

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Implementation of )  
Sections 4928.54 and 4928.544 of the ) Case No. 16-247-EL-UNC  
Revised Code. )

ENTRY ON REHEARING

The Commission finds:

- (1) R.C. 4928.54 and 4928.544 require the director of development services to aggregate percentage of income payment plan (PIPP) program customers for the purpose of establishing a competitive procurement process for the supply of competitive retail electric service for those customers, which shall be an auction. Additionally, pursuant to the written request by the director of development services, the Commission shall design, manage, and supervise the competitive procurement process. Pursuant to R.C. 4928.542, the competitive procurement process must meet the following requirements:
  - (a) Be designed to provide reliable competitive retail electric service to PIPP program customers;
  - (b) Reduce the cost of the PIPP program relative to the applicable standard service offer (SSO);
  - (c) Result in the best value for persons paying the universal service rider.
- (2) On March 2, 2016, the Commission issued its Finding and Order (Order) in this case. Pursuant to the Order, the Commission adopted a competitive request for proposal (RFP) auction process to procure wholesale supply for the PIPP electric load.
- (3) Pursuant to R.C. 4903.10, any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the

Commission, within 30 days of the entry of the order upon the Commission's journal.

- (4) On April 1, 2016, Ohio Partners for Affordable Energy (OPAE) and The Retail Electric Supply Association (RESA) filed applications for rehearing and memoranda in support. Thereafter, on April 11, 2016, memoranda contra the applications for rehearing were filed by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy), RESA, and Duke Energy Ohio (Duke).

I. Assignments Of Error Raised By OPAE

- (5) As its first assignment of error, OPAE asserts that the Commission's Order is unreasonable and unlawful because it fails to utilize a declining clock auction to determine the price of full requirements service to serve PIPP customers. OPAE asserts that using a competitive RFP auction process rather than a declining clock auction is inconsistent with the intent of R.C. 4928.542. OPAE argues that the competitive RFP auction process will not result in the best possible price, which is required by R.C. 4928.542. OPAE notes that it agreed in its comments that an RFP process would be acceptable for the first year due to the short amount of time available to implement a process, but did not intend for the Commission to adopt such a process for the long-term.

In their memoranda contra, FirstEnergy and Duke argue that OPAE's first assignment of error lacks merit. FirstEnergy and Duke note that R.C. 4928.54 simply requires a competitive process that shall be an auction. The competitive RFP auction process satisfies this requirement. RFP auctions are widely recognized as competitive processes that are, in other terms, single-round sealed bid auctions. They assert that OPAE's argument is reduced to complaining about the process adopted by the Commission without evidence as to why it is unreasonable or unlawful.

- (6) The Commission finds that OPAE's first assignment of error lacks merit. The competitive RFP auction process adopted by the Commission satisfies R.C. 4928.54 because it is both competitive and an auction. Even OPAE argued in its

comments that the Commission should initially adopt an RFP process. See OPAE Comments (Feb. 29, 2016) at 2. The Commission is not now persuaded by OPAE that the competitive RFP auction process is uncompetitive or not an auction. The Commission fully considered OPAE's proposal to adopt a declining-clock auction, including its advantages and disadvantages, and determined that a competitive RFP auction process will best meet the statutory requirements in R.C. 4928.542. The Commission determined that the competitive RFP auction process will ensure reliable electric service to PIPP customers, will reduce the cost of the PIPP program relative to the applicable SSO, and will achieve the best value for persons paying the universal service rider. In making this determination, the Commission considered two staff reports containing three separate proposals, as well as 21 sets of comments and reply comments filed by numerous stakeholders. Each proposal made by Staff in its Staff Reports had advantages and disadvantages, and the Commission determined that the competitive RFP auction process will be the most effective means of meeting the requirements of R.C. 4928.542.

- (7) As its second assignment of error, OPAE argues that the Commission's Order is unreasonable and unlawful because it fails to bid the entire aggregated PIPP load. OPAE avers that pursuant to R.C. 4928.54, the Commission must include the entire PIPP load in the auction.

In their memoranda contra, FirstEnergy, Duke, and RESA argue that OPAE's second assignment of error also lacks merit. According to FirstEnergy, Duke, and RESA, the Commission reasonably and lawfully allowed suppliers to honor existing SSO supply contracts, which will avoid market disruptions. Initially, the memoranda contra aver that the alleged problem raised by OPAE will fully self-correct within a few delivery years as laddered SSO supply contracts expire and are replaced with new agreements that do not include the PIPP load. Further, FirstEnergy points out that the Revised Code is silent as to any deadline when the entire PIPP load must be procured via the competitive auction process. Duke argues that the Commission exercised its authority to determine, in its discretion, that the

contractual expectations of wholesale SSO suppliers should be maintained, while at the same time a competitive auction should be implemented for that PIPP load that is not subject to an existing wholesale supply contract. Similarly, RESA argues that it is undisputed that SSO suppliers have future commitments and obligations to serve SSO load, and these obligations were formed on the assumption that the PIPP load would be part of the SSO load.

- (8) The Commission finds that OPAE's second assignment of error lacks merit. The Commission has complied with the requirements of R.C. 4928.54 while allowing wholesale SSO suppliers to continue to serve the load that they were expecting to serve when they participated in the SSO auctions and engaged in wholesale supply agreements. We fully considered the matter raised by OPAE before deciding that the RFP auctions should only include the PIPP load that would otherwise be included in the next SSO auction. The Commission will not meddle with the existing wholesale supply agreements and will allow wholesale SSO suppliers to honor their agreements. Wholesale SSO suppliers have already bid into the wholesale SSO auctions and procured the right to supply portions of the PIPP load. Since wholesale SSO suppliers have already obtained the right to serve that portion of the PIPP load, the Commission finds that it would be best for both auction processes and participants if the Commission permits wholesale SSO suppliers to honor their existing wholesale supply agreements. Further, over time, all of the PIPP load will eventually be served by RFP auction winners. Finally, we agree with FirstEnergy that R.C. 4928.54 does not contain any timeline for when all of the PIPP load must be included in the RFP auction.
- (9) As its third assignment of error, OPAE asserts that the Commission's Order is unreasonable and unlawful because *it violates a requirement in R.C. 4928.541 that the bidding process shall be conducted until a winning bid or winning bids are selected*. Additionally, OPAE argues that the Order unreasonably and unlawfully violates R.C. 4928.542(B) by creating the possibility for the PIPP load to be served at a cost above the otherwise applicable SSO. OPAE's argument

is that the Commission should use a declining clock auction and bid the entire aggregated PIPP load into the auction. According to OP&E, a competitive declining clock auction will either produce a lower price or it will not, but it better complies with R.C. 4928.541 that the auction be held until a winning bid is completed.

In its memoranda contra, FirstEnergy argues that the Commission should deny OP&E's assignment of error because it lacks merit. FirstEnergy asserts that the Commission's Order to establish contingency mechanisms to procure PIPP supply is reasonable because it recognizes the possibility that in a competitive marketplace, suppliers may choose not to submit bids to serve PIPP customers at a price below the otherwise applicable SSO price. FirstEnergy argues that the contingency plan of permitting purchases from the market in the event the RFP auctions do not yield a winning bidder is reasonable in light of the statutory obligation the electric utilities have to provide retail generation service to non-shopping customers, including PIPP customers.

- (10) The Commission finds that OP&E's third assignment of error lacks merit. The Commission notes that R.C. 4928.54 requires both a competitive process and an auction. However, to place a ceiling on the auction price is inherently uncompetitive. Accordingly, the Commission adopted an auction process in which an initial RFP auction shall take place to determine if there is a CRES provider willing to serve the PIPP load for less than the SSO price. Thereafter, if no CRES provider is willing to serve the PIPP load for less than the SSO price, then a supplemental RFP auction shall be conducted in which CRES providers may submit bids to serve the PIPP load at any price. If no CRES provider submits bids in either RFP auction, then the Commission finds that a contingency plan must exist to ensure that the electric utilities are capable of procuring supply for the PIPP load.

The Commission notes that this contingency plan of allowing the electric utilities to obtain supply for the PIPP load through a bilateral transaction or from the market is necessary due to the timing of the competitive RFP auctions.

Pursuant to R.C. 4928.542, the Commission must reduce the cost of the PIPP program relative to the applicable SSO. However, the SSO auctions are often conducted within 60 days of the delivery year, so as to obtain a market price as close in time to the delivery year as possible. Once the SSO auction is conducted, the electric utility can calculate the blended SSO price and provide it to CRES providers so that they know what the otherwise applicable SSO price is before bidding in the competitive RFP auctions. Accordingly, the initial and supplemental RFP auctions must be conducted in this timeframe between the SSO auction and the delivery year. In the unlikely scenario that no CRES provider participates in either of the competitive RFP auctions, then the electric utility may need to procure supply for the PIPP load on extremely short notice. Accordingly, we find, as we did in our Order, that the electric utilities may procure supply through bilateral transactions or through the market if no CRES provider participates in either of the competitive RFP auctions, consistent with the contingency plans contained in the Master Supply Agreements (MSAs) for the SSO auctions. Additionally, the Commission finds that these contingency plans may be exercised by the electric utilities in the event that a supplier defaults.

- (11) In its fourth assignment of error, OPAE argues that the Commission's Order is unreasonable and unlawful because it creates the potential for the PIPP load to be served at a price exceeding the otherwise applicable SSO price, and may force an electric utility to enter into bilateral contracts to procure full requirements service for PIPP customers. OPAE asserts that this violates the intent of R.C. 4928.54 to provide the best value to persons paying the universal service rider, and violates the specific requirement that the cost of electricity for the PIPP load be set through an auction. OPAE avers that the solution to this unreasonable and unlawful violation of R.C. 4928.54 is to adopt a declining clock auction.

In their memoranda contra, Duke and FirstEnergy each argue that OPAE's fourth assignment of error lacks merit. Initially, FirstEnergy notes that OPAE's fourth assignment of error fails to recognize the physical reality that on June 1 of

each year power must be procured to serve PIPP customers. A contingency plan must be adopted so that when PJM's delivery year begins on June 1 of each year, electric supply will have been procured for the PIPP load so that PIPP customers may have reliable electric service. Duke asserts that the processes adopted by the Commission are critical to ensuring that power is provided to PIPP customers in the event of a supplier default or other circumstance beyond the electric utility's control. Further, Duke argues that the Commission's process complies with the requirements in R.C. 4928.54, *et seq.*, and the General Assembly has deferred to the Commission the proper implementation of R.C. 4928.54.

- (12) The Commission finds that OPAE's fourth assignment of error similarly lacks merit. The Commission adopted a competitive RFP auction process that is designed to provide reliable competitive retail electric service to PIPP program customers, reduce the cost of the PIPP program relative to the applicable SSO, and result in the best value for persons paying the universal service rider. Under the process adopted by the Commission, the electric utilities must initially conduct a competitive RFP auction by issuing an RFP to procure supply for PIPP load at a price less than the SSO price. However, if no CRES provider offers to serve the PIPP load at a price less than the SSO price, then the electric utility is required to conduct a supplemental RFP auction. During the supplemental RFP auction, CRES providers may submit offers to serve the PIPP load at any price. This second competitive RFP auction is necessary to ensure that when PJM's delivery year begins on June 1, a CRES provider is under contract to supply electric service for the PIPP load. As noted above, no ceiling on the price will be applied to the second competitive RFP auction, as a price ceiling would be inherently uncompetitive, and the electric utility would have already conducted a competitive RFP auction to determine that there were not any CRES providers willing and able to serve the PIPP load for less than the SSO price for that delivery year.

Thereafter, if no CRES provider submits an offer to serve the PIPP load at any price, then the electric utility and the

Commission would face the very real and unfortunate possibility that no supply would be procured to serve the PIPP load. Accordingly, the Commission finds that if no CRES provider participates in the competitive RFP auctions, then the electric utility may engage in bilateral contracts and the PJM-administered wholesale markets to procure supply for the PIPP load. As noted by FirstEnergy and Duke, the Commission must adopt a contingency process because it is critical to ensure that power is provided to PIPP customers in the event that a CRES provider is not willing or able to serve the PIPP load.

## II. Assignments Of Error Raised By RESA

- (13) In its first assignment of error, RESA asserts that the Commission's Order is unreasonable and unlawful because it fails to require that an independent auction manager conduct and monitor the competitive RFP auctions and evaluate the bids for serving the PIPP load. RESA avers that an independent third-party auction manager assures prospective bidders that common bidding practices will be used and minimizes concerns or perceptions of favoritism should utility-affiliated CRES providers participate in the competitive RFP auctions. To ensure an open and fair process, RESA requests that the Commission direct each electric utility to employ an independent auction manager to conduct and monitor the RFP auctions.

In their memoranda contra, Duke and FirstEnergy argue that the Commission did not err in failing to require an independent RFP auction manager and that the Commission's decision was both lawful and reasonable. However, both Duke and FirstEnergy note that they have each retained an independent entity to assist with the development and implementation of their competitive RFP auctions. While they have each retained an independent entity, they note that nothing in R.C. 4928.54, *et seq.*, requires an independent third-party auction manager.

- (14) The Commission finds that RESA's first assignment of error lacks merit. Initially, the Commission notes that RESA's argument may be moot, as the electric utilities in this case have already retained independent third-party entities or



auction managers to implement the competitive RFP auction process. However, RESA asserts that a third-party auction manager should be mandatory. The Commission disagrees. The Commission finds no requirement for a third-party auction manager in R.C. 4928.54, *et seq.*, and finds that no requirement should be adopted. In fact, requiring a third-party auction manager to conduct each competitive RFP auction could drive up the costs of the competitive RFP auctions, which may not result in the best value for persons paying the universal service rider. If, at some point in the future, the competitive RFP auctions can be effectively and efficiently conducted without the need for an independent third-party auction manager, then requiring an auction manager may drive up the cost of the RFP auction.

- (15) In its second assignment of error, RESA argues that the Commission's Order is unreasonable and unlawful because it fails to establish a special CRES registration process so that entities who want to participate in only the PIPP auctions can obtain a CRES certificate. RESA notes that wholesale suppliers have successfully participated for years in SSO auctions, but the Commission's Order prohibits them from participating in the PIPP RFP auctions unless they are certified CRES providers. RESA asserts that the Commission should adopt a special PIPP-only CRES certification process so that entities who want only to participate in the PIPP auctions can obtain a CRES certificate. RESA then provides some of the parameters that could be adopted by the Commission to establish this PIPP-only CRES certification process.

In their memoranda contra, FirstEnergy and Duke argue that the Commission properly limited participation in the competitive RFP auctions to CRES providers. FirstEnergy asserts that R.C. 4928.54 contains no provisions for a special certification process. Duke argues that R.C. 4928.54 is clear that only CRES providers can participate in the auctions and the Commission cannot waive this provision of the statute.

- (16) The Commission notes that R.C. 4928.54 specifically states that only bidders certified under R.C. 4928.08 may participate in the auctions. Under 4928.08(B), no electric utility, electric services company, electric cooperative, or

governmental aggregator shall provide a competitive retail electric service to a consumer in this state on and after the starting date of competitive retail electric service without first being certified by the Commission regarding its managerial, technical, and financial capability to provide that service and providing a financial guarantee sufficient to protect customers and electric utilities from default. The Commission has implemented these provisions through its rules in Ohio Adm.Code 4901:1-27-10 and by issuing CRES certificates. We find that this process should continue to be applied for CRES certification, even for those entities who desire to provide supply for just the PIPP load.

- (17) In its third assignment of error, RESA avers that the Commission's Order is unreasonable and unlawful because it fails to establish a uniform, standard protocol for key information that must be in the RFPs and the timing for bidding information. RESA notes that the Commission's Order delegated the development of the RFPs to the electric utilities in consultation with Staff. However, RESA asserts that the Commission should have required the RFPs to include such critical information as a definitive date starting when the RFP bids are due and to delineate that the RFPs will be issued well in advance of the bid due dates. Further, RESA requests that the Commission direct the electric utilities to provide information about the PIPP load on as discrete a time basis as possible, and be provided in advance to qualified bidders. Additionally, RESA asserts that the electric utilities should be required to publish their blended SSO price following the SSO auction so that bidders can develop their RFP bids in response. Finally, RESA argues that each of these requirements should be uniform for all of the electric utilities in the state of Ohio.

In their memoranda contra, Duke and FirstEnergy each argue that RESA's assignment of error lacks merit and that the Commission properly refused to force uniformity in the competitive RFP auction process. FirstEnergy argues that uniformity of data may not be possible among the electric utilities and that any mandate may simply be impractical. Duke notes that the electric utilities' MSAs for their SSO auctions are all different. Therefore, it would be

unreasonable to force such uniformity in the PIPP auctions, particularly when no requirement is contained in the Revised Code.

- (18) The Commission finds that RESA's third assignment of error lacks merit. While the Commission agrees with RESA that there should be similarity between the competitive RFP auctions, the Commission also recognizes that uniformity may be unworkable. As Duke notes, each electric utility has an MSA for its SSO auctions, and the MSAs are not all uniform. Accordingly, the Commission finds that flexibility should be built into the competitive RFP auction process at this time. The Commission directed Staff and the electric utilities to work together to implement the competitive RFP auction process. If, at some point in the future, uniform RFP auction processes can be implemented, then Staff should work with the electric utilities to unify the processes. However, at this time, the Commission finds that the competitive RFP auction process should contain sufficient flexibility for the electric utilities and Staff to obtain the best value for persons paying the universal service rider. Between the extensive comment period in this case, as well as the Commission's directive for Staff and the electric utilities to work together, the Commission intends for this to be a collaborative process so that all parties can work together to obtain the best value for persons paying the universal service rider.
- (19) In its fourth assignment of error, RESA asserts that the Commission's Order is unreasonable and unlawful because it fails to establish a uniform, standard protocol in the event of a tie among RFP bids. RESA argues that the Commission's Order left it up to the electric utilities to determine who will serve the PIPP load if there are multiple winning bidders. RESA asserts that the Commission should modify its ruling and establish a uniform, standard protocol for handling a tie in the RFP auction process. RESA proposes that the Commission have an auction manager send to suppliers who submitted the tying low bids a request for a tie-breaking submission and continue the process until a clear winner is established.

In their memoranda contra, FirstEnergy and Duke similarly argue that uniformity amongst the electric utilities is not necessary. FirstEnergy argues that as long as a tiebreaker process is defined in the bidding rules and is unbiased, no additional requirements are necessary. FirstEnergy asserts that there are many unbiased ways to break a tie in the procurement process.

- (20) The Commission finds that RESA's fourth assignment of error lacks merit. The Commission's Order directed that each electric utility should explain how it will determine who will serve the PIPP load, in whole or in part, if there are multiple winning bidders. Accordingly, the Commission finds that uniformity is not necessary and that the electric utilities, in consultation with Staff, should determine how to best determine the winning bidders. Further, the Commission notes that all RFP auction results and winning bids will be subject to Commission approval. So long as the process for selecting the winning bidder is defined in the bidding rules, and all results are subject to Commission approval, the process will be transparent and known to bidders up-front. Additionally, Staff will be filing a Staff Report regarding each electric utility's RFP auction within 90 days of the start of the delivery year. If Staff believes that uniformity or a uniform tie-break procedure is necessary, then Staff may include such a recommendation and the Commission may consider Staff's recommendation in a subsequent rulemaking proceeding.
- (21) As its fifth and final assignment of error, RESA argues that the Commission failed to establish any parameters regarding the procuring of supply for the PIPP load "from the market through bilateral transactions" in the event that the initial and supplemental RFP auctions fail to procure supply for the PIPP load. RESA requests that the Commission clarify what is required in the event that the initial and supplemental RFP auctions fail to procure supply for the PIPP load. RESA notes that if the Commission's intent was to procure supply for the PIPP load from the market in the same fashion as a failed SSO auction, then this outcome has merit. However, if the Commission's intent was simply for the electric utility to enter into a bilateral agreement with a

supplier, then it is unclear how the electric utility will decide the terms of the bilateral transaction. RESA asserts that clarification is needed, and that having the electric utility go into the PJM-administered markets to secure the energy and capacity as needed is the most logical, market-based, and price-transparent method of doing so.

In their memoranda contra, FirstEnergy and Duke argue that RESA's fifth assignment of error lacks merit. FirstEnergy notes that its SSO auction contingency plans are well documented and it plans to use the PJM-administered markets if PIPP supply is not procured in the RFP auctions. Similarly, Duke asserts that the Commission's Order is reasonable in that the electric utilities' contingency plans for the SSO auctions have been reviewed by Staff and approved by the Commission. In Duke's case, the SSO auction contingency plan is to offer unfilled tranches to existing SSO suppliers, subject to credit-based limits and load caps, and then engage in the PJM-administered markets. Duke notes that this same procedure also applies in the case of a supplier default.

- (22) The Commission finds that RESA's fifth and final assignment of error lacks merit. The Commission stated in its Order that in the unlikely scenario that both an initial and supplemental RFP auction fail to procure supply for the PIPP load, then the load should be procured from the market through bilateral transactions much the same way an SSO auction would if it did not result in all available tranches being filled, until such additional RFP auctions can be conducted. The Commission notes that if this process is ever realized, then it will be because no CRES provider agreed to serve the PIPP load in the competitive RFP auctions. Accordingly, since no CRES provider will serve the PIPP load, someone must be found to provide supply for the PIPP load to ensure that PIPP customers have reliable electric service. Without a CRES provider willing to serve the PIPP load, the Commission must allow the electric utilities to look elsewhere. Therefore, the Commission finds that the electric utilities may procure supply for the PIPP load from the market through bilateral transactions, much as they would in an SSO auction. The Commission's intent is for PIPP

customers to have reliable electric service, even when no CRES provider desires to serve them. Accordingly, if no CRES provider will supply the PIPP load, then the Commission intends for the electric utilities to have the flexibility they need to do whatever they can to procure supply for the PIPP load to ensure that PIPP customers have reliable electric service. This means the electric utilities shall have the flexibility to engage in bilateral transactions and to procure supply from the PJM-administered wholesale markets, consistent with the process they would use in the event of an unfilled tranche in an SSO auction or supplier default.

### III. Conclusion

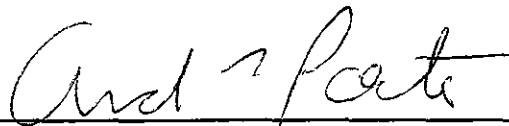
- (23) Accordingly, in conclusion, the Commission finds that each of the assignments of error raised by OPAE and RESA lack merit and their applications for rehearing should be denied. The Commission has adopted a competitive RFP auction process that satisfies all three requirements contained in R.C. 4928.542. The competitive RFP auction process consists of an initial RFP auction during which CRES providers may submit bids to serve the PIPP load for less than the SSO. If no CRES provider submits a bid to serve the PIPP load for less than the SSO, then a supplemental RFP auction will be conducted during which CRES providers may submit bids to serve the PIPP load at any price. If no CRES provider submits a bid in either auction, then contingency measures will be implemented by the electric utilities to ensure that adequate supply is procured to serve the PIPP load. This process will be effective for the delivery year beginning on June 1, 2016, and Staff will file a Staff Report within 90 days of the delivery year detailing the effectiveness of the competitive RFP auction process at procuring supply for the PIPP load. The Commission finds that this process will ensure reliable electric service to PIPP customers and result in the best value for persons paying the universal service rider. Accordingly, the Commission finds that the applications for rehearing filed by OPAE and RESA should be denied.

It is, therefore,

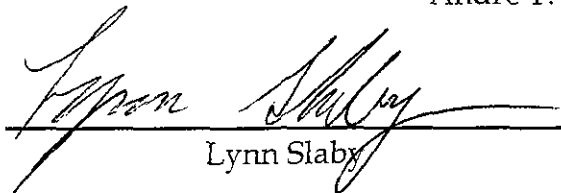
ORDERED, That the applications for rehearing filed by OP&E and RESA be denied. It is, further,

ORDERED, That a notice or copy of this Entry be served upon all electric utilities in the state of Ohio, all competitive retail electric service providers in the state of Ohio, the Electric-Energy industry list-serve, the Ohio Consumers' Counsel, the Ohio Development Services Agency, and any other interested persons.

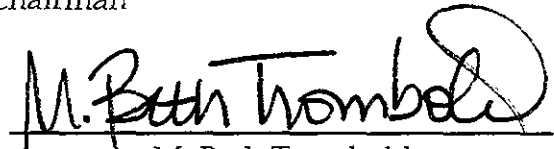
THE PUBLIC UTILITIES COMMISSION OF OHIO



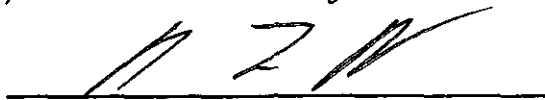
Andre T. Porter, Chairman



Lynn Slaby



M. Beth Trombold



Asim Z. Haque



Thomas W. Johnson

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APR 27 2016



Barcy F. McNeal  
Secretary