved POR program to another proceeding, as there are simply too many details to resolve in the present cases. OCC also asserts that it was reasonable and lawful for the Commission to defer the implementation details to a future proceeding, which, according to OCC, will provide the best opportunity for a collaborative resolution of the issues.

(80) In the ESP 3 Order, the Commission found that a POR program should be approved for AEP Ohio, with the implementation details to be discussed within the MDWG

and determined in a subsequent proceeding, following the filing of a detailed implementation plan by Staff no later than August 31, 2015. The Commission noted that the MDWG will provide an existing forum for discussion regarding the implementation of AEP Ohio's POR program and enable interested stakeholders to address matters such as the POR program rules, calculation of the discount rate, implementation and maintenance costs, collection rates and procedures, and the timing and other mechanics of the process by which the Company will purchase receivables from CRES providers. ESP 3 Order at 80-81. We find that our deferral of the implementation details to a future proceeding is a proper next step and well within the bounds of our discretion. As the Ohio Supreme Court has recognized, the Commission is vested with broad discretion to manage its dockets, 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. *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367, 384 N.E.2d 264 (1978); *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 433 N.E.2d 212 (1982). We, therefore, find no error in our decision to address the implementation details in a future case and AEP Ohio's request for rehearing should be denied.

(81) Second, AEP Ohio argues that it was unreasonable for the Commission to include CRES providers' early termination fees as a commodity related charge subject to the POR program. AEP Ohio requests that the Commission clarify that commodity related charges includes only the charges related to the actual cost of generation and not other CRES related charges, including, but not limited to, early termination charges and charges for other services, such as weatherization, appliance control, and energy audits, that are provided by CRES providers.

(82) OCC agrees with AEP Ohio that CRES providers' early termination fees should not be considered commodity related charges. OCC argues that the inclusion of CRES providers' early termination fees in the POR program would constitute a barrier to reasonably priced service and harm

diversity and choice of supplier. RESA replies that an early termination fee should be considered a rate design component that seeks to capture a fixed cost that may otherwise not be collected. RESA also asserts that, if the Commission elects to provide clarification on this issue, it should determine that commodity costs include all cost components necessary to provide bundled energy service, including generation costs, transmission costs, capacity costs, ancillary services, labor, taxes, and administrative cost components necessary to bring physical power to the electric distribution service area.

(83) The Commission expressly stated, in the ESP 3 Order, that only commodity related charges may be included in AEP Ohio's POR program. ESP 3 Order at 80. To the extent that it is necessary to do so, the Commission clarifies that commodity related charges means charges that are directly tied to the actual cost of generation and does not include early termination fees, which are not a necessary component of generation service.

(84) As its third argument, AEP Ohio claims that it was unreasonable and unlawful for the Commission to allow CRES providers to determine which of its eligible customers should be included in the POR program. AEP Ohio contends that the Commission should require all CRES providers using consolidated billing to participate in the POR program. Alternatively, AEP Ohio requests that the Commission clarify that each CRES provider may decide whether it will participate in the POR program and, if it elects to do so, all of its eligible customers on consolidated billing must be included in the program.

(85) Similarly, in its fourth ground for rehearing with respect to the POR program, AEP Ohio maintains that it was unreasonable and unlawful for the Commission to modify the Company's proposed POR program to afford CRES providers on consolidated billing a yearly option to participate in the program. AEP Ohio asserts that, in allowing CRES providers to determine whether to participate in the POR program, the Company will be required to maintain two processes in its systems and call

centers with greater costs and decreased efficiencies, while shopping customers will be offered different payment plan options based on their CRES provider. AEP Ohio, therefore, reiterates its request that the POR program be mandatory for all CRES providers that use consolidated billing. In the alternative, AEP Ohio proposes that CRES providers should be required to participate on a five-year basis in order to provide recovery for programming and ensure consistency for customers. As another option, AEP Ohio notes that a consolidated billing charge for CRES providers that choose not to participate in the POR program could be imposed to recover the costs to maintain the necessary additional processes and systems that support the non-participating CRES providers.

(86) Direct Energy counters that CRES providers using consolidated billing should not be required to participate in a POR program that includes commodity only charges, as it would eliminate their option of having AEP Ohio bill and collect for non-commodity items, such as in-home warranty products. Direct Energy notes that the convenience of paying for related products and services on one bill is important to customers. Direct Energy further notes that CRES providers should not be precluded from offering demand response or energy efficiency types of products, air conditioner tune-ups, or any other energy related service that might improve a customer's demand side energy usage. According to Direct Energy, the Commission reasonably concluded that CRES providers should be permitted to continue to participate in consolidated billing, without also being required to participate in the POR program. Direct Energy asserts that AEP Ohio offers no legal support for its arguments and raises nothing new for the Commission's consideration, while the Company's newly proposed alternatives have no record support or vetting by the other parties.

(87) RESA asserts that CRES providers should have the maximum amount of flexibility when it comes to billing options, so that they are not limited in their product offerings. RESA, therefore, argues that the Commission

should clarify that, under the POR program, CRES providers may provide dual billing to certain customers and use consolidated billing for other customers. RESA believes that, for customers on consolidated billing, CRES providers should be required to include either all or none of such customers in the POR program.

(88) In the ESP 3 Order, the Commission directed that participation in the POR program by CRES providers that elect consolidated billing must not be mandatory. ESP 3 Order at 80. We, thus, concluded that CRES providers should maintain the flexibility to participate in consolidated billing, without being required to participate in the POR program. We clarify, however, that it was not our intention to enable CRES providers, if they elect to participate in the POR program, to include some customers but not others. With this clarification, AEP Ohio's third and fourth grounds for rehearing should be denied.

(89) In its fifth ground for rehearing, AEP Ohio argues that it was unreasonable and unlawful for the Commission to forego the creation of a mechanism for the recovery of the implementation and administrative costs of the dual-system POR program approved by the Commission, which will be more than the costs projected for the Company's proposed program. AEP Ohio claims that it is unclear whether the increased fee amount is a matter for the MDWG to determine or a compliance filing for the Company at a later date. AEP Ohio further claims that, if the administrative fee was not approved by the Commission, the ESP 3 Order unreasonably and unlawfully requires the Company to subsidize CRES providers, in violation of R.C. 4928.02(H). AEP Ohio, therefore, requests that the Commission approve the POR program and BDR as proposed or, in the alternative, clarify that the Company will be held harmless to all administrative and implementation costs. AEP Ohio adds that the Commission should validate the administrative fee creation for all CRES providers until the cost of implementation is recovered.

(90) The Commission finds that AEP Ohio's request for rehearing on this issue should be denied. In the ESP 3 Order, we

determined that the details of the POR program, including implementation and maintenance costs, should be discussed by interested stakeholders within the MDWG. ESP 3 Order at 81. We fully expect that such costs will be addressed in the detailed implementation plan to be developed by the MDWG and filed by Staff. We clarify, however, that AEP Ohio should be permitted to recover the implementation and maintenance costs associated with the POR program.

(91) Next, AEP Ohio asserts that it was unreasonable for the Commission to require plans for supplier consolidated billing and switching provisions in the implementation filing due on August 31, 2015. AEP Ohio requests that the Commission clarify that issues not related to the implementation of the POR program were not intended to be included in the plan for filing on August 31, 2015.

(92) Noting that the Commission has already approved rules regarding supplier consolidated billing, Direct Energy requests that the Commission affirm that supplier consolidated billing is a priority and direct that the MDWG create and file a plan to implement supplier consolidated billing in AEP Ohio's service territory no later than six months from the date of this Second Entry on Rehearing, in order to ensure that the issue is dealt with promptly by the MDWG, while still maintaining the Commission's ability to review the details before implementation.

(93) RESA believes that it is appropriate to resolve the mechanics of supplier consolidated billing in the MDWG, although RESA requests that a deadline be imposed on the group's resolution of this issue.

(94) In the ESP 3 Order, the Commission noted that the recommendations regarding supplier consolidated billing offered by Direct Energy and IGS and RESA's objections to the switching provisions in tariff sheets 103-20D and 103-41D should be further discussed within the MDWG. ESP 3 Order at 81. Although the Commission agrees that it is reasonable to include these issues among the other issues being addressed within the MDWG, it was not the Commission's intention that these issues be included within

the detailed implementation plan for the POR program or to establish a particular timeframe for their resolution. With this clarification, rehearing on this issue should be denied.

(95) AEP Ohio also contends that it was unreasonable and unlawful for the Commission to approve a BDR to recover generation related costs above the amount already being recovered through base rates, because the record does not contain the amount in base rates related to CRES receivables and generation related uncollectible expense. AEP Ohio asserts that it is unreasonable to compare the generation portion of the bill to the entire $12.2 million baseline from the Company's most recent distribution rate case proceedings, which includes generation, transmission, and distribution related bad debt, because the impact of the Commission's modification will be to lower the amount of recovery approved in base rates without any opportunity or record justifying the decrease. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-351-EL-AIR, et al. (*Distribution Rate Case*), Opinion and Order (Dec. 14, 2011). AEP Ohio requests that the Commission approve the BDR, as proposed by the Company, or, alternatively, allow the Company to provide new evidence regarding the comparable baseline level of generation related bad debt as a subset of the baseline established in the *Distribution Rate Case*.

(96) The Commission determined, in the ESP 3 Order, that the BDR should be limited to CRES receivables and generation related uncollectible expenses above the amount already being recovered through base distribution rates and, given that the implementation details of the POR program will be resolved in another docket, should initially be established as a placeholder rider set at zero. We also noted that, as proposed by AEP Ohio, the BDR would flow the bad debt of both shopping and non-shopping customers, whether generation or distribution related, through a single rider, which may cause an anticompetitive subsidy under R.C. 4928.02(H), and is contrary to the practice of Duke Energy Ohio, Inc. (Duke), which maintains separate uncollectible expense riders for generation and distribution related bad

debt. ESP 3 Order at 81. We clarify that it was our intention to limit the BDR to CRES receivables and generation related uncollectible expenses above the generation related amount that is already being recovered through base distribution rates. Following implementation of the POR program, AEP Ohio may seek recovery of CRES receivables and generation related uncollectible expenses through the BDR, providing, among other information in support of its application for recovery, the appropriate baseline level of generation related bad debt as a portion of the $12.2 million baseline that was established in the *Distribution Rate Case*. With this clarification, AEP Ohio's request for rehearing should be denied.

(97) Additionally, AEP Ohio argues that it was unreasonable for the Commission to order the Company to implement a modified POR program that does not allow the Company to disconnect customers for non-payment of CRES charges. AEP Ohio contends that the Commission's denial of the requested waiver of Ohio Adm.Code 4901:1-18-10(D), as contrary to R.C. 4928.10(D)(3), is inconsistent with the Commission's current practice of allowing for the disconnection of service for non-payment of CRES receivables in both the gas and electric industries. AEP Ohio asserts that, if the Commission clarifies that CRES receivables purchased by the Company become a regulated debt of the Company, as other surrounding deregulated markets have done, the waiver is not necessary and the Company may then disconnect for non-payment of its regulated costs under the POR program.

(98) Noting that R.C. 4928.10(D)(3) prohibits disconnection of non-competitive service for non-payment of a competitive service, OPAE/APJN assert that AEP Ohio cannot invent a way around the law by dubbing a charge for a competitive service as a charge for non-competitive service. OCC argues that customers should not be subject to collection practices that include the threat of disconnection for the non-payment of unregulated services, including CRES charges, and should not lose their ability to return to SSO service due to disconnection for non-payment of such charges.

(99) The Commission finds that AEP Ohio's request for rehearing on this issue should be denied. In the ESP 3 Order, we denied AEP Ohio's request for a waiver of Ohio Adm.Code 4901:1-18-10(D), noting that it was counter to the prohibition on disconnection for non-payment of CRES-related charges, as set forth in R.C. 4928.10(D)(3), and that the Commission cannot grant a rule waiver that is inconsistent with the statute. As we noted, R.C. 4928.10(D)(3) requires the Commission to adopt rules regarding a number of specific consumer protections, including, with respect to disconnection and service termination, a prohibition against blocking, or authorizing the blocking of, customer access to a non-competitive retail electric service when a customer is delinquent in payments to the electric utility or electric services company for a competitive retail electric service. ESP 3 Order at 82. We find that the consumer protections afforded by the statute would be defeated if CRES receivables are simply reclassified as a non-competitive retail service under the POR program.

(100) Finally, AEP Ohio maintains that it was unreasonable that the Commission created a greater liability on the Company by denying the right to disconnect customers for non-payment of receivables, but did not approve the Company's proposed late payment fee to encourage timely payment, despite the fact that other Ohio utilities already impose a late payment fee of 1.5 percent for residential customers.

(101) OCC responds that AEP Ohio cites no statute, rule, or precedent that would require the Commission to consider the proposed late payment fee in the present proceedings as opposed to a future distribution rate case. OCC adds that, by reviewing this issue in a distribution rate case, the Commission would be able to more thoroughly evaluate the impact of the proposed late payment fee on the affordability of service.

(102) The Commission reasonably determined, in the ESP 3 Order, that the merits of a late payment charge for residential customers would be more appropriately addressed in a distribution rate case. ESP 3 Order at 81-82. We find that our determination to more closely consider this issue was

reasonable and, accordingly, AEP Ohio's request for rehearing should be denied.

(103) OPAE/APJN argue that the Commission acted unreasonably and unlawfully when it found that a POR program would provide significant customer benefits, including the likelihood of increased numbers of active CRES providers and product offerings, and approved the establishment of the BDR. Specifically, OPAE/APJN contend that the POR program will impose significant costs on customers without any quantifiable benefits; there is no evidence that additional CRES providers will enter the market as a result of the program; and there is no need to encourage competition in AEP Ohio's service territory, given the large number of CRES providers that are already competing for customers. Regarding the Commission's approval of the BDR, OPAE/APJN assert that the Commission unlawfully shifted the collection risk from CRES providers to all distribution customers, in violation of R.C. 4928.02(H). OPAE/APJN claim that the BDR is unlawful, as it will collect generation related charges through distribution rates.

(104) According to AEP Ohio, the Commission relied upon the record in finding that a POR program will provide customer benefits and increase competition. AEP Ohio asserts that the record evidence thoroughly supports the Commission's findings and that OPAE/APJN's arguments to the contrary are without merit. Regarding the BDR, AEP Ohio contends that it was appropriate for the Commission to approve the BDR in these proceedings as opposed to a base rate case and that the POR program was authorized for the benefit of shopping and non-shopping customers and, therefore, there is no unlawful subsidy or violation of R.C. 4928.02(H), contrary to OPAE/APJN's claims.

(105) In the ESP 3 Order, the Commission found, based on the evidence of record, that a POR program will result in significant customer benefits, such as the likelihood of increased numbers of active CRES providers and product offerings in AEP Ohio's service territory, which occurred following the implementation of a POR program in Duke's

service territory. We also modified AEP Ohio's proposed BDR, limiting the rider to incremental CRES receivables and generation-related uncollectible expenses, in order to avoid the type of anticompetitive subsidy prohibited under R.C. 4928.02(H). In reaching these decisions, we thoroughly considered and rejected the arguments raised again by OPAE/APJN on rehearing. ESP 3 Order at 76, 81, 95. Accordingly, we find that OPAE/APJN's request for rehearing should be denied.

(106) RESA contends that it was unjust and unreasonable to require an industry review of the POR program through the MDWG, given that the POR program only impacts AEP Ohio and its customers. RESA asserts that the industry-wide MDWG, which already has a number of issues to debate, is not the appropriate forum for a discussion of the implementation details of AEP Ohio's POR program. RESA points out that not all members of the MDWG have an interest in AEP Ohio's POR program and that it is more reasonable for interested stakeholders to meet separately to discuss the implementation details. RESA believes that a better approach is to direct that AEP Ohio submit, within 60 days, a POR program plan that meets the requirements set forth by the Commission in the ESP 3 Order.

(107) In response, AEP Ohio notes that, like RESA, the Company has concerns with the Commission's delegation of issues to the MDWG. AEP Ohio believes, however, that RESA fails to recognize that the Company will not implement a POR program that harms the Company, which will change the focus of the MDWG. AEP Ohio asserts that, if the Commission sustains its modifications to the POR program proposed by the Company, the MDWG's efforts will consist of stakeholders attempting to create a POR program that results in no harm to the Company. AEP Ohio concludes that the Commission should deny RESA's request for rehearing on this issue and instead adopt the POR program proposed by the Company in its application and testimony.

(108) The Commission recognizes that some participants in the MDWG may not be concerned with the implementation details of AEP Ohio's POR program. In the ESP 3 Order, we

specifically directed that interested stakeholders should participate in the MDWG's process of developing a detailed implementation plan to be filed by Staff. ESP 3 Order at 81. The Commission believes that it is reasonable for a subset of the MDWG to address implementation of AEP Ohio's POR program. RESA's request for rehearing on this issue should, therefore, be denied.

(109) RESA argues that it was unjust and unreasonable to require that supplier consolidated billing and certain tariff language issues be discussed by the MDWG, without first establishing any parameters for such discussions. RESA, therefore, recommends that the Commission direct that Staff file a report by August 2015 that identifies how supplier consolidated billing should be provided and addresses RESA's concerns regarding tariff sheets 103-20D and 103-41D.

(110) AEP Ohio claims that RESA's proposal is aggressive and contrary to RESA's belief that the MDWG already has enough to debate. AEP Ohio asserts that RESA's request for rehearing should be denied, as there is nothing in the record to elevate the issue of supplier consolidated billing to priority treatment through a quick report by Staff and an accelerated process ahead of all of the other issues that the MDWG is currently discussing.

(111) The Commission finds that RESA's request for rehearing should be denied. As stated in the ESP 3 Order, the Commission believes that the recommendations regarding supplier consolidated billing offered by Direct Energy and IGS and RESA's objections to the switching provisions in tariff sheets 103-20D and 103-41D are appropriate for further discussion within the MDWG. ESP 3 Order at 81. However, as mentioned above, it was not the Commission's intention to establish a particular timeframe for the MDWG's discussions regarding these issues. The MDWG was established as a forum facilitated by Staff, in which issues related to the development of the competitive market are discussed by interested stakeholders. *CRES Market Case*, Finding and Order (Mar. 26, 2014) at 23. The Commission recognizes that a number of issues have already been

assigned to the MDWG for consideration, including the recent addition of the detailed implementation plan for AEP Ohio's POR program, and we intend to address the MDWG's priority of current tasks by subsequent entry in another proceeding.

X. CAPITAL STRUCTURE AND COST OF CAPITAL

(112) OCC maintains that a return on equity (ROE) of 10.2 percent is excessive, because it does not recognize that AEP Ohio is now a distribution only utility, without the greater risk associated with a generation business, and that the Company collects virtually all of its revenues from customers through numerous riders. OCC adds that, since AEP Ohio's ROE of 10.2 percent was approved in the *Distribution Rate Case*, interest rates and other costs of capital have declined. OCC argues that the Commission's decision to adopt the ROE approved in the *Distribution Rate Case* is not based upon the facts of record, in violation of R.C. 4903.09.

(113) AEP Ohio responds that the Commission considered the evidence in the record in making its determination regarding the ROE. AEP Ohio notes that the record contains a range of ROE recommendations from 9 to 11 percent and that the 10.2 percent ROE adopted by the Commission is within that range.

(114) In the ESP 3 Order, the Commission noted that the record reflects a range in ROE recommendations, from OCC's proposed ROE of 9.00 percent up to AEP Ohio's requested ROE of 10.65 percent. We further noted that OCC's recommended ROE is insufficient to enable AEP Ohio to maintain its financial integrity and protect its ability to attract capital, while the Company's proposed ROE failed to adequately account for its reduced exposure to risk from regulatory lag in light of the DIR and numerous other riders. For these reasons, the Commission found that it was appropriate to maintain the ROE of 10.2 percent authorized for AEP Ohio in the *Distribution Rate Case*, which we specifically determined was just and reasonable, as well as supported by the evidence of record in the present

proceedings. ESP 3 Order at 84. OCC's arguments in favor of a lower ROE have already been thoroughly considered and rejected by the Commission. ESP 3 Order at 83-84. We affirm our finding that, based on the record before us, 10.2 percent is an appropriate ROE and, accordingly, find that rehearing on this issue should be denied.

(115) Additionally, OCC contends that the Commission should have considered other factors that merit a reduction to AEP Ohio's ROE, such as provider of last resort (POLR), retail stability, and capacity charges authorized in prior ESPs.

(116) In response, AEP Ohio argues that OCC's attempt to incorporate issues related to the Company's POLR, rate stability, and capacity charges from prior unrelated proceedings is improper and should be rejected. AEP Ohio contends that OCC should not be permitted to use the rehearing process to relitigate its disagreement with how the Commission resolved those issues in the prior cases. AEP Ohio also points out that, if past or present decisions result in the Company's collection of significantly excessive earnings, the Commission will have the ability to remedy such overearnings in the manner set forth in R.C. 4928.143(F).

(117) The Commission finds no merit in OCC's contention that charges authorized in prior ESP proceedings should have been considered in the course of establishing AEP Ohio's ROE in the present cases. As discussed above, the ROE that we approved for AEP Ohio is properly based on the record before us. We find that OCC's request for rehearing is an attempt to reverse prior Commission orders and, therefore, it should be denied.

(118) IEU-Ohio argues that the ESP 3 Order is unlawful and unreasonable, because the Commission approved an ROE of 10.2 percent based on the terms of the stipulation and recommendation (stipulation) adopted in the *Distribution Rate Case*, which expressly provides that it has no precedential effect. IEU-Ohio notes that, in another proceeding, the Commission determined that the stipulated ROE from the *Distribution Rate Case* could not be relied upon

by Staff to support its litigation position. *In re Ohio Power Co. and Columbus Southern Power Co.*, Case No. 10-2929-EL-UNC, Opinion and Order (July 2, 2012) at 34. IEU-Ohio contends, however, that the Commission, in the ESP 3 Order, has sent a clear message that any party that may seek to resolve contested issues through a settlement package must assume that the Commission will selectively extract one aspect of the settlement package and use it procedurally and substantively to resolve the contested issues in another proceeding.

(119) OCC also claims that the Commission unreasonably approved an ROE that was agreed to as part of the comprehensive settlement in the *Distribution Rate Case*, which should only be considered reasonable in the context of the entire stipulation and should not be used as precedent in these proceedings, consistent with the terms of the stipulation.

(120) Regarding the fact that the 10.2 percent ROE is consistent with the recommended and adopted ROE from the stipulation in the *Distribution Rate Case*, AEP Ohio points out that, although the Commission acknowledged this fact in the ESP 3 Order, the Commission based its decision on the record. AEP Ohio adds that the Commission's recognition in the ESP 3 Order of the stipulation in the *Distribution Rate Case* is not inconsistent with the term of the stipulation prohibiting it from being cited as precedent.

(121) In the ESP 3 Order, we acknowledged that an ROE of 10.2 percent was approved in the *Distribution Rate Case*, pursuant to a stipulation submitted by the parties in those proceedings, which was intended to have no precedential effect. However, we noted that, although the parties may agree that the provisions contained within a settlement agreement should not be used as precedent in other proceedings, such limitations do not extend to the Commission. ESP 3 Order at 84, citing *ESP 2 Case*, Opinion and Order (Aug. 8, 2012) at 10. Further, as discussed above, the Commission determined that, based on the evidence of record in the present cases, it was appropriate to maintain AEP Ohio's ROE of 10.2 percent, given that it fell within the

range of recommendations put forth by AEP Ohio and the intervenors, and would enable the Company to maintain its financial integrity and ability to attract capital, as well as account for the Company's reduced exposure to regulatory lag in light of the DIR and other riders. ESP 3 Order at 84. Accordingly, we find no merit in the arguments raised by IEU-Ohio and OCC and their requests for rehearing should, thus, be denied.

XI. STATUTORY TEST

(122) AEP Ohio requests that the Commission clarify its determination that the proposed ESP, as modified, is more favorable in the aggregate than a market rate offer (MRO). Specifically, AEP Ohio asserts that the modified ESP provides $53,064,000 in quantifiable benefits that would not be possible under an MRO, as opposed to the $44,064,000 related to the Company's voluntary extension of the RDCR. AEP Ohio notes that the Commission modified the Company's RDCR proposal to continue to include $1 million annually, or $3 million over the ESP term, to fund the Neighbor-to-Neighbor bill payment assistance program to support at-risk and low-income customers in the Company's service area. AEP Ohio further notes that the Commission directed the Company to continue the Ohio Growth Fund by contributing $2 million annually, or $6 million over the ESP term. AEP Ohio, therefore, contends that the Commission should include, in its analysis of the MRO/ESP statutory test, the additional $9 million in quantifiable benefits that the modified ESP provides, resulting in a total of $53,064,000 in quantifiable benefits over the ESP term that would not be possible under an MRO.

(123) OMAEG replies that, although the Commission's modification of the ESP to include $1 million in annual funding for the Neighbor-to-Neighbor program over the term of the ESP will provide bill payment assistance for at-risk customers, it does nothing to alleviate the disparate treatment of customer classes when considering any potential quantitative benefits of the ESP. With respect to the $2 million annual funding for the Ohio Growth Fund over the term of the ESP, OMAEG asserts that, although

such funding may provide some economic benefit for non-residential customers, the ratio of residential to non-residential quantitative benefits is still considerably skewed and, therefore, the Commission should find that the ESP does not provide more customer benefits than would be available under an MRO.

(124) OCC disputes AEP Ohio's assertion that the annual funding of the Neighbor-to-Neighbor program and the Ohio Growth Fund should be counted as quantitative benefits of the ESP. OCC argues that the funding for the Neighbor-to-Neighbor program cannot be included in the statutory test, because the funding does not fit within any of the items specified in R.C. 4928.143(B)(2). OCC also points out that the funding for the Neighbor-to-Neighbor program would be available under an MRO, in conjunction with a distribution rate case, and, therefore, the funding should be considered a wash, consistent with the Commission's method of performing the MRO/ESP analysis. With respect to the funding of the Ohio Growth Fund, OCC notes that the Commission directed that shareholders contribute $2 million per year, or portion thereof, during the term of the ESP. OCC claims that the funding is, therefore, indeterminate and cannot be quantified as a benefit of the ESP. OCC also points out that the funding of the Ohio Growth Fund was not quantified by the Commission as part of the MRO/ESP analysis in AEP Ohio's prior ESP proceedings.

(125) In the ESP 3 Order, the Commission determined that the ESP, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, as modified by the Commission in the ESP 3 Order, is more favorable in the aggregate as compared to the expected results that would otherwise apply under R.C. 4928.142. With respect to quantitative benefits of the ESP, the Commission found that the modified ESP is better in the aggregate than an MRO by $44,064,000, which is the amount associated with AEP Ohio's voluntary commitment to continue the residential distribution credit over the course of the ESP term. ESP 3 Order at 94-95. We agree with AEP Ohio that the funding for the Neighbor-to-Neighbor

program and the Ohio Growth Fund provides a known quantifiable benefit under the ESP. Contrary to OCC's assertion, there is no guarantee that such funding would be the outcome under an MRO, in conjunction with a distribution rate case. In response to OMAEG, we note that the MRO/ESP test set forth in R.C. 4928.143(C)(1) does not require that the quantifiable benefits of an ESP apply to all customer classes or that we undertake a class-by-class analysis in our evaluation of the ESP. Rather, the statute requires consideration of whether the ESP is more favorable in the aggregate than an MRO. As we stated in the ESP 3 Order, the Commission must ensure that the modified ESP as a total package is considered. ESP 3 Order at 94. Accounting for the additional benefits of the Neighbor-to-Neighbor program and the Ohio Growth Fund, we find that the ESP, as modified, results in a total of $53,064,000 in quantifiable benefits over the ESP term that would not be possible under an MRO. Accordingly, AEP Ohio's request for clarification on this issue should be granted.

(126) In its application for rehearing, OCC contends that the Commission unreasonably and unlawfully found that the ESP, as modified, is more favorable in the aggregate to customers than an MRO, and that the Commission exceeded its authority in performing the statutory test. Specifically, OCC claims that the $44,064,000 attributable to the residential distribution credit should not be considered a quantitative benefit of the ESP, because the credit was already recognized as a benefit of the prior ESP. OCC believes that the continuation of the credit is merely a mechanism to mitigate excess revenue collection under the DIR and is, therefore, not a benefit afforded by the new ESP. With respect to the placeholder PPA rider, OCC argues that, if costs are expected to be recovered during the ESP term, a determination cannot be made as to whether the ESP is more favorable than an MRO, because AEP Ohio has failed to sustain its burden of proof on this issue. Next, OCC maintains that the Commission failed to recognize the costs associated with the DIR in its analysis of the statutory test. OCC maintains that the statutory test does not allow the Commission to account for the results of a distribution rate

case in its analysis and, even if it does, the Commission must compare the additional revenues collected under the DIR to the revenues that would be collected by means of a distribution rate case. Finally, according to OCC, qualitative benefits should not be included and considered as part of the statutory test and, in any event, consumers do not benefit from any of the qualitative factors identified by the Commission. In particular, OCC claims that the Commission erred in identifying, as qualitative benefits of the ESP, AEP Ohio's prior commitment to implement fully market-based rates; improved system reliability through the DIR and other distribution riders, with no recognition of the accelerated cost recovery; and the furtherance of state policy objectives set forth in R.C. 4928.02, without adequate explanation in violation of R.C. 4903.09. OCC adds that, while the Commission must review an ESP to ensure that its provisions do not violate state policy, only those items expressly listed in R.C. 4928.143(B) can be considered a part of the ESP for purposes of the test performed under R.C. 4928.143(C)(1).

(127) OMAEG also argues that the Commission erred in determining that AEP Ohio's proposed ESP, as modified, is more favorable in the aggregate than an MRO. Specifically, OMAEG asserts that the Commission's determination that the ESP is quantitatively more favorable in the aggregate than an MRO over the term of the ESP, by $44,064,000, is misleading, as the $44,064,000 will benefit only the residential ratepayers. OMAEG further asserts that it is unclear as to whether the qualitative benefits associated with continuation of the DIR and other distribution related riders will come to fruition without the imposition of additional distribution costs on ratepayers during the term of the ESP. Next, OMAEG contends that, if moving more quickly to market-based pricing than would be expected under an MRO represents a qualitative benefit of the ESP, as the Commission claims, then establishing the PPA rider as a financial limitation on shopping that would purportedly alleviate the risk associated with market-based pricing represents a step in the opposite direction and is not a benefit of the ESP. Finally, OMAEG maintains that,

although the PPA rider and BDR have been set at zero as placeholder riders, the Commission must nevertheless consider the effect that the establishment of those riders in an ESP will have on customers, including AEP Ohio's future recovery of costs, as compared to the expected results that would otherwise apply under an MRO.

(128) AEP Ohio replies that the continuation of the residential distribution credit will provide a substantial quantitative benefit during the ESP term, because, absent the Company's voluntary commitment to continue the credit, residential rates would increase on June 1, 2015, by the amount of the credit. AEP Ohio adds that there is no basis for OCC's contention that the credit is a mechanism to mitigate excess revenue collection under the DIR. In response to OMAEG, AEP Ohio points out that there is no requirement that the quantifiable benefits of an ESP must apply to all customer classes in order to be counted for purposes of the statutory test. AEP Ohio also asserts that the $2 million annual funding required by the Commission for the Ohio Growth Fund provides quantifiable benefits for all customers. Next, AEP Ohio argues that the incremental costs of the DIR, ESRR, and other distribution riders are properly excluded from the MRO/ESP analysis. AEP Ohio points out that, despite OCC's position to the contrary, nothing in the language of R.C. 4928.143(C)(1) or any rule of statutory construction requires the Commission to ignore the results of the inevitable distribution rate cases that would occur during the period of the alternative MRO, in order to enable the electric distribution utility to maintain and improve the quality and reliability of its distribution services. With respect to the placeholder BDR and PPA rider, AEP Ohio notes that, where the future costs of placeholder riders are unknown or speculative, the Commission has properly declined to include any estimates of such riders' costs in the MRO/ESP analysis. AEP Ohio asserts that there is no better estimate of the projected cost impact of both riders than zero. Regarding non-quantifiable benefits, AEP Ohio contends that the statutory test does not require the Commission to ignore the non-quantifiable provisions of an ESP that provide significant benefits when determining

whether the ESP is more favorable in the aggregate compared to the expected results that an MRO would provide. AEP Ohio also maintains that OCC mistakenly conflates the provisions of the ESP with the benefits that those provisions provide. In response to OCC's argument that the more rapid implementation of market based rates is not a qualitative benefit of the ESP, AEP Ohio emphasizes that, if the Company had substituted an MRO for its proposed ESP, the progress towards completion of the transition to competition would have become much more uncertain, with adverse repercussions for all stakeholders. Next, AEP Oho contends that it is appropriate for the Commission to take into account, when evaluating whether and to what extent an ESP is more favorable than an MRO, instances where the provisions of the ESP provide benefits by promoting the state policies enumerated in R.C. 4928.02 in ways that the MRO may not be able to do. AEP Ohio believes that OCC's criticism again confuses the restriction that an ESP may only include items listed in R.C. 4928.143(B) with the need to evaluate the benefits, quantitative and qualitative, that those items provide in performing the MRO/ESP analysis required by the statute. AEP Ohio also notes that the Commission, throughout the ESP 3 Order, specifically identified how particular ESP provisions promote specific aspects of state policy. Finally, AEP Ohio responds to the arguments of OCC and OMAEG that the fact that there is not an absolute commitment from the Company not to file a distribution rate case during the ESP term does not diminish the conclusion that the DIR, ESRR, and other distribution related riders will mitigate the potential need for such a rate case and the associated time and expense.

(129) The Commission finds that OCC's and OMAEG's requests for rehearing should be denied. Initially, we affirm our finding that the ESP, as modified, is more favorable in the aggregate than the expected results under R.C. 4928.142. ESP 3 Order at 94-95. In response to OCC's claims regarding the residential distribution credit, we again note that AEP Ohio has voluntarily agreed to extend the credit, which would otherwise expire on May 31, 2015, and, therefore, it is a quantifiable benefit in the amount of $44,064,000 over the

three-year term of the ESP. ESP 3 Order at 94. There is no evidence in the record that indicates that the residential distribution credit is necessary to mitigate excess revenue collection under the DIR, as OCC claims, and there is no requirement to perform a class-by-class analysis, contrary to OMAEG's position. Further, we affirm our finding that it is not necessary to attempt to quantify the impact of the PPA rider or BDR in the MRO/ESP analysis, given that both placeholder riders have been set at zero, and any future costs associated with these riders are unknown and subject to future proceedings. *ESP 2 Case,* Entry on Rehearing (Jan. 30, 2013) at 9; ESP Order at 94. We also affirm that it was unnecessary to consider the revenue requirements associated with the DIR, ESRR, and other approved distribution related riders, because the results should be considered the same whether incremental distribution investments and expenses are recovered through the ESP or through a distribution rate case, in conjunction with an MRO. *In re Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co.,* Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 55-56; ESP 3 Order at 94.

(130) Turning to OCC's and OMAEG's arguments related to the qualitative benefits of the ESP, the Commission again finds that that there are indeed qualitative benefits that make the ESP, as modified by the Commission, more favorable in the aggregate than the expected results under R.C. 4928.142. We previously determined that the ESP furthers the state policy found in R.C. 4928.02; enables AEP Ohio to implement fully market based prices as of June 1, 2015; and should enable the Company to hold base distribution rates constant over the ESP period, while making significant investments in distribution infrastructure and improving service reliability. As noted in the ESP 3 Order, the evidence of record reflects that these are additional benefits that will occur as a result of the ESP. ESP Order at 95. We, therefore, do not agree with OMAEG's assertion that these benefits are not likely to come to fruition. We also disagree with OCC's contention that the non-quantifiable provisions of an ESP may not be considered in conducting the MRO/ESP analysis. R.C.

> 4928.143(C)(1) specifically requires the Commission to determine whether the ESP, including not only pricing but also all other terms and conditions, is more favorable in the aggregate than an MRO. We agree with AEP Ohio that OCC wrongly conflates the restriction that an ESP may only include items listed in R.C. 4928.143(B) with the need to weigh the quantitative and qualitative benefits that those items provide, in performing the MRO/ESP test. Finally, we thoroughly explained and relied upon the evidence of record in enumerating specific qualitative benefits of the ESP. ESP 3 Order at 95. Regarding the more rapid implementation of market based pricing afforded by the ESP, we agree with AEP Ohio that, if the Company had proposed an MRO instead of an ESP, the completion of the transition to such pricing would have been more uncertain. We also believe that it was appropriate to note that the ESP promotes the state policies enumerated in R.C. 4928.02, in a manner that may not be possible under an MRO, and we explained throughout the ESP 3 Order how specific provisions of the ESP promote state policy, contrary to OCC's claims. Finally, we find that, although AEP Ohio has not committed to refrain from initiating a distribution rate case during the ESP term, the fact remains that the DIR, ESRR, and other distribution related riders should enable the Company to hold base distribution rates constant over the term of the ESP, while continuing to invest in distribution infrastructure and improve service reliability.

It is, therefore,

ORDERED, That the applications for rehearing of the Commission's February 25, 2015 Opinion and Order be denied, in part, and granted, in part, as set forth herein. It is, further,

ORDERED, That a copy of this Second Entry on Rehearing be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Andre T. Porter, Chairman

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

Thomas W. Johnson

SJP/GNS/sc

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Barcy F. McNeal
Secretary