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PUCO

In the Matter of the Application Seeking)
Approval of Ohio Power Company's) Case No. 17- 0752
Proposal to Enter into an Affiliate Power)
Purchase Agreement for Inclusion in the)
Power Purchase Agreement Rider.) On Appeal from the Public Utilities
Commission of Ohio

In the Matter of the Application of Ohio)
Power Company for Approval of Certain) Case No. 14-1693-EL-RDR, 14-
Accounting Authority.) 1694-EL-AAM

NOTICE OF APPEAL
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NOTICE OF APPEAL

Appellant, the Office of the Ohio Consumers' Counsel ("OCC" or "Appellant"), consistent with R.C. 4903.11 and 4903.13, and S.Ct.Prac.R. 3.11(A)(2), 3.11(C)(2), and 10.02, gives notice to this Court and to the Public Utilities Commission of Ohio ("Appellee" or "PUCO") of this appeal taken to stop customers from paying millions of dollars for rates that include unlawful above-market charges for electricity.

Appellant is the statutory representative, as established under R.C. Chapter 4911, of AEP Ohio's 1.2 million residential customers. OCC was a party of record in the case being appealed. Appellant takes this appeal from PUCO decisions approving a Power Purchase Agreement ("PPA") Rider for the Ohio Power Company ("AEP Ohio") in PUCO Case No. 14-1693-EL-RDR et al. The decisions being appealed are the PUCO's Opinion and Order entered in its Journal on March 31, 2016 (Attachment A), the PUCO's Second Entry on Rehearing of November 3, 2016 (Attachment B), the PUCO's Third Entry on Rehearing of January 4, 2017 (Attachment C) and the PUCO's Fifth Entry on Rehearing of April 5, 2017 (Attachment D).¹

OCC alleges that these Orders are unlawful and unreasonable in the following respects, all of which were raised in OCC's Application for Rehearing as noted:

1. The PUCO unlawfully approved AEP Ohio's PPA Rider, even though the charge was a transition charge or equivalent revenue, to be collected after the market development period has ended. The PPA Rider requires customers to pay AEP Ohio (and its affiliate) generation revenues that it is otherwise unable to collect in a competitive market. In approving the PPA Rider, the PUCO violated R.C. 4928.38 and the Ohio Supreme Court's decisions in *In*

¹ Per S.Ct.Prac.R. 10.02(A)(2), the decisions being appealed are attached.

*re Application of Columbus Southern Power Co.*² and *In re Dayton Power & Light Co.*³ (OCC's May 2, 2016 Application for Rehearing at 43-44).

2. The PUCO unlawfully and unreasonably approved AEP Ohio's PPA Rider as a "financial" limitation on shopping and found it to be allowable under R.C. 4928.143(B)(2)(d). That statute does not permit a "financial" limitation on customer shopping, and such a limitation would conflict with the legislative intent. Further, the PPA Rider will not stabilize or provide certainty regarding retail electric service. The PPA rider thus fails to meet the requirements of R.C. 4928.143(B)(2)(d). (OCC's May 2, 2016 Application for Rehearing at 40-42).

3. The PUCO unreasonably and unlawfully approved the Competition Incentive Rider charge ("CIR") that layers additional costs onto the standard service offer that customers pay, violating R.C. 4928.02(A). The CIR unduly discriminates against AEP Ohio's standard offer customers and does not ensure that reasonably priced electric service is available to all Ohioans. (OCC's May 2, 2016 Application for Rehearing at 50).

4. The PUCO unlawfully and unreasonably determined that the Utility's electric security plan "was more favorable in the aggregate to customers than a market rate offer." This determination was unlawful and unreasonable because the PUCO approved AEP Ohio's PPA Rider as a "placeholder" rider, set at zero. Thus, the costs of the PPA Rider were unknown to the PUCO during the term of the electric security plan. Without considering the costs of the PPA Rider -- costs which would require customers to fund subsidies for power plants and 900 MW of renewable energy -- the PUCO failed to fulfill its duty under R.C. 4928.143(C)(1). The PUCO's decision was also unreasonable because it approved a settlement with a number of proposals

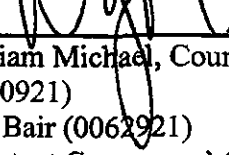
² 147 Ohio St. 3d 439 (2016).

³ 147 Ohio St. 3d 166 (2016).

subject to future filings, whose costs are unknown, including the PPA Rider. (OCC's May 2, 2016 Application for Rehearing at 46-47).

OCC respectfully submits that the PUCO's Opinion and Order entered in its Journal on March 31, 2016, the PUCO's Second Entry on Rehearing of November 3, 2016, and the PUCO's Third Entry on Rehearing of January 4, 2017, are unreasonable and unlawful, and should be reversed or modified with specific instructions to the PUCO to correct its errors.

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application Seeking)
Approval of Ohio Power Company's)
Proposal to Enter into an Affiliate Power) Case No. 14-1693-EL-RDR
Purchase Agreement for Inclusion in the)
Power Purchase Agreement Rider.)

In the Matter of the Application of Ohio)
Power Company for Approval of Certain) Case No. 14-1694-EL-AAM
Accounting Authority.)

OPINION AND ORDER

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The Commission, having considered the record in these proceedings, hereby issues its Opinion and Order, modifying and adopting the joint stipulation and recommendation submitted by the signatory parties.

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OPINION:

I. INTRODUCTION

It has long been the mission of the Commission to ensure consumers are provided electricity in a reliable, cost-effective, and safe manner. This mission requires the complex task of balancing the interests of Ohio's public utilities companies, other vital businesses, and hard-working citizens.

These principles remain the same today, but the challenges confronting electric utilities continue to evolve. Apparent from the participation in these dockets, electric utilities, customers, suppliers, and many others are concerned about those challenges. They are also interested in the many opportunities to meet them through integrating technology, assuring a diverse mix of resources, and providing the infrastructure and incentives for customers to be engaged in how they consume electricity.

Thousands of pages of testimony and briefs, as well as letters and emails, have been filed with the Commission in these proceedings. Lawyers, expert witnesses, and other staff listened and litigated in hearing rooms at the Commission for countless days. The record before us also contains input from diverse interests, including, but not limited to, customers - residential, commercial and industrial, both large and small; competitive suppliers of retail electric services; and electric generation providers in Ohio and beyond.

Although it bears no weight in the decision of this Commission, we must note that we do not check our sense of the real world at the door. The subject of these proceedings has become part of a larger public dialogue about the provision of electricity service in our state and beyond.

We also note that the Opinion and Order in these proceedings is being released simultaneously with the Opinion and Order in *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO. While these decisions are similar in that they involve retail rate stability, we emphasize the decisions involve different companies and different types of cases. The current proceedings pertain to only a retail rate stability rider while the other pertains to an entire electric security plan (ESP). In addition, the cases involve stipulations with different terms and different signatory parties. Consequently, neither the format nor the substance of the decisions is identical.

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The role of the Commission is to decide these cases in a manner consistent with the law while balancing many interests. This Opinion and Order describes the positions of numerous parties not only to summarize the complexity of the record, but to demonstrate the depth of stakeholder concern and the myriad of suggestions made to assist the Commission in our decision.

It is against this backdrop that we issue this Opinion and Order.

II. HISTORY OF THE PROCEEDINGS

Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company) is a public utility as defined in R.C. 4905.02 and an electric distribution utility (EDU) as defined in R.C. 4928.01(A)(6), and, as such, is subject to the jurisdiction of this Commission. R.C. 4928.141 provides that an EDU shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services (CRES) necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer (MRO) in accordance with R.C. 4928.142 or an ESP in accordance with R.C. 4928.143.

In Case No. 13-2385-EL-SSO, et al., the Commission modified and approved AEP Ohio's application for an ESP for the period of June 1, 2015, through May 31, 2018, pursuant to R.C. 4928.143. *In re Ohio Power Co., Case No. 13-2385-EL-SSO, et al. (ESP 3 Case)*, Opinion and Order (Feb. 25, 2015), Second Entry on Rehearing (May 28, 2015). Among other matters, the Commission concluded that AEP Ohio's proposed power purchase agreement (PPA) rider, which would have flowed through to customers the net impact of the Company's contractual entitlement associated with the Ohio Valley Electric Corporation (OVEC), satisfied the requirements of R.C. 4928.143(B)(2)(d) and, therefore, was a permissible provision of an ESP. The Commission stated, however, that it was not persuaded, based on the evidence of record, that AEP Ohio's PPA rider proposal would provide customers with sufficient benefit from the rider's financial hedging mechanism or any other benefit that would be commensurate with the rider's potential cost. Noting that a properly conceived PPA rider proposal may provide significant customer benefits, the Commission authorized AEP Ohio to establish a placeholder PPA rider, at an initial rate of zero, for the term of the ESP, with the Company being required to justify any future request for cost recovery. Finally, the Commission determined that all of the implementation details with respect to the placeholder PPA rider would be determined in a future proceeding, following the filing of a proposal by AEP Ohio that addresses a number of specific factors, which the Commission will consider, but not be bound by, in its evaluation of the Company's filing. In addition, the Commission indicated that AEP Ohio's PPA rider proposal must address several other issues specified by the Commission. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 20-22, 25-26.

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On October 3, 2014, in the above-captioned proceedings, AEP Ohio filed an application seeking approval of a proposal to enter into a new affiliate PPA with AEP Generation Resources, Inc. (AEPGR).¹ Following the issuance of the Commission's Opinion and Order in the *ESP 3 Case*, AEP Ohio filed, on May 15, 2015, an amended application and supporting testimony, again seeking approval to enter into a new affiliate PPA with AEPGR and also requesting authority to include the net impacts of both the affiliate PPA and the Company's OVEC contractual entitlement in the placeholder PPA rider approved in the *ESP 3 Case*. AEP Ohio explained that the amended application supersedes and replaces the Company's original application filed on October 3, 2014. AEP Ohio further explained that the primary purposes of the amended application are to include the OVEC contractual entitlement in the pending PPA rider proposal, along with the proposed affiliate PPA with AEPGR; address the factors and requirements set forth by the Commission in the *ESP 3 Case*; and update the Company's supporting testimony to reflect a current analysis of the amended proposal.

By Entry issued August 7, 2015, the procedural schedule in these matters was established, including an intervention deadline of August 21, 2015. The following parties were granted intervention by Entry issued September 15, 2015: FirstEnergy Solutions Corp. (FES); Industrial Energy Users-Ohio (IEU-Ohio); Ohio Energy Group (OEG); The Kroger Company (Kroger); Sierra Club; Buckeye Power, Inc. (Buckeye); Mid-Atlantic Renewable Energy Coalition (MAREC); Ohio Advanced Energy Economy (OAEE); Wal-Mart Stores East, LP and Sam's East, Inc. (jointly, Walmart); Ohio Environmental Council (OEC); Monitoring Analytics, LLC (Market Monitor or IMM); Ohio Hospital Association (OHA); Energy Professionals of Ohio (EPO); Environmental Defense Fund (EDF); Ohio Manufacturers' Association Energy Group (OMAE); Retail Energy Supply Association (RESA); Ohio Consumers' Counsel (OCC); Direct Energy Services, LLC, Direct Energy Business, LLC, and Direct Energy Business Marketing, LLC (collectively, Direct Energy); Interstate Gas Supply, Inc. (IGS); PJM Power Providers Group (P3); Electric Power Supply Association (EPSA); Ohio Partners for Affordable Energy (OPAE); Dynegy, Inc. (Dynegy); Appalachian Peace and Justice Network (APJN); Environmental Law & Policy Center (ELPC); Constellation NewEnergy, Inc. and Exelon Generation Company, LLC (jointly, Exelon); and EnerNOC, Inc. (EnerNOC). OAEE filed a notice of withdrawal from these proceedings on September 18, 2015.

A prehearing conference was held, as scheduled, on September 22, 2015. The evidentiary hearing on the amended application commenced on September 28, 2015, and concluded on November 3, 2015. At the evidentiary hearing, AEP Ohio offered the direct testimony of 11 witnesses in support of the Company's application, while two witnesses offered rebuttal testimony on behalf of the Company. Additionally, 25 witnesses testified on behalf of various intervenors and one witness testified on behalf of Staff. At the

¹ AEP Ohio and AEPGR are both subsidiaries of American Electric Power Company, Inc. (AEP).

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conclusion of the evidentiary hearing, a briefing schedule was established, with initial and reply briefs due to be filed by the parties on November 24, 2015, and December 9, 2015, respectively. By Entry dated November 19, 2015, the attorney examiner granted Staff's motion for an extension of the briefing schedule, such that initial and reply briefs were to be filed by December 22, 2015, and January 8, 2016, respectively.

On December 14, 2015, a joint stipulation and recommendation (stipulation) was filed by AEP Ohio, Staff, OEG, OHA, MAREC, OPAGE, Buckeye, Sierra Club, FES, Direct Energy, and IGS (collectively, signatory parties). IEU-Ohio filed a letter on December 22, 2015, noting that it does not oppose the stipulation.

By Entry issued December 15, 2015, the attorney examiner established a procedural schedule, including a hearing date of January 4, 2016, in order to assist the Commission in its review of the stipulation. The attorney examiner also determined that the briefing schedule should be held in abeyance until otherwise ordered. The evidentiary hearing on the stipulation commenced, as scheduled, on January 4, 2016, and concluded on January 8, 2016. During the evidentiary hearing, AEP Ohio offered the testimony of William A. Allen in support of the stipulation. Testimony in opposition to the stipulation was offered by 11 witnesses: four witnesses for OCC (Noah C. Dormady, Robert B. Fortney, Michael P. Haugh, and James F. Wilson); two witnesses for OMAEG (Edward W. Hill and John Seryak); one witness for Dynegy (Dean Ellis); one witness for P3 and EPSA (A. Joseph Cavicchi); one witness for ELPC, OEC, and EDF (Karl R. Rábago); one witness for RESA (Stephen E. Bennett); and one witness for the Market Monitor (Joseph E. Bowring). An untimely motion for limited intervention filed by PJM Interconnection, LLC (PJM) on December 28, 2015, was denied by oral ruling during the hearing on January 6, 2016, and as addressed in a subsequent Entry dated January 7, 2016, which invited PJM to file an amicus brief as a non-party. An untimely motion to intervene was also filed by Noble Americas Energy Solutions LLC (Noble) on January 12, 2016. On January 22, 2016, Advanced Power Services (APS), Carroll County Energy LLC (CCE), and South Field Energy LLC (South Field) filed a joint motion requesting leave to file a joint amicus brief. Oregon Clean Energy, LLC (Oregon) filed a similar motion on February 1, 2016.

In accordance with the briefing schedule established at the conclusion of the evidentiary hearing on the stipulation, initial and reply briefs were filed by the parties on February 1, 2016, and February 8, 2016, respectively. PJM filed an amicus brief on February 1, 2016. In addition to the briefs, numerous written comments were filed by residential, commercial, and industrial customers; local governments and school districts; community organizations; and other interested stakeholders in response to AEP Ohio's amended application and the stipulation. The majority of the written comments filed in the dockets convey opposition to the PPA rider proposal, although considerable support for the proposal has also been expressed to the Commission.

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III. PROCEDURAL MATTERS

A. Motions for Protective Order

On September 11, 2015, OCC, Sierra, and P3/EPSC filed motions for protective order with respect to the confidential versions of the direct testimony of Sarah E. Jackson (OCC Ex. 14), James F. Wilson (OCC Ex. 16), Paul L. Chernick (Sierra Club Ex. 39), and A. Joseph Cavicchi (P3/EPSC Ex. 9). On September 18, 2015, AEP Ohio filed a motion for protective order seeking protection of the confidential versions of the direct testimony of these witnesses. AEP Ohio contends that the redacted testimony, along with certain exhibits and attachments that were included with the testimony, constitutes competitively sensitive and proprietary trade secret information. Specifically, AEP Ohio notes that the redactions pertain to several generating units owned, or partially owned, by AEPGR and the Company's portion of the OVEC assets, as well as information regarding forecasts of future wholesale market energy, capacity, and fuel prices and forecasted costs, including projected costs associated with environmental compliance. AEP Ohio asserts that the information is the product of original research and development by the Company and AEPGR, has been kept confidential, and, as a result, retains substantial economic value to the Company and AEPGR by being kept confidential. According to AEP Ohio, public disclosure would enable third parties to gain information about the costs and operations of the generation units and forecast prices that may impair the Company's ability to sell their output at the best price and weaken the benefits of the proposed PPA, thereby harming the Company and its customers, as well as AEPGR.

On December 28, 2015, OCC and P3/EPSC filed motions for protective order regarding the confidential versions of the direct testimony of James F. Wilson (OCC Ex. 35), Robert B. Fortney (OCC Ex. 32), and A. Joseph Cavicchi (P3/EPSC Ex. 13 and 13A), in opposition to the stipulation. On December 30, 2015, AEP Ohio filed a motion for protective order seeking protection of the confidential versions of the direct testimony of these witnesses. According to AEP Ohio, the redacted testimony, along with certain exhibits and attachments that were included with the testimony, constitutes competitively sensitive and proprietary trade secret information for the same reasons noted above.

On February 1, 2016, P3/EPSC filed a motion for protective order with respect to excerpts of its joint initial brief that refer to information contained within the confidential portion of the hearing transcript (Volume III). On February 10, 2016, AEP Ohio filed a motion for protective order, seeking to protect certain trade secret information found in the excerpts in P3/EPSC's initial brief, as well as the confidential portions of the hearing transcript (Volumes XXI and XXII), for the same reasons set forth in the Company's earlier motions.

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On March 2, 2016, AEP Ohio filed a motion for protective order, along with a request for expedited ruling, which seeks to protect certain trade secret information in Company Exhibits 28-33 and 55; Sierra Club Exhibits 6-7, 14, and 39; OMAEG Exhibits 7-9; OCC Exhibit 18; ELPC Exhibits 5-6; IEU-Ohio Exhibit 8; IGS Exhibit 1; the confidential portions of certain hearing transcripts (Volumes IV, V, and XI); and any other designated confidential information not encompassed by a prior motion for protective order or a ruling by the attorney examiners. AEP Ohio asserts that the information constitutes confidential trade secret information for the same reasons addressed in its earlier motions. No memoranda contra were filed with respect to any of the motions for protective order.

The Commission finds that the information that is the subject of the motions for protective order filed by AEP Ohio, OCC, Sierra Club, and P3/ESPA constitutes confidential and proprietary trade secret information. We, therefore, find that the motions for protective order filed by AEP Ohio, OCC, Sierra Club, and P3/ESPA are reasonable and should be granted. Pursuant to Ohio Adm.Code 4901-1-24(F), Company Exhibits 28-33 and 55; Sierra Club Exhibits 6-7, 14, and 39; OMAEG Exhibits 7-9; OCC Exhibit 18; ELPC Exhibits 5-6; IEU-Ohio Exhibit 8; IGS Exhibit 1; the confidential portions of the hearing transcripts (Volumes III, IV, V, XI, XXI and XXII); the confidential versions of the direct testimony of OCC witnesses Jackson, Wilson, and Fortney, Sierra Club witness Chernick, and P3/ESPA witness Cavicchi; and P3/ESPA's initial brief shall be granted protective treatment for 24 months from the date of this Opinion and Order. Any request to extend the protective order must be filed at least 45 days in advance of the expiration date.

B. Motions and Interlocutory Appeal Regarding Procedural Schedule

In their briefs, RESA, Exelon, P3, and EPSA argue that the Commission failed to adhere to due process requirements during the second phase of these proceedings following the filing of the stipulation. Specifically, RESA, Exelon, P3, and EPSA contend that the established procedural schedule, including the deadlines for discovery, testimony, and briefs, as well as the hearing date, was insufficient and prejudicial to the parties, particularly given the significant importance of these proceedings and the overlapping schedule established in the pending ESP case for Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy), Case No. 14-1297-EL-SSO (*FirstEnergy ESP Case*). RESA, Exelon, P3, and EPSA note that a joint request to modify the procedural schedule and a related interlocutory appeal were filed by some of the opposing parties but were not ruled upon by the Commission, while requests made during the hearing on the stipulation to continue the hearing date and extend the briefing deadlines were summarily denied. RESA, Exelon, P3, and EPSA conclude that the procedural schedule did not afford the parties a fair and ample opportunity to prepare for the second phase of the proceedings, in violation of their due process rights. (RESA/Exelon Br. at 59-62; P3/ESPA Br. at 78-81.) OMAEG also

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argues that the Commission should have continued both the initial evidentiary hearing and the hearing on the stipulation, particularly given the overlap with the *FirstEnergy ESP Case*, and that, by declining to do so, the Commission put a severe strain on the parties' resources, narrowed the scope of their ample discovery rights, and limited their ability to thoroughly and adequately prepare for these proceedings, in contravention of their due process rights (OMAEGB Br. at 12-14).

AEP Ohio replies that all parties were afforded due process through many days of hearing and voluminous discovery and that there is no evidence that any party has been prejudiced by the procedural schedule (Co. Reply Br. at 122-124).

As RESA, Exelon, P3, and EPSA acknowledge, the procedural schedule for these cases is fully within the Commission's discretion and not subject to a statutory deadline. 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, avoid undue delay, and eliminate unnecessary duplication of effort. *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367, 379, 384 N.E.2d 264 (1978); *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560, 433 N.E.2d 212 (1982). Likewise, the decision to deny a continuance or to set a specific deadline for filing briefs rests in the Commission's discretion. *City of Akron v. Pub. Util. Comm.*, 5 Ohio St.2d 237, 241, 215 N.E.2d 366 (1966). The Commission finds that the schedule established in these proceedings, including the deadlines for discovery, testimony, and briefs, as well as the dates for both evidentiary hearings, provided the intervenors with a fair and full opportunity to address the issues raised in AEP Ohio's application, as amended, and the stipulation. The Commission, therefore, finds that all requests for an extension of the procedural schedule should be denied and that the attorney examiners properly proceeded with both evidentiary hearings over the objections of certain parties.

In reaching this decision, we note that AEP Ohio filed its initial application in the present cases on October 3, 2014, and its amended application on May 15, 2015, while the original application proposing a PPA rider in the *ESP 3 Case* was filed more than two years ago on December 20, 2013; the Company responded to over 1,100 data requests, as well as supplemented over 70 data requests upon filing its amended application (Co. Ex. 52 at 11); and there were approximately five weeks of properly noticed evidentiary hearings on the amended application and the stipulation, during which the parties were afforded the opportunity to offer testimony and cross-examine witnesses, followed by the opportunity to present their arguments through initial and reply briefs. Regarding the overlap with the *FirstEnergy ESP Case*, we note that, in light of the sheer volume of the Commission's open dockets, it is inevitable that there are multiple proceedings occurring at any given time before the Commission. Although the Commission may, at times, elect to amend the procedural schedule in a pending case to accommodate the schedule in another

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proceeding, the fact remains that there are cases, such as the present proceedings and the *FirstEnergy ESP Case*, that are of such significant import, as RESA, Exelon, P3, and EPSA acknowledge, that they must be heard and decided in an expeditious manner and without delay. The record reflects that the attorney examiners were cognizant of the fact that the hearings in both proceedings were occurring at the same time and, in fact, took steps to ensure that the parties were able to participate fully in both proceedings (*see, e.g.*, Tr. VII at 1838-1839). Further, as the parties and their attorneys have demonstrated here and in the *FirstEnergy ESP Case*, they are clearly competent and knowledgeable with respect to the matters addressed in the amended application and the stipulation, as well as capable of litigating more than one case at the same time. In short, we find that ample due process was provided to all parties and that no party has been prejudiced by the procedural schedule established in these proceedings.

Finally, regarding ELPC's interlocutory appeal, which was filed on December 23, 2015, the Commission notes that the appeal was purportedly taken from the attorney examiners' constructive denial of a joint motion to extend the procedural schedule, as filed on December 16, 2015. We find that ELPC's interlocutory appeal is procedurally improper and should be denied, because it was not filed in response to a ruling issued under Ohio Adm.Code 4901-1-14 or an oral ruling issued during a public hearing or prehearing conference, as required by Ohio Adm.Code 4901-1-15, and is otherwise without merit for the reasons set forth above.

C. Untimely Motions for Intervention

1. PJM

In its brief, OMAEG contends that PJM's request to intervene and file testimony in these proceedings should have been granted to enable PJM to develop the record and to assist the Commission in understanding Section III.A.5.a of the stipulation, which addresses oversight of the bidding of the PPA units into the PJM wholesale markets. OMAEG requests that the Commission accept PJM's pre-filed testimony as evidence in the record. (OMAEG Br. at 14-16.)

Noting that PJM has not challenged the denial of its untimely motion to intervene in these proceedings, AEP Ohio asserts that it is inappropriate for OMAEG to challenge a decision affecting another entity's request for intervention, particularly where the affected entity itself has not done so. AEP Ohio adds that PJM did not demonstrate extraordinary circumstances for its untimely request and, in any event, PJM was offered the opportunity to file an amicus brief. (Co. Reply Br. at 124-125.)

As noted above, by Entry dated January 7, 2016, the attorney examiner denied PJM's untimely motion for intervention, which was filed on December 28, 2015.

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Specifically, the Entry noted that PJM did not demonstrate extraordinary circumstances in support of its request to intervene months after the intervention deadline of August 21, 2015, and following the widely publicized and lengthy initial hearing. Additionally, the Entry noted that PJM does not have a unique interest in these proceedings that is not adequately represented by other parties, including the Market Monitor and several wholesale power provider organizations, and that PJM cannot claim that it lacked notice that Commission oversight of AEP Ohio's bidding process would be at issue in these proceedings, given the fact that the Company was directed, in the *ESP 3 Case*, to include provisions for rigorous Commission oversight of any proposed PPA, including periodic substantive review and audit, and in light of the fact that Company witness Vegas squarely addressed this issue in his initial testimony filed on May 15, 2015, in these proceedings (Co. Ex. 1 at 5). The Entry further noted that, in cases where a stipulation is filed following the deadline for motions to intervene, the Commission has established that the filing of a stipulation that may resolve issues differently than initially proposed, or that expands the issues, does not, alone, constitute extraordinary circumstances warranting untimely intervention. *In re Dayton Power & Light Co.*, Case No. 02-2779-EL-ATA, et al. (*DP&L Case*), Opinion and Order (Sept. 2, 2003) at 8-9; *In re Ohio Power Co. and Columbus Southern Power Co.*, Case No. 10-2376-EL-UNC, et al., Opinion and Order (Dec. 14, 2011) at 9-10. Finally, the Entry emphasized that the Commission and Staff regularly rely upon PJM in an open, informal, and collaborative dialogue to exchange data and information regarding its reliability, transmission planning, and market operation functions, which has assisted the Commission in developing more effective policy outcomes and should continue in the future unhindered by unnecessary litigation. Although PJM's motion for intervention was denied, PJM was invited to file an amicus brief, as a non-party, solely to provide the Commission with information on its operations and clarification of Section III.A.5.a of the stipulation, which PJM filed on February 1, 2016.

The Commission finds that the attorney examiner's decision to deny PJM's untimely request for intervention should be affirmed for the reasons set forth in the Entry dated January 7, 2016, and as summarized above. Further, PJM has not challenged the attorney examiner's ruling and OMAEG has failed to show that it was prejudiced by the ruling, particularly given that numerous other parties provided substantial testimony with respect to Section III.A.5.a of the stipulation, while PJM was invited to provide, and did provide, its perspective to the Commission through the filing of an amicus brief. We, therefore, deny OMAEG's request to admit PJM's pre-filed testimony into the record and also find that AEP Ohio's motion to strike the testimony, which was filed on December 31, 2015, should be denied as moot.

2. Noble

On January 12, 2016, Noble filed an untimely motion to intervene. Noble is a certified power marketer that sells CRES to mercantile customers in Ohio. Noble is a

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member of RESA, which is an intervenor in these matters. Noble states that, recently, as a result of negotiations surrounding the stipulation filed in these cases, Noble's interest unforeseeably diverged from those of RESA and some of RESA's members. Noble states that, as a result of these extraordinary circumstances, it seeks untimely intervention in these proceedings in accordance with R.C. 4903.221 and Ohio Adm.Code 4901-1-11(F). Noble asserts that it maintains a real and substantial interest in the proceedings and may experience negative economic impacts if the stipulation is approved. Noble notes that other RESA members, Direct Energy and IGS, are signatory parties to the stipulation. Noble accepts the record in these cases as it existed on the date its motion for intervention was filed. On February 8, 2016, Noble filed a reply brief.

On January 18, 2016, AEP Ohio filed a memorandum contra Noble's motion to intervene. AEP Ohio asserts that Noble's motion to intervene should be denied as untimely and unjustified since the deadline for intervention passed several months ago. AEP Ohio states that RESA has represented the interest of its members, including Noble, throughout these proceedings and during the settlement negotiations. AEP Ohio states that Noble, like other RESA members, could have timely filed for intervention to represent its interest directly. Thus, AEP Ohio avers that Noble's notion of an unforeseeable divergence of interest is inaccurate and contrived. AEP Ohio notes that RESA continues to oppose the stipulation and, as noted in Noble's motion, opposes the same provisions as Noble. In AEP Ohio's opinion, Noble fails to explain why its perspective is any different from other numerous parties opposing the stipulation, including RESA. AEP Ohio contends that Noble's intervention in these matters at this late stage would be unfair and prejudicial to the parties, but particularly to the Company and signatory parties. On February 16, 2016, AEP Ohio filed a motion to strike Noble's reply brief filed on February 8, 2016. Noble filed an untimely memorandum contra the motion to strike on March 7, 2016, and AEP Ohio filed a letter in response on March 9, 2016.

Pursuant to R.C. 4903.221, the Commission may, in its discretion, grant a motion to intervene filed after the specified deadline for intervention has passed for "good cause shown." Accordingly, Ohio Adm.Code 4901-1-11(F) provides that an untimely motion to intervene will only be granted under "extraordinary circumstances." The established intervention deadline in these matters was August 21, 2015. Noble filed its request for intervention on January 12, 2016, or 144 days after the intervention deadline and after the hearing on the amended PPA application and the hearing on the stipulation had concluded.

Noble offers that its interest unforeseeably diverged from those of RESA and certain RESA members during the course of negotiations on the stipulation. The Commission finds Noble's situation to be foreseeable. Noble, like other RESA members, Direct Energy and IGS, could have sought intervention in these matters to protect its interest directly rather than relying on RESA. As discussed above, the Commission has determined that

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the filing of a stipulation that may resolve issues differently than initially proposed, or that expands the issues, does not, alone, constitute extraordinary circumstances justifying untimely intervention. *DP&L Case*, Opinion and Order (Sept. 2, 2003) at 8-9; *In re Ohio Power Co. and Columbus Southern Power Co.*, Case No. 10-2376-EL-UNC, et al., Opinion and Order (Dec. 14, 2011) at 9-10. In its analysis in the *DP&L Case*, the Commission reasoned that it should be no surprise to anyone that a case may be resolved by the proposal of a stipulation, which often encompass a variety of issues, and the mere fact that a stipulation may resolve issues differently than initially proposed does not afford an entity the right to intervene beyond the deadline.² *DP&L Case* at 8-9.

Further, the Commission notes that RESA witness Bennett offered testimony in opposition to the stipulation and opposes the same provisions Noble discusses in its motion (Tr. XXII at 5582-5583). Noble offers no other reason why its interests may be different from RESA. Thus, we find that Noble has failed to set forth extraordinary circumstances that justify its late intervention. The Commission has frequently denied untimely motions to intervene where no extraordinary circumstances were presented. See, e.g., *In re Ohio Power Co. and Columbus Southern Power Co.*, Case No. 10-2376-EL-UNC, et al., Opinion and Order (Dec. 14, 2011) at 9; *In re FirstEnergy*, Case No. 11-5201-EL-RDR, Opinion and Order (Aug. 7, 2013) at 7-8; *In re Greenwich Windpark*, Case No. 13-990-EL-BGN, Opinion, Order, and Certificate (Aug. 25, 2014) at 3-4. For these reasons, the Commission denies Noble's untimely request for intervention and, therefore, also strikes Noble's reply brief filed on February 8, 2016.

D. Motions for Leave to File Amicus Brief

On January 22, 2016, as renewed on February 1, 2016, APS, CCE, and South Field filed a joint motion for leave to file a joint amicus brief. APS is an energy development company with two projects in Ohio - one project, CCE, is under construction and the other project, South Field, is in the development stage. The Ohio Power Siting Board (Board) granted CCE a certificate to construct an approximately 750 megawatt (MW) combined cycle, natural gas electric generation facility in Carroll County, Ohio, at a cost of \$899 million.³ South Field has an application currently pending before the Board for a certificate to construct a 1,100 MW combined cycle, natural gas electric generation facility to be located in Columbiana County, Ohio, at a projected cost of over \$1 billion.⁴ On February 1, 2016, APS, CCE, and South Field filed their joint amicus brief.

² Ultimately, however, the Commission did grant the untimely request for intervention in the *DP&L Case* on the basis that the intervenor did not receive notice of certain procedures required by a proposed rule relating to the end of the market development period. *DP&L Case* at 9.

³ *In re CCE*, Case No. 13-1752-EL-BGN, Opinion, Order, and Certificate (Mar. 9, 2015).

⁴ *In re South Field*, Case No. 15-1716-EL-BGN, is an application currently pending before the Board.

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On February 1, 2016, Oregon filed a motion for leave to file an amicus brief. Oregon attached its brief to the motion. The Board issued Oregon a certificate to construct an 800 MW natural gas fueled, combined cycle electric generation facility, in Lucas County, Ohio, at a cost of more than \$860 million, with construction expected to commence in 2016.⁵

Oregon and APS, CCE, and South Field (collectively, Generation Developers) assert that, as developers of unsubsidized new generation facilities of significant size, they bring a unique perspective of the implications of AEP Ohio's PPA application, as modified by the stipulation, which is not offered by any other party to these proceedings. The Generation Developers submit the implications and policy ramifications have only come to light with the filing of the stipulation and Staff's change in its position from opposing AEP Ohio's PPA application to a signatory on the stipulation. Accordingly, the Generation Developers argue the policy implications were not foreseeable in the initial phase of these proceedings. The Generation Developers reason that submission of amicus briefs, to be filed consistent with the briefing schedule, will contribute to the full development of the issues and will not unduly prejudice any party. The Generation Developers proffer that the public interest perspective favors granting their requests for leave to file amicus briefs.

On January 27, 2016, AEP Ohio filed a memorandum contra the motion filed by APS, CCE, and South Field for leave to file a joint amicus brief. AEP Ohio did not file a memorandum contra Oregon's motion but addressed the arguments in Oregon's brief in the Company's reply brief. In its memorandum contra, AEP Ohio argues that APS, CCE, and South Field have not demonstrated any real or substantial interest in these proceedings that is not adequately represented by existing parties or stated any reason why they did not seek to participate in a timely manner. AEP Ohio argues that APS, CCE, and South Field were aware of the proceedings prior to January 2016, as they are represented by the same law firm as other intervenors in these matters. The Company asserts that granting the request to allow APS, CCE, and South Field to file a joint amicus brief will unduly prejudice AEP Ohio and the signatory parties.

The Commission has previously found that the decision whether to accept briefs from amici curiae must be based on the individual case at bar and the issues proposed to be addressed by the movant. *In re Duke Energy Ohio, Inc.*, Case No. 12-1685-GA-AIR, et al., Opinion and Order (Nov. 13, 2013) at 5-6. In this instance, the Commission finds that permitting the Generation Developers to file amicus briefs will not prejudice any party and will assist the Commission in its consideration of the issues. We specifically note that AEP Ohio has addressed the arguments of the Generation Developers in its memorandum

⁵ *In re Oregon Clean Energy Center*, Case No. 12-2959-EL-BGN, Opinion, Order, and Certificate (May 1, 2013).

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contra and in its reply brief. Therefore, the Commission finds that the Generation Developers' motions for leave to file amicus briefs are reasonable under the circumstances and should be granted. Although the Commission is allowing the Generation Developers to file amicus briefs, the Generation Developers will not be considered, either collectively or individually, parties to these proceedings, including for purposes of rehearing and appeal, which is consistent with our decision regarding PJM.

E. Evidentiary Rulings

OCC and APJN argue that the Commission should reverse, pursuant to Ohio Adm.Code 4901-1-15(F), certain rulings of the attorney examiners that occurred during the evidentiary hearings. Specifically, OCC and APJN assert that the settlement discussion confidentiality privilege was applied in a blanket fashion that the Ohio Supreme Court has rejected and was well beyond legal bounds, as Ohio Adm.Code 4901-1-26(E) does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations, or require exclusion when the evidence is offered for another valid purpose. OCC and APJN assert that the information that OCC sought to obtain through cross-examination was for the valid purpose of determining whether the Commission's three-part test for consideration of stipulations has been satisfied in the present proceedings. OCC and APJN add that the manner in which the privilege was applied was prejudicial to the non-signatory parties and deprived the Commission of an accurate and complete record. Accordingly, OCC and APJN request that the evidentiary hearing be reopened to allow non-signatory parties to cross-examine witnesses on matters related to the three-part test, consistent with the proper bounds of the settlement discussion confidentiality privilege. (OCC/APJN Br. at 163-167.)

Next, OCC and APJN contend that it was likewise prejudicial to the non-signatory parties for the attorney examiners to quash subpoenas served by OCC on certain signatory parties (i.e., Sierra Club, Direct Energy, and IGS) to appear and testify during the evidentiary hearing. OCC and APJN argue that the ruling will undermine parties' ability to subpoena important witnesses, which is contrary to their purpose; will allow the signatory parties to determine who files testimony in support of the stipulation, thereby enabling other signatory parties to evade questioning, even where they are not similarly situated; and will effectively prohibit non-signatory parties from conducting any meaningful discovery, as written discovery responses from signatory parties that do not testify will not be part of the evidentiary record. For these reasons, OCC and APJN request that the evidentiary hearing be reopened to allow non-signatory parties to cross-examine the subpoenaed signatory parties. (OCC/APJN Br. at 168-170.) AEP Ohio responds that OCC/APJN's challenge to the evidentiary ruling of the attorney examiners is untimely and misguided. AEP Ohio emphasizes that, in full compliance with the Commission's rules, testimony was presented by Company witness Allen and that OCC had the opportunity to examine him regarding the stipulation. According to AEP Ohio,

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requiring parties to a stipulation to produce hearing witnesses merely because they signed a stipulation would establish a poor precedent and have a chilling effect on settlement discussions. (Co. Reply Br. at 120-122.)

Finally, OCC and APJN claim that AEP Ohio witness Allen should not have been permitted to testify about the alleged economic analysis attached to his pre-filed testimony, because he was not qualified to do so. OCC and APJN emphasize that, although Mr. Allen acknowledged that he is not an economist or an expert regarding the economic base model used in the analysis, his testimony was admitted into the record, despite motions to strike raised by OCC and others. OCC and APJN, therefore, request that Mr. Allen's testimony be excluded from the record. (OCC/ APJN Br. at 170.)

The Commission finds that the evidentiary rulings of the attorney examiners should be affirmed. First, regarding the confidentiality of settlement discussions, Ohio Adm.Code 4901-1-26(E) provides that evidence of furnishing or offering or promising to furnish, or accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a disputed matter in a Commission proceeding is not admissible to prove liability for or invalidity of the dispute and that evidence of conduct or statements made in compromise negotiations is likewise not admissible. The rule also provides that the exclusion of evidence is not required when the evidence is offered for another valid purpose, which OCC and APJN claim is the case here, as they sought to elicit information on cross-examination relevant to the three-part test used by the Commission to evaluate stipulations. Contrary to OCC/ APJN's claims, however, the non-signatory parties were not precluded from asking questions regarding the occurrence of settlement meetings, the individuals in attendance, or other aspects of the bargaining process; questions about the specific provisions in the stipulation or how they may impact ratepayers or the public interest; or questions about the stipulation's effect on important regulatory principles or practices. Rather, as the record reflects, the non-signatory parties were permitted a full and fair opportunity to cross-examine AEP Ohio witness Allen regarding the three-part test during the evidentiary hearing. Mr. Allen was repeatedly directed by the attorney examiner, over objections from AEP Ohio's counsel, to answer questions posed by the non-signatory parties, without divulging the specific details of the settlement negotiations. (*See, e.g.*, Tr. XIX at 4688, 4695.)

Regarding the subpoenas served by OCC on Sierra Club, Direct Energy, and IGS, the Commission affirms the attorney examiner's ruling to quash the subpoenas (Tr. XXII at 5658-5659). Ohio Adm.Code 4901-1-25 provides that a subpoena may be quashed if it is unreasonable or oppressive. Here, we agree that it would be unreasonable to establish a precedent, in cases involving a contested stipulation, under which a non-signatory party could compel the testimony of a signatory party witness, or a signatory party could compel the testimony of a non-signatory party witness, seeking to determine the basis for a party's decision to either join or not join the stipulation. We find that such a precedent

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would have a chilling effect on settlement negotiations in Commission proceedings. Additionally, with respect to testimony in support of a stipulation, Ohio Adm.Code 4901-1-30(D) requires only that at least one signatory party file or provide supporting testimony. OCC and APJN, in effect, seek to amend the rule. As it stands now, the rule appropriately requires the signatory parties, consistent with their evidentiary burden to support the stipulation, to determine whether testimony from multiple witnesses is necessary or whether the testimony of one witness is sufficient to demonstrate that the stipulation is reasonable and satisfies the Commission's three-part test.

With regard to the economic analysis attached to Mr. Allen's testimony and the attorney examiner's rulings denying several parties' motions to strike the testimony (Tr. VII at 1770-1771, 2060), we note that the Commission has considerable discretion regarding the qualifications of an expert. *City of Akron v. Pub. Util. Comm.*, 5 Ohio St.2d 237, 242, 215 N.E.2d 366 (1966). Mr. Allen's testimony sets forth his significant educational and professional qualifications (Co. Ex. 10 at 1-2) and, although he is not himself an economist, Mr. Allen testified that he directed an economist at American Electric Power Service Corporation (AEPSC) to run the economic model at his request and that he had input into the actual process of running the model, including gathering the necessary data and discussing how to account for various factors (Tr. VII at 1780-1784). In light of his extensive experience as AEPSC's Managing Director of Regulatory Case Management and his advanced business degree, we find that Mr. Allen is clearly familiar with regulatory filings and was sufficiently knowledgeable to sponsor the results of the model that were attached to his testimony (Co. Ex. 10 at 1-2; Tr. VII at 1800, 1805). We, therefore, find that OCC/APJN's claims are without merit and that the attorney examiner's rulings denying the motions to strike Mr. Allen's testimony should be affirmed.

F. Motions to Stay

On March 21, 2016, OCC, APJN, and OMAEG filed a motion to stay these proceedings, pending a ruling on a complaint before the Federal Energy Regulatory Commission (FERC), which was filed by EPSA, RESA, Dynegy, and others on January 27, 2016, in regard to AEP Ohio's proposed affiliate PPA.⁶ OCC, APJN, and OMAEG note that the Supreme Court of Ohio has recognized that there is an apparent unfairness when a decision of the Commission is determined to be unlawful, but customers receive no refund of the charges that have already been collected, due to the prohibition on retroactive ratemaking. OCC, APJN, and OMAEG assert that a stay of these proceedings would avoid such unjust results.

Although OCC, APJN, and OMAEG acknowledge that the Commission has stated that there is no controlling precedent establishing the conditions under which it will stay

⁶ FERC Docket No. EL16-33-000.

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an order, OCC, APJN, and OMAEG point out that the Commission has favored the following four-factor test: whether there has been a strong showing that the movant is likely to prevail on the merits; whether the party seeking the stay has shown that it would suffer irreparable harm absent the stay; where the public interest lies; and whether the stay would cause substantial harm to other parties. *In re Commission's Investigation Into the Modification of Intrastate Access Charges*, Case No. 00-127-TP-COI, Entry on Rehearing (Feb. 20, 2003) at 5, citing *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 31 Ohio St.3d 604, 606, 510 N.E.2d 806 (1987). In support of their motion for a stay of these proceedings, OCC, APJN, and OMAEG argue that they have satisfied the four factors considered by the Commission in determining whether to stay an order. Specifically, OCC, APJN, and OMAEG claim that there is a strong likelihood that the complainants will prevail at FERC on the merits; the collection of unlawful PPA rider charges during the pendency of the complaint would likely cause irreparable harm to AEP Ohio's customers; a stay would further the public interest by providing relief to customers burdened by the state of the economy; and a stay would not cause substantial harm to the Company, given that the PPA rider is revenue neutral to the Company.

AEP Ohio filed a memorandum contra the motion to stay these proceedings on March 23, 2016. According to AEP Ohio, the motion is another strategy of OCC, APJN, and OMAEG to defeat the Company's PPA rider proposal through unnecessary delay. AEP Ohio also contends that the complaint pending before FERC does not provide any grounds to delay the Commission's decision on the stipulation. In particular, AEP Ohio argues that the Commission's decision on the retail rate treatment of the affiliate PPA is not dependent on the pending complaint; the Commission should issue its decision before FERC rules on the complaint; and the complaint provides no basis to delay a decision regarding the OVEC entitlement or the other commitments in the stipulation. Finally, AEP Ohio asserts that neither the four-factor test nor any other precedent justifies a stay before the Commission issues an order and, in any event, the motion to stay filed by OCC, APJN, and OMAEG does not satisfy any part of the test. AEP Ohio maintains that it would be improper for the Commission to make findings regarding the likelihood of success of a complaint pending before FERC; potential rate impacts are insufficient to establish irreparable harm; a stay would not further the public interest; and a stay would, in fact, cause great harm to the Company and its parent, AEP. On March 30, 2016, OCC, APJN, and OMAEG filed a reply to AEP Ohio's memorandum contra their motion to stay, which reiterated the arguments raised in the motion.

On March 29, 2016, Noble filed a motion to stay the proceedings, noting that it fully supports and joins in the motion filed by OCC, APJN, and OMAEG. In support of its motion, Noble argues that AEP Ohio's PPA rider proposal will irretrievably harm the wholesale and retail markets for generation in Ohio. On March 30, 2016, AEP Ohio filed correspondence in response to Noble's motion. AEP Ohio asserts that the motion should

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be denied for the same reasons included in its memorandum contra the motion to stay filed by OCC, APJN, and OMAEG.

Initially, the Commission finds that the motions to stay the proceedings, as filed by Noble and OCC, APJN, and OMAEG, are procedurally improper. In support of their request, OCC, APJN, and OMAEG rely solely on the four-factor test. However, as OCC, APJN, and OMAEG acknowledge, the four-factor test has traditionally been used by the Commission to determine whether to stay an order pending appeal. Here, OCC, APJN, and OMAEG, as well as Noble, filed their motions in advance of the Commission's issuance of this Opinion and Order. Noble, OCC, APJN, and OMAEG have essentially requested that the Commission refrain from issuing an order in these proceedings, pending a ruling by FERC on the complaint before it. As discussed above, the Commission has broad discretion to manage its dockets, including how to manage and expedite the orderly flow of its business and avoid undue delay. *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367, 379, 384 N.E.2d 264 (1978); *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560, 433 N.E.2d 212 (1982). AEP Ohio's amended application has been pending for nearly a year, while the Commission has held two evidentiary hearings and reviewed a voluminous record and post-hearing briefs. As stated above, we find it necessary to decide these proceedings in an expeditious manner and without delay.

We find that Noble, OCC, APJN, and OMAEG's attempts to hamper our discretion, aside from the procedural irregularities, should also be rejected on substantive grounds. Even if we assume that the motion should be considered under the four-factor test, given that we hereby issue our Opinion and Order, OCC, APJN, and OMAEG have misapplied the test and otherwise failed to satisfy its criteria. Focusing instead on EPSA's likelihood of success before FERC, OCC, APJN, and OMAEG have not shown or even addressed whether they, as the movants, are likely to prevail on the merits, consistent with the first part of the test, through an appeal to the Ohio Supreme Court. With respect to the second factor, the Commission has previously found that potential rate impacts are insufficient to establish irreparable harm. See, e.g., *In re Duke Energy Ohio, Inc.*, Case No. 12-1685-GA-AIR, et al., Entry (Feb. 19, 2014) at 3-4, 6; *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 08-917-EL-SSO, et al., Entry (Mar. 30, 2009) at 2, 3. Addressing the third factor, OCC, APJN, and OMAEG have again cited potential rate impacts and have not offered any other reason explaining how the public interest favors the extraordinary remedy of a stay. As we find below, the stipulation, as a package, is in the public interest and, therefore, a stay would not be appropriate under the circumstances, as it would delay the significant benefits provided by the stipulation and may cause substantial harm to AEP Ohio's interests. For this same reason, and in light of our denial of Noble's untimely motion to intervene in these proceedings, we find that Noble's motion also lacks merit. Accordingly, the motions to stay the proceedings filed by Noble, OCC, APJN, and OMAEG should be denied.

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IV. DISCUSSION

A. Summary of the Application

In the application, as amended, AEP Ohio requests approval of its proposal to enter into a new affiliate PPA between the Company and AEPGR through which the Company would purchase the output of specific generating units owned wholly by AEPGR or, in part, with Dynegy and The Dayton Power and Light Company (DP&L). AEP Ohio also seeks approval to include the net impacts of the new affiliate PPA in the PPA rider, which the Commission approved on a placeholder basis in the *ESP 3 Case*. Finally, AEP Ohio requests approval to include, in the PPA rider, the net impacts of the Company's contractual entitlement to a 19.93 percent share of the electrical output of generating units owned by OVEC. As explained in the testimony of AEP Ohio witnesses Vegas and Pearce, the Company proposes to include the following generating units in the PPA rider:

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Affiliate PPA Rider Units						
Plant	Location	Unit	PPA Entitlement (MW)	Planned Retirement Year	Owner	Operator
Cardinal	Ohio	1	592	2033	AEPGR	AEPGR
Conesville	Ohio	4	339	2033	AEPGR, Dynegy, DP&L	AEPGR
Conesville	Ohio	5	405	2036	AEPGR	AEPGR
Conesville	Ohio	6	405	2038	AEPGR	AEPGR
Stuart	Ohio	1	150	2033	AEPGR, Dynegy, DP&L	DP&L
Stuart	Ohio	2	150	2033	AEPGR, Dynegy, DP&L	DP&L
Stuart	Ohio	3	150	2033	AEPGR, Dynegy, DP&L	DP&L
Stuart	Ohio	4	150	2033	AEPGR, Dynegy, DP&L	DP&L
Zimmer	Ohio	1	330	2051	AEPGR, Dynegy, DP&L	Dynegy
OVEC PPA Rider Units						
Plant	Location	Unit	PPA Entitlement (MW)	Planned Retirement Year	Owner	Operator
Kyger Creek	Ohio	1	40	2040	OVEC	OVEC
Kyger Creek	Ohio	2	40	2040	OVEC	OVEC
Kyger Creek	Ohio	3	40	2040	OVEC	OVEC
Kyger Creek	Ohio	4	40	2040	OVEC	OVEC
Kyger Creek	Ohio	5	40	2040	OVEC	OVEC
Clifty Creek	Indiana	1	40	2040	OVEC	OVEC
Clifty Creek	Indiana	2	40	2040	OVEC	OVEC
Clifty Creek	Indiana	3	40	2040	OVEC	OVEC
Clifty Creek	Indiana	4	40	2040	OVEC	OVEC
Clifty Creek	Indiana	5	40	2040	OVEC	OVEC
Clifty Creek	Indiana	6	40	2040	OVEC	OVEC

Additionally, Mr. Vegas testified that the affiliate PPA and the OVEC PPA are designed to stabilize retail rates in AEP Ohio's service area, support economic development in Ohio,

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protect the reliability of electricity supply, maintain fuel diversity, and protect against the adverse impact of early plant closures on the Ohio economy and the local communities that the plants support. According to Mr. Vegas, the 3,111 MW included in the affiliate PPA and the OVEC PPA, which represents over a third of AEP Ohio's connected retail load, is a significant and reasonable amount of generation to use as a financial hedge to stabilize rates, as required by the Commission in the *ESP 3 Case*. (Co. Ex. 1 at 12-13; Co. Ex. 2 at 6-7, 10; Co. Ex. 13 at 1.)

B. Summary of the Stipulation

As stated previously, a stipulation signed by AEP Ohio, Staff, OEG,⁷ OHA, MAREC, OPAC, Buckeye, Sierra Club, FES,⁸ Direct Energy, and IGS was filed on December 14, 2015. The stipulation was intended by the signatory parties to resolve all of the outstanding issues in these proceedings. The signatory parties agree that, for purposes of settlement, the Commission should approve the amended application as filed by AEP Ohio on May 15, 2015, subject to the modifications described in the stipulation.⁹ (Joint Ex. 1 at 1, 4.) The following is a summary of the stipulation and is not intended to supersede or replace the stipulation:

Additional Terms and Conditions of the PPA Rider (Section III.A)

Inclusion of a Revised Affiliate PPA in the PPA Rider (Section III.A.1)

The signatory parties agree that it would be prudent for AEP Ohio to sign a revised affiliate PPA, which has been updated as summarized in Attachment A to the stipulation.¹⁰ Consistent with the terms of the PPA rider as approved in the *ESP 3 Case* and as proposed in the amended application, the signatory parties further agree that the net credits or costs of a revised affiliate PPA should be reflected in AEP Ohio's retail rates by including the revised affiliate PPA in the PPA rider.¹¹ (Joint Ex. 1 at 4.)

⁷ OEG's signature and consent to the stipulation were contingent upon subsequent client approval (Joint Ex. 1 at 38). By letter dated December 15, 2015, OEG informed the Commission that OEG had received final client approval and should, therefore, be considered a signatory party on an unconditional basis.

⁸ FES notes that it has intervened in these proceedings to support the legal and policy determination supporting a Commission-approved PPA rider. FES takes no position with respect to any other issue being settled or litigated in these proceedings. (Joint Ex. 1 at 39.)

⁹ Sierra Club agrees not to oppose this provision.

¹⁰ Sierra Club, Direct Energy, and IGS are not participating in this provision but agree not to oppose it.

¹¹ Sierra Club, Direct Energy, and IGS are not participating in this provision but agree not to oppose it.

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Inclusion of OVEC Entitlement in the PPA Rider (Section III.A.2)

The signatory parties agree that the net credits or costs of AEP Ohio's contractual entitlement to a share of the electrical output of generating units owned by OVEC should be reflected in the Company's retail rates by including the OVEC PPA in the PPA rider, as proposed in the Company's amended application.¹² Consistent with page 27 of the Opinion and Order in the *ESP 3 Case*, AEP Ohio will continue reasonable efforts to explore divestiture of the OVEC asset and report by June 30 annually; however, the signatory parties agree that ongoing inclusion of the OVEC PPA in the PPA rider is not dependent upon a successful divestiture of the OVEC asset. (Joint Ex. 1 at 5.)

Additional PPA Rider Credit Commitment of AEP Ohio (Section III.A.3)

To encourage AEP Ohio to exercise its contractual rights under the revised affiliate PPA to ensure that the PPA units are managed efficiently, cost effectively, and with maximum market profitability, the Company will make the following commitment. If, in any of the last four years of the PPA rider, the unadjusted PPA rider results in a charge to customers or a credit to customers that is less than the amount set forth in the table below, AEP Ohio agrees to provide an additional credit to customers, not to exceed the amount set forth in the table below:

Planning Year 2020/2021	\$10 Million
Planning Year 2021/2022	\$20 Million
Planning Year 2022/2023	\$30 Million
Planning Year 2023/2024	\$40 Million

(Joint Ex. 1 at 5.)

In no event will AEP Ohio provide an additional credit that results in customers receiving a net credit (the sum of the unadjusted PPA rider credit and the additional credit) that exceeds the amount set forth in the table above. For example, if the unadjusted PPA rider credit were \$5 million in planning year 2020/2021, then AEP Ohio would provide customers an additional credit of \$5 million, resulting in a net credit of \$10 million. Alternatively, if, in that same planning year, the unadjusted PPA rider charge were \$16 million, then AEP Ohio would provide an additional credit of \$10 million to customers, resulting in a net charge of \$6 million. To further illustrate, if in that same planning year, the unadjusted PPA rider charge were \$5 million, then AEP Ohio would provide an additional credit of \$10 million, resulting in a net credit of \$5 million. (Joint Ex. 1 at 5-6.)

¹² Sierra Club, Direct Energy, and IGS are not participating in this provision but agree not to oppose it.

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The unadjusted PPA rider value under this provision (Section III.A.3) that is used to determine the level, if any, of a Company-funded credit for a given year shall be calculated without including the cost of the renewable facilities implemented under Section III.I of the stipulation (Joint Ex. 1 at 6).

PPA Rider Mechanism (Section III.A.4)

The signatory parties agree that the PPA rider will be set based on annual forecasted values subject to quarterly true-ups to reflect actual values, with the initial rider rate being based on a \$4 million credit for 2016 (annualized) subject to reconciliation. Consistent with the amended application and supporting testimony, AEP Ohio would flow all revenues and costs relating to the affiliate PPA and the OVEC PPA through the PPA rider. PPA rider credits and charges will be allocated to rate classes/voltage levels (Residential; GS Non-Demand; Secondary; Primary; Sub/Tran; and Lighting) schedules based upon their PJM five monthly coincident peak demands for the prior year. PPA rider costs/credits will be billed to customers through a per kilowatt hour (kWh) charge for each rate class/voltage level. (Joint Ex. 1 at 6.)

Other Contingencies for Continuation of the PPA Rider Recovery (Section III.A.5)

The signatory parties agree that, based on the following conditions and presuming an extension of the ESP 3 term through May 31, 2024, PPA rider recovery will extend through May 31, 2024 (Joint Ex. 1 at 7).

Rigorous Review of the PPA Rider (Section III.A.5.a)

AEP Ohio agrees to participate in annual compliance reviews before the Commission to ensure that actions taken by the Company when selling the output from generation units included in the PPA rider into the PJM market were not unreasonable. AEP Ohio, not its customers, would be responsible for the adjustments made to the PPA rider based on actions deemed unreasonable by the Commission, including any costs (after proper consideration of such costs and netting of any bonus payments) associated with performance requirements in PJM's markets. Any determination that the costs and revenues included in the PPA rider are unreasonable shall be made in light of the facts and circumstances known at the time such costs were committed and market revenues were received. In addition, the calculation of the PPA rider will be based on the sale of power into PJM. (Joint Ex. 1 at 7.)

Full Information Sharing (Section III.A.5.b)

AEPGR fleet information on any cost component will be provided pursuant to a reasonable Staff request (as determined by the Commission) as it conducts a

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reasonableness review of a specific cost component for the generation units included in the affiliate PPA. Staff shall treat any and all such information, regardless of its content, as if it is highly sensitive, proprietary, trade secret information, and critical energy infrastructure information.¹³ In addition, as permitted by law, such information shall not be subject to a public information request and shall be protected indefinitely. (Joint Ex. 1 at 7-8.)

Commission Option to Terminate upon Unit Sale (Section III.A.5.c)

AEP Ohio's retail rate recovery from the purchase of wholesale generation from a PPA unit may be extinguished upon the sale or transfer to a non-affiliate of any generation units that are included in the purchase power agreement,¹⁴ if the Commission decides to exclude that unit from the PPA rider based on the circumstances of such transfer or sale.¹⁵ The Commission may also determine that such unit should be maintained in the PPA rider. (Joint Ex. 1 at 8.)

Commitment Reporting (Section III.A.5.d)

AEP Ohio will file an annual compliance report with the Commission by December 31, 2016, and for the remainder of the extended ESP term, confirming that the commitments in Section III of the stipulation are being met (Joint Ex. 1 at 8).

Future Modifications to the Revised Affiliate PPA (Section III.A.6)

The signatory parties agree that, by adopting the stipulation, the Commission will make no finding as to the prudence of any future modification to a revised affiliate PPA, and the Commission will reserve the right to review the prudence of AEP Ohio agreeing to any such future modification as part of its ongoing oversight of retail rates. AEP Ohio agrees that it will request a Commission determination of the prudence of any future modification to the affiliate PPA. In addition, AEP Ohio would agree to make a voluntary filing to obtain a Commission prudence determination prior to changing depreciation rates under the affiliate PPA. AEP Ohio, not its customers, would be responsible for any

¹³ Sierra Club is not participating in this provision but agrees not to oppose it.

¹⁴ For example, AEP has indicated that it will maintain separate accounting and may decide to transfer the affiliate PPA units into a separate subsidiary in order to facilitate the PPA transaction, which would not trigger operation of Section III.A.5.c. For purposes of this provision and the entire stipulation, an "affiliate" of AEP Ohio does not include utility operating companies.

¹⁵ Changes among the current owners in the ownership structure of the jointly-owned units, either in whole or in part, while maintaining a comparable level of capacity for the generation station and while avoiding adverse economic impacts for retail customers, shall not be considered a sale for purposes of this provision. Further, if AEP Ohio is successful in divesting the OVEC asset, that outcome will not trigger operation of Section III.A.5.c. Finally, the renewable projects relating to Section III.I will not trigger operation of Section III.A.5.c.

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increased costs associated with changing depreciation rates if the Commission determines such changes are not prudent. (Joint Ex. 1 at 8-9.)

Federal Advocacy (Section III.B)

AEP Ohio¹⁶ will make the following additional commitments in order to continue to proactively and cooperatively work to improve the PJM markets and advance initiatives that ultimately will benefit retail customers in Ohio (Joint Ex. 1 at 9).

1. Through May 31, 2024, AEP Ohio will advocate in good faith before PJM and FERC for market enhancements such as a longer-term capacity product, and any other market improvements. Before making any such filing, AEP Ohio will inform Staff of its position and the rationale behind it. (Joint Ex. 1 at 9.)

2. Beginning June 1, 2016, and continuing through May 31, 2024, AEP Ohio will provide a public, annual update to the Commission on the state of wholesale electricity markets from the Company's perspective (Joint Ex. 1 at 9).

3. In the event that PJM has not obtained approval for a longer-term capacity product to address state resource adequacy needs by September 1, 2017, the Commission will solicit comments from interested parties no later than October 30, 2017, addressing the state's long-term resource adequacy needs (Joint Ex. 1 at 9).

Extension of ESP 3 Term Through May 31, 2024 (Section III.C)

AEP Ohio will file a separate application with the Commission requesting that its current ESP be extended through the term of the affiliate PPA - that is, until May 31, 2024. AEP Ohio will file this separate application by April 30, 2016. Among other appropriate proposals to be developed as part of the application, AEP Ohio will include the following provisions and features in its application. (Joint Ex. 1 at 10.)

1. A proposal for extension of riders and tariffs relating to the expanded ESP term, including, but not limited to, the terms and conditions for extension of the distribution investment rider (DIR) (Joint Ex. 1 at 10).

2. Any additional funding commitments relating to the expanded ESP term (Joint Ex. 1 at 10).

3. A proposal to extend the competitive bidding process for SSO procurement, including the schedule, auction products, and related matters (Joint Ex. 1 at 10).

¹⁶ The federal advocacy commitments are those of AEP Ohio and not of any other signatory party.

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4. An analysis and proposal relating to the significantly excessive earnings test (SEET) for the extended ESP term (Joint Ex. 1 at 10).
5. An analysis of the statutory MRO comparison test (Joint Ex. 1 at 10).
6. The additional issues under the ESP statute relating to the expanded ESP term (Joint Ex. 1 at 10).

In addition to the foregoing general matters to be addressed in the application to extend the ESP term, AEP Ohio agrees to propose and the signatory parties agree to advocate for approval of (and the non-opposing parties agree to either support or not oppose) the following items as agreed to in the stipulation (Joint Ex. 1 at 10).

7. A provision to extend the interruptible power (IRP) tariff and credit for the full expanded ESP term (i.e., through May 31, 2024) for the current IRP tariff customers as well as 250 MW of additional interruptible load of the signatory parties' members that qualify under the tariff as well as members of non-opposing parties. Further, 150 MW of the additional interruptible load shall be reserved for new businesses locating in the service territory of AEP Ohio. If 100 MW of additional interruptible load subscribes to the IRP tariff during the 12 months immediately following approval of the stipulation, then the IRP tariff shall be increased by an additional 25 MW available to the signatory parties' members. AEP Ohio will also include a provision to increase the IRP credit to \$9/kilowatt (kW)-month starting in June 2018 and throughout the remainder of the extended ESP term for any customers that are participating during that time period. The IRP tariff proposal will be updated to reflect the terms of this paragraph including that it will be available to both SSO and shopping customers. (Joint Ex. 1 at 10-11.)

8. A provision to include an automaker credit provision to support increased utilization or expansion of automaker facilities in AEP Ohio's service territory. The automaker credit provision will provide a \$10/megawatt hour credit for all kWh consumption above the customer's baseline consumption. The baseline will be established based upon the customer's calendar year 2009 annual usage. Total credits under this provision shall not exceed \$500,000 annually. Recovery of these credits will be through the economic development rider (EDR). (Joint Ex. 1 at 11.)

9. A provision giving GS-3 and GS-4 customers with interval metering capability the opportunity to opt in to a pilot mechanism under the new basic transmission cost rider (BTCR) based on each eligible customer's single annual transmission coincident peak demand (Joint Ex. 1 at 11).

10. This section of the stipulation is reserved for future use (Joint Ex. 1 at 11).

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11. The signatory parties agree that nothing in the stipulation constitutes an amendment of AEP Ohio's existing energy efficiency and peak demand reduction (EE/PDR) plan for purposes of the uncodified provisions enacted in 2014 by Senate Bill 310 (S.B. 310) and that nothing in the stipulation affects a customer's opt-out right under R.C. 4928.6612, as that provision was enacted in 2014 by S.B. 310. IRP tariff customers may opt out of the opportunity and ability to obtain direct benefits from AEP Ohio's EE/PDR plan as provided in S.B. 310. No account properly identified in the customer's verified notice under R.C. 4928.6612 shall be subject to any cost recovery mechanism under R.C. 4928.66 or eligible to participate in, or directly benefit from, programs arising from EDU portfolio plans approved by the Commission. (Joint Ex. 1 at 11-12.)

12. AEP Ohio will file and advocate for a pilot program that establishes a bypassable competition incentive rider (CIR) as an addition to the SSO non-shopping rate above the auction price with the purpose of incenting shopping and recognizing that there may be costs associated with providing retail electric service that are not reflected in SSO bypassable rates.¹⁷ The total collected from the CIR will then be refunded to all distribution customers through a new rider established in the 2016 ESP amendment case. (Joint Ex. 1 at 12.)

- a. AEP Ohio and the signatory parties will meet to determine the charge to include based on a mills per kWh. This will be included in the 2016 ESP amendment case. If the signatory parties cannot agree on an appropriate charge, Staff will choose the final level for inclusion in AEP Ohio's ESP extension filing. (Joint Ex. 1 at 12.)
- b. AEP Ohio will file and support approval of a pilot rider to credit the amount collected from the CIR bypassable pilot rider in the 2016 ESP amendment. The rider will provide a credit for all distribution customers using the same rate design associated with the PPA rider. (Joint Ex. 1 at 12.)
- c. The charge from the CIR would take effect concurrent with the implementation of the SSO credit rider upon final order of the ESP extension proceeding. Unless otherwise amended by the Commission, the CIR pilot adder shall be in effect through the term of the affiliate PPA recovery sought in the agreement or until new distribution base rates are put into effect. AEP Ohio will provide an analysis as part of its next distribution rate case to show all of the actual costs required to provide

¹⁷ OPAE is not participating in this provision but agrees not to oppose it in this docket.

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SSO generation service that are included in the Company's cost of service study. (Joint Ex. 1 at 12-13.)

13. Aside from the above-listed items, AEP Ohio agrees not to propose any changes relating to the current ESP term (i.e., through May 31, 2018) for the riders and tariffs approved in the Opinion and Order in the *ESP 3 Case*. In addition, AEP Ohio agrees not to renew proposals for riders or tariffs that were rejected in the Opinion and Order in the *ESP 3 Case* for both the current ESP term and the extended ESP term (i.e., through May 31, 2024). (Joint Ex. 1 at 13.)

Additional AEP Ohio Commitments (Section III.D)

1. AEP Ohio will make a shareholder-funded donation of \$500,000 to a research and development program for clean energy technology at an Ohio public higher educational institution (Joint Ex. 1 at 13).

2. In a manner that is consistent with AEP Ohio's existing EE/PDR plan and while staying within the currently approved funding levels, AEP Ohio will work with OHA on an annual energy efficiency program targeted at OHA members in the Company's territory. The intent will be to partner with OHA over the term of the affiliate PPA, to encourage and increase OHA members' participation in AEP Ohio's cost effective energy efficiency programs at their facilities. (Joint Ex. 1 at 13.)

- a. Provide \$400,000 in EE/PDR funding per year through the term of the affiliate PPA, to the OHA to promote and obtain significant participation and energy/demand savings through AEP Ohio's EE/PDR programs amongst its members including Energy Star benchmarking, hospital energy audits, education related to energy efficiency and demand reduction, meetings with hospital facility directors and members of hospital c-suites, and presentations that champion energy efficiency, hospital resilience, and energy-related actions to mitigate climate change, and related issues (Joint Ex. 1 at 13-14).
- b. AEP Ohio and OHA will work together to develop and automate Energy Star benchmarking for OHA members in AEP Ohio's certified territory, which will support a broader offering to other customer segments (Joint Ex. 1 at 14).
- c. Provide up to \$600,000 per year through the term of the affiliate PPA, in additional incentives from EE/PDR funding for contributions to qualifying EE/PDR projects under the AEP Ohio program. OHA and AEP Ohio will collaborate to determine the level of funding from this

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pool of dollars to contribute to projects throughout the year to provide an extra incentive for OHA members to implement EE/PDR projects under the AEP Ohio plan. Consideration for the additional incentives should include the size of the facility with a preference for smaller OHA members that have below average Energy Star scores. (Joint Ex. 1 at 14.)

- d. AEP Ohio will prioritize circuits with OHA members for any Volt-Var Optimization deployments over the term of the affiliate PPA, when determining the implementation plan. AEP will work with OHA to determine which circuits will be prioritized taking into account the benefit to the circuit in comparison to others and construction/staging considerations. (Joint Ex. 1 at 14.)
- e. AEP Ohio will commit to update all Alternative Feed Service rates for OHA members to a uniform \$2.50 per kW month (Joint Ex. 1 at 15).
- f. AEP Ohio, in collaboration with OHA, will provide a Continuous Energy Improvement program for rural hospitals in AEP Ohio's certified territory with the goal of improving each participating hospital's energy efficiency (Joint Ex. 1 at 15).

OHA's partnership and rights to administer the programs and receive funding under this clause will be contingent upon continued approval and existence of an AEP Ohio EE/PDR plan, approved funding, and any other necessary mechanism to ensure the continued recovery of net lost distribution revenues. OHA will support the approval of budgets and components of the EE/PDR rider, including shared savings at least at their current levels in future filings. (Joint Ex. 1 at 15.)

3. In a manner that is consistent with AEP Ohio's existing EE/PDR plan and while staying within the currently approved funding levels, OP&E will receive \$200,000 in 2016 to provide direct assistance with the approved Community Assistance Program (CAP) within the Company's EE/PDR plan as follows:

- a. Design and manage bulk purchasing of refrigerators and other energy efficiency measures where feasible;
- b. Provide software and manage temporary data reporting for CAP through March 2016, or until the AEP Ohio Energy Efficiency Customer Platform (EECP) data system is in place;
- c. Provide monitors to administer quality assurance/quality control of the CAP; and

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- d. Manage the training of community action agencies on the AEP Ohio EECF data system used for CAP and other meetings and training initiatives as necessary including the annual Weatherize Ohio conference.

For 2017, OPAE will manage and administer the CAP within AEP Ohio's EE/PDR plan. The program will have an annual budget up to \$8,000,000. OPAE will receive a five percent management fee. In addition to overall management of the program, OPAE will continue to provide quality assurance/quality control of the CAP. (Joint Ex. 1 at 15-16.)

OPAЕ's partnership and rights to administer the program and receive funding under this clause will be contingent upon continued approval and existence of an AEP Ohio EE/PDR plan, approved cost recovery, and any other necessary mechanism to ensure the continued recovery of net lost distribution revenues. OPAE will support the approval of budgets and components of the EE/PDR rider, including shared savings at least at their current levels in future filings. (Joint Ex. 1 at 16.)

4. Upon approval of the stipulation, 50 percent of the EE/PDR rider costs for transmission and sub-transmission voltage customers will be transferred to the EDR through May 31, 2024 (Joint Ex. 1 at 16).

5. Upon approval of the stipulation, 50 percent of the IRP credits from the EE/PDR rider will be transferred to the EDR, to more accurately reflect the economic development benefits of these credits charged for demand-metered customers (Joint Ex. 1 at 16).

6. AEP will maintain a nexus of operations (including employees) in Ohio relating to operation and support for the PPA units for the duration of the PPA rider. AEP intends to maintain its corporate headquarters in Columbus, Ohio for the term of the PPA rider. (Joint Ex. 1 at 16.)

7. AEP Ohio agrees to work with Staff and the signatory parties to determine the parameters of a two-year pilot supplier consolidated billing program for any CRES provider that is a signatory party. The purpose of the pilot will be to provide the industry with data and information on the practicality of a supplier consolidated billing implementation in the Ohio electric choice market. (Joint Ex. 1 at 16-17.)

- a. The participating CRES provider will agree to assume all EDU bill requirement administrative code rules and work with Staff and the EDU on consumer safeguards, including Ohio Adm.Code Chapter 4901:1-21 (without waiver unless recommended by Staff) (Joint Ex. 1 at 17).

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- b. Participating CRES providers agree to provide Staff and the EDU with any and all information related to the pilot (Joint Ex. 1 at 17).
- c. Staff, AEP Ohio, and participating CRES providers will meet to determine a methodology to govern the implementation, including, but not limited to, the method of transfer and payment to the EDU of customer charges, as well as credit and collection procedures and purchase of receivables without recourse (Joint Ex. 1 at 17).
- d. The methodology to govern the pilot shall be established no later than six months from a final order approving a stipulation in these proceedings (Joint Ex. 1 at 17).
- e. Due to the nature of a pilot program, the supplier consolidated billing pilot will be limited to 5,000 customers per CRES provider signatory party for the first six months of active implementation (Joint Ex. 1 at 17).
 - i. Based upon biannual review and approval by Staff, AEP Ohio, and participating CRES provider signatory parties, the customer participation cap shall be incrementally increased by 5,000 customers each six months not to exceed 20,000 customers for any individual CRES signatory party over the two-year term of the pilot program (Joint Ex. 1 at 17).
 - ii. Existing customers may remain on the supplier consolidated billing program upon completion of the two-year term of the pilot until otherwise ordered by the Commission (Joint Ex. 1 at 18).
 - iii. The signatory parties retain the right to petition the Commission to expand the pilot cap or terms pending Commission consideration of future consolidated billing orders (Joint Ex. 1 at 18).
- f. Costs related to AEP Ohio's implementation of the pilot supplier consolidated billing program will be shared 50 percent by the CRES provider signatory parties. AEP Ohio's 50 percent share will be eligible for recovery in a future rate proceeding. Staff will study the costs needed to implement the pilot and include an analysis of the type of costs needed to expand the program and how that should be allocated among the providers. (Joint Ex. 1 at 18.)
- g. Participating CRES suppliers shall have the ability to bill under the pilot supplier consolidated billing program no later than one year from

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approval of the final Opinion and Order approving a stipulation in these proceedings (Joint Ex. 1 at 18).

- h. Participating CRES suppliers shall not prohibit a customer from returning to the EDU consolidated billing (Joint Ex. 1 at 18).
- i. Participating CRES suppliers shall not charge a late payment fee greater than the EDU's tariffed late payment fee (Joint Ex. 1 at 18).
- j. By the conclusion of the two-year pilot program, Staff shall file a report on the program that shall include recommendations on the program, which may include expansion or retirement (Joint Ex. 1 at 18).
- k. Any participating CRES supplier's competitively sensitive information acquired by AEP and Staff under the pilot supplier consolidated billing program shall be afforded the appropriate confidential treatment (Joint Ex. 1 at 19).

8. AEP Ohio will file a proposal for a pilot program in the comments due on January 6, 2016, in Case No. 12-3151-EL-COI. The proposal will be to establish a pilot program in the AEP Ohio service territory providing an EDU third-party agent call transfer process to educate and enroll interested customers moving and initiating service and to establish a procedure for the offering of a standard discount rate providing a guaranteed discount off the price to compare without early termination fees. (Joint Ex. 1 at 19.)

9. With respect to Conesville Units 5 and 6, AEP Ohio and its affiliates make the following commitments (Joint Ex. 1 at 19).

- a. By July 1, 2016, AEP Ohio will make a cost recovery filing supporting the conversion of Conesville Units 5 and 6 to natural gas co-firing. These units will be converted by December 31, 2017, subject to approval for cost recovery for AEP Ohio through the PPA rider and any other regulatory approvals. AEP Ohio agrees to use its best efforts to seek Commission approval for cost recovery of co-firing Conesville Units 5 and 6. If the Commission's cost recovery decision is not issued until after January 31, 2017 (the lead time needed for construction), the completion deadline may change commensurately based on the timing of the Commission's actual cost recovery approval decision. (Joint Ex. 1 at 19.)
- b. For the period from completion of the co-firing project through December 31, 2029, AEP Ohio and its affiliate owner shall limit the coal heat input to

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no more than 28,737,180 million British Thermal Units (MMBTU) per year (annualized for any partial years) combined for both units Conesville 5 and 6. This annual MMBTU limit is 37.5 percent of the unit's design level. AEP Ohio and its affiliates commit that the units will maximize usage of natural gas when it is available and economic. (Joint Ex. 1 at 19-20.)

- c. Conesville Unit 6 will retire, refuel, or repower to 100 percent natural gas by December 31, 2029. If PJM pursues a Reliability Must Run (RMR) arrangement or equivalent mechanism for continued operation of the unit due to the transmission reliability impacts of the retiring of the unit, AEP Ohio and its affiliate will retire, refuel, or repower the unit at the end of such RMR arrangement or equivalent mechanism. Except as provided in Sections III.A.6 (potential depreciation rate change) and III.D.10 (Conesville co-firing costs),¹⁸ no costs to retire, refuel, or repower Conesville Unit 6 shall be recovered through the PPA rider. (Joint Ex. 1 at 20.)
- d. Conesville Unit 5 will retire, refuel, or repower to 100 percent natural gas by December 31, 2029. If PJM pursues a RMR arrangement or equivalent mechanism for continued operation of the unit due to the transmission reliability impacts of the retiring of the unit, AEP Ohio and its affiliate will retire, refuel, or repower the unit at the end of such RMR arrangement or equivalent mechanism. Except as provided in Sections III.A.6 (potential depreciation rate change) and III.D.10 (Conesville co-firing costs),¹⁹ no costs to retire, refuel, or repower Conesville Unit 5 shall be recovered through the PPA rider. (Joint Ex. 1 at 20.)

10. AEP Ohio and its affiliates will retire, refuel, or repower Cardinal Unit 1 to 100 percent natural gas by December 31, 2030.²⁰ If PJM pursues a RMR arrangement or equivalent mechanism for continued operation of the unit due to the transmission reliability impacts of the retiring of the unit, AEP Ohio and its affiliate will retire, refuel, or repower the unit at the end of such RMR arrangement or equivalent mechanism. Except as provided in Section III.A.6 (potential depreciation rate change), no costs to retire, refuel,

¹⁸ Through the testimony of AEP Ohio witness Allen on January 6, 2016 (Tr. XX at 4940), as well as letter filed by the Company on January 7, 2016, the Company explained that the reference here to Section III.D.10 should actually be to Section III.D.9.

¹⁹ Through the testimony of AEP Ohio witness Allen on January 6, 2016 (Tr. XX at 4940), as well as letter filed by the Company on January 7, 2016, the Company explained that the reference here to Section III.D.10 should actually be to Section III.D.9.

²⁰ Buckeye is not participating in Sections III.D.10 to III.D.12 of the stipulation.

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or repower Cardinal Unit 1 shall be recovered through the PPA rider. (Joint Ex. 1 at 20-21.)

11. With respect to Conesville Units 5 and 6 and Cardinal Unit 1, AEP Ohio and its affiliates make the following commitments. AEP Ohio will open a docket at the Commission no later than December 31, 2024, which it will update annually, known as the "Retirement Readiness" docket. The purpose of the docket will be to identify and timely remove any barriers to retiring, refueling, or repowering Conesville Units 5 and 6 and Cardinal Unit 1 by the dates set forth above. Elements of the "Retirement Readiness" docket will include the following. (Joint Ex. 1 at 21.)

- a. AEP Ohio or an independent third party will perform a unit-by-unit load flow analysis by December 31, 2024, to identify any transmission upgrades and/or non-transmission alternatives to allow Cardinal Unit 1, Conesville Unit 5, and Conesville Unit 6 to retire, refuel, or repower on the dates set forth above without negative impacts to reliability or the need for RMR agreements. Such analysis will: (1) take off-line only Cardinal Unit 1, Conesville Units 5 and 6, and all units that have notified PJM of their intentions to retire on or before December 31, 2029; (2) include new generation that has a signed interconnection agreement and is scheduled to go into service on or before December 31, 2029; and (3) include transmission upgrades that have been approved by the PJM board and have an expected completion date by December 31, 2029. Such analysis will include at least one scenario in which retiring capacity is replaced with 25 percent demand response, 25 percent renewables, and 50 percent non-coal new generation. (Joint Ex. 1 at 21.)
- b. By December 31, 2024, AEP Ohio or an independent third party will identify specific transmission upgrades and/or non-transmission alternatives that would completely alleviate any identified reliability concerns. AEP Ohio will analyze non-transmission solutions to any reliability problems projected to result from the retirement of the units, including energy efficiency, demand response, and distributed generation resources. (Joint Ex. 1 at 22.)
- c. AEP Ohio or an independent third party will set forth a plan by December 31, 2024, to timely implement the specific transmission upgrades and/or non-transmission alternatives that would address the reliability concerns, so that each unit can be retired, refueled, or repowered by the dates set forth above. AEP Ohio will include in its implementation plan all cost-effective non-transmission solutions identified through this analysis. AEP Ohio will annually update this

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docket to inform the Commission of its progress in implementing its plan. A report documenting the results of such analysis and setting forth a plan for implementing each transmission upgrade and non-transmission alternative by the retire, refuel, or repower date shall be filed with the Commission at least four years before the retire, refuel, or repower date for each unit. AEP Ohio agrees to take reasonable steps to implement any necessary transmission upgrades or non-transmission alternatives, so that each unit can be retired, refueled, or repowered by the dates set forth above. (Joint Ex. 1 at 22.)

- d. No transmission upgrade costs or non-transmission alternative costs associated with the commitments set forth in this section (Section III.D.12) shall be recovered through the PPA rider. The signatory parties retain the right to challenge any proposed transmission upgrades or non-transmission alternatives. (Joint Ex. 1 at 22-23.)

12. With respect to the co-owned PPA units (Conesville Unit 4, Zimmer Unit 1, Stuart Units 1 through 4, and the OVEC units), AEP Ohio and its affiliates make the following commitments. AEP Ohio will open a docket at the Commission no later than March 30, 2017, which it will update annually, known as the "Generation Transition" docket. The purpose of the docket will be to identify and remove any remaining barriers to retiring, repowering, or refueling the co-owned units. Elements of the "Generation Transition" docket will include the following. (Joint Ex. 1 at 23.)

- a. AEP Ohio will annually report and document in this docket the steps that it and its affiliates have taken to secure retiring, repowering, or refueling to 100 percent natural gas the remaining PPA units with the joint owners (Joint Ex. 1 at 23).
- b. If AEP Ohio is not able to get all of the remaining co-owners to commit to retiring, refueling, or repowering the co-owned PPA units in a plan to be submitted by January 1, 2024, AEP will report and document in this docket the steps that it has taken to consolidate ownership interests so that the co-owned units are exclusively owned by a single entity (Joint Ex. 1 at 23).
- c. AEP Ohio or an independent third party will perform a unit-by-unit load flow analysis by December 31, 2020, to identify any transmission upgrades and/or non-transmission alternatives to: (a) allow Conesville Unit 4, Zimmer Unit 1, Stuart Units 1 through 4, and the OVEC units to retire before their currently planned retirement dates without negative impacts to reliability or the need for RMR agreements; and to

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- (b) minimally impact the local communities where coal plants are located by evaluating targeted investments in demand-side energy savings programs, renewables, and other alternative technologies. Such analysis will: (1) take off-line only Conesville Unit 4, Zimmer Unit 1, Stuart Units 1 through 4, the OVEC units, and all units that have notified PJM of their intentions to retire using the same retirement scenarios for the co-owned units outlined below; (2) include new generation that has a signed interconnection agreement and is scheduled to go into service using the same retirement scenarios for the co-owned units outlined below; and (3) include transmission upgrades that have been approved by the PJM board and have an expected completion date using the same retirement scenarios for the co-owned units outlined below. Such analysis will include at least one scenario in which retiring capacity is replaced with 25 percent demand response, 25 percent renewables, and 50 percent non-coal new generation. This analysis will be filed as a part of the annual update in 2021 and will include scenarios for retirement of 5 years and 10 years before the currently-planned retirement date; for units currently scheduled to operate beyond 2039, the analysis will include scenarios for retirement of 15 years and 20 years before the currently-expected retirement date. (Joint Ex. 1 at 23-24.)
- d. AEP Ohio or an independent third party will identify by June 1, 2021, specific transmission upgrades and/or non-transmission alternatives that would completely alleviate any identified reliability concerns. AEP Ohio must analyze non-transmission solutions to any reliability problems projected to result from retirement of each unit, including energy efficiency, demand response, and distributed generation resources. (Joint Ex. 1 at 24.)
- e. AEP Ohio will have an independent third party perform an analysis about how to bring or encourage companies to establish renewable energy companies with headquarters and manufacturing plants in Ohio and how to transition the current power plant workforce to such job opportunities. AEP Ohio will file this in the 2018 annual update filing. (Joint Ex. 1 at 24-25.)
- f. AEP Ohio will publish figures for its current and historic property tax payments to municipalities or local government entities that host the co-owned units, and will conduct a study analyzing how that revenue might be replaced post-retirement (Joint Ex. 1 at 25).

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- g. AEP Ohio will publish its current and historic employment figures at the co-owned units, and will conduct a study analyzing the expected impact to employment from retirement of the co-owned units, and how those jobs might be replaced or relocated (Joint Ex. 1 at 25).
- h. AEP Ohio and its affiliates commit to continue to pursue transfer or sale of its contractual entitlement at OVEC and other jointly-owned PPA units. AEP Ohio and its affiliates will periodically file a status report with the Commission on these transfers or sales. Nothing in the stipulation limits the right of AEP Ohio or its affiliates to sell any PPA unit, provided that any such sale would be made subject to the commitments made in the stipulation by AEP Ohio and its affiliates and in the bilateral agreement between AEPGR and Sierra Club executed on December 14, 2015. (Joint Ex. 1 at 25.)
- i. AEP Ohio will use best efforts to develop a plan with joint owners to retire, repower, or refuel the jointly-owned PPA units, which will be filed in the "Generation Transition" docket no later than June 1, 2024. This plan will incorporate scenarios listed above for potential early retirement (5 years and 10 years and, as applicable, 15 years and 20 years). If the co-owners are not willing to commit to early retirement, repowering, or refueling, AEP will use best efforts to consolidate ownership so that it can further explore potential early retirement scenarios. (Joint Ex. 1 at 25-26.)
- j. Except as provided in Section III.A.6 (potential depreciation rate change), no costs to retire, refuel, or repower the co-owned PPA units shall be recovered through the PPA rider. No transmission upgrade costs or non-transmission alternative costs associated with the commitments set forth in this section (Section III.D.13) shall be recovered through the PPA rider. The signatory parties retain the right to challenge any proposed transmission upgrades or non-transmission alternatives. (Joint Ex. 1 at 26.)

13. In Case No. 13-1939-EL-RDR, AEP Ohio will propose - through settlement efforts to commence within 90 days of adoption of the stipulation and through a filing in that docket if settlement is not achieved after another 60 days - and use best efforts to pursue approvals for each of the following (Joint Ex. 1 at 26).

- a. A proposal to deploy 160 circuits of Volt/VAR Optimization (versus today's potential plan of 80 circuits if the gridSMART stipulation is finalized and approved). Recovery of costs will be through the gridSMART Phase II Rider with no shared savings and no incentive

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return on equity (ROE). More specifically, savings associated with Volt/VAR Optimization will not be counted toward the calculation used to determine the level of shared savings under the current EE/PDR plan or for purposes of triggering the shared savings mechanism but may be counted toward the Company's overall achievement of EE/PDR above and beyond the agreed upon savings benchmarks in Section III.D.16.²¹ (Joint Ex. 1 at 26-27.)

- b. A provision to file a cost/benefit study for a full deployment of Volt/VAR Optimization equipment on all of its distribution circuits and substations, including Volt-Amp Reactive power and Conservation Voltage Reduction technology. The cost/benefit study shall be broken down by distribution circuit and substation, to determine the total amount of investment that would be cost-effective. (Joint Ex. 1 at 27.)
- c. When AEP Ohio files the cost/benefit study, it will also include a proposal for seeking cost recovery of deployment of all cost-effective Volt/VAR technology. AEP Ohio agrees not to seek any additional incentive for installing the equipment or shared savings for any resulting energy savings. If the filing is approved, AEP Ohio agrees to deploy the equipment in a timely manner. (Joint Ex. 1 at 27.)
- d. AEP Ohio shall keep the equipment operational during the useful life of the equipment and shall file annual reports with the Commission stating the amount of energy reductions, peak demand reduction, and monetary savings and greenhouse gas emission reductions resulting from this equipment (Joint Ex. 1 at 27).
- e. AEP Ohio and Staff agree that they will support Sierra Club's full intervention in Case No. 13-1939-EL-RDR, if the Commission adopts the stipulation without material modification (Joint Ex. 1 at 27).
- f. AEP Ohio will use its best efforts to seek approval for the energy and peak demand reductions to be used as a compliance tool under the Clean Power Plan (CPP) (Joint Ex. 1 at 27).

²¹ Through the testimony of AEP Ohio witness Allen on January 6, 2016 (Tr. XX at 4938-4939), as well as letter filed by the Company on January 7, 2016, the Company explained that the reference here to Section III.D.16 should actually be to Section III.D.15.

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14. AEP Ohio agrees, within 90 days of a Commission order adopting the stipulation, to form a working group in conjunction with Staff and other interested parties, to discuss a pilot program for future descending clock default supply auctions where, after the auction is completed but before the market clearing price is announced, energy efficiency providers would be able to competitively bid to supply energy efficiency projects (Joint Ex. 1 at 27-28).

15. AEP Ohio agrees to develop and submit for Commission approval a 2017-2019 EE/PDR plan designed to achieve an energy savings goal of 1.33 percent annually and a demand reduction goal of 0.75 percent annually of baseline energy and demand, respectively, by the end of the plan period. As part of that filing, AEP Ohio agrees to continue its current practice of bidding eligible peak demand reduction achievements into PJM capacity auctions for the 2017-2019 EE/PDR plan, with any capacity revenues shared consistent with existing Commission policy (80 percent to customers and 20 percent retained by the Company). These commitments regarding the 2017-2019 EE/PDR plan filing are contingent upon approval of the 2017-2019 AEP Ohio EE/PDR plan, including funding and any other necessary mechanism to ensure the continued recovery of net lost distribution revenues. Sierra Club agrees to support the approval of budgets necessary to reach these goals and components of the EE/PDR rider, including shared savings at current approved levels. Nothing in this paragraph affects a customer's opt-out right under R.C. 4928.6612, as that provision was enacted in 2014 by S.B. 310. (Joint Ex. 1 at 28.)

Carbon Emission Reduction Plan (Section III.E)

By December 31, 2016, AEP Ohio will file a carbon emission reduction plan indicating how the Company and its affiliates intend to promote fuel diversification and carbon emission reduction, including an analysis of the economic impact of any proposals for the Commission's consideration. AEP Ohio will incorporate AEP's activities and plans relating to carbon reduction into the filed carbon emission reduction plan. For example, AEP's goals for transforming its generation fleet (while maintaining 6 percent nuclear generation) include: (1) reducing reliance on coal/lignite generation from 74 percent in 2005 to 48 percent by 2026; (2) increasing natural gas generation from 17 percent in 2005 to 25 percent by 2026; (3) increasing hydro/wind/solar/pumped storage from 3 percent in 2005 to 15 percent in 2026; and (4) increasing energy efficiency/demand response from less than 1 percent in 2005 to 6 percent in 2026. Reliance on resources with higher carbon emissions may be replaced with renewable resources, energy efficiency, and other advanced technologies, including batteries. (Joint Ex. 1 at 28-29.)

Fuel Diversification (Section III.F)

AEP Ohio will implement programs to promote fuel diversity and carbon emission reductions to address potential environmental regulations in the future, including an

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analysis of the economic impact of any proposals for the Commission's consideration. AEP Ohio will explore programs including the conversion of fuel sources at the PPA units, energy efficiency plans, the closure of the PPA units, and the siting of renewable energy generation. Any programs implemented by AEP Ohio will be subject to the assurance of recovery for prudently incurred costs. (Joint Ex. 1 at 29.)

Grid Modernization (Section III.G)

AEP Ohio will explore avenues to empower consumers through grid modernization initiatives that promote customer choice in Ohio. As part of its June 1, 2016 grid modernization business plan, AEP Ohio will highlight future initiatives, including, but not limited to, the following options:

- i. Installing advanced metering infrastructure.
- ii. Investing in Distribution Automation Circuit Reconfiguration.
- iii. Pursuing Volt-VAR Optimization.
- iv. Removing obstacles for distributed generation.
- v. Consulting with Staff on net-metering tariffs.

(Joint Ex. 1 at 29-30.)

AEP Ohio's June 1, 2016 plan will include, but not be limited to, data sharing provisions, subject to customer consent, and full smart grid/meter deployment timelines. AEP Ohio will work with the signatory parties prior to filing the plan. (Joint Ex. 1 at 30.)

Battery Technology (Section III.H)

Contingent on battery resources being eligible for inclusion in rate base in conjunction with the provision of distribution services, AEP Ohio will include such battery resources in future filings before the Commission (Joint Ex. 1 at 30).

Environmental and Renewable Energy Projects (Section III.I)

1. AEP Ohio and its affiliates will develop a total of at least 500 MW nameplate capacity of wind energy projects in Ohio as follows (Joint Ex. 1 at 30).

- a. The individual projects will be proposed over the course of the next four years, following adoption of the stipulation (Joint Ex. 1 at 30).

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- b. AEP Ohio will file EL-RDR applications under the PPA rider to initiate approval for retail cost recovery associated with each project. AEP Ohio agrees to use its best efforts to seek Commission approval for these filings. (Joint Ex. 1 at 30.)
- c. AEP affiliates will have the right, based on commercially reasonable terms, to initially own up to 50 percent of such projects on an aggregate net basis based on installed capacity. Ownership details will be established for each project individually. Such projects will be competitively bid. AEP will consult with Staff regarding the process by which projects are selected for advancement. The request for proposal process will be commenced within 45 days of a Commission order adopting the stipulation. Subject to timely regulatory approvals, the projects will commence construction by the deadline for eligibility of benefits available under the CPP. The projects are not contingent on the CPP taking effect. (Joint Ex. 1 at 30-31.)
- d. AEP Ohio will be the buyer of a long-term PPA (i.e., 10 years or longer) for each project, including all capacity, energy, ancillaries, and renewable energy credits produced by the project. Capacity, energy, and ancillary services for all projects will be liquidated into the PJM markets with resulting revenues being credited to retail customers. Renewable energy credits not reserved for compliance will be liquidated into the markets with resulting revenues being credited to retail customers. (Joint Ex. 1 at 31.)
- e. The commitment is premised upon AEP Ohio receiving full cost recovery (based on a PPA structure) through the PPA rider with details (except for the rate design provided for below) to be determined as part of the separate EL-RDR filing.²² In reviewing such applications, the Commission will consider, among other relevant matters, the economics and proposed PPA price associated with each project, as compared to other available market prices for such projects. (Joint Ex. 1 at 31.)
- f. The wind energy projects will be completed by 2021 subject to timely regulatory approvals (Joint Ex. 1 at 31).

²² Except as explicitly indicated, nothing in this section shall be interpreted to limit the rights of the signatory parties to fully participate or take positions (for or against) in EL-RDR proceedings relating to the terms of any individual project.

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2. AEP Ohio will develop a total of at least 400 MW nameplate capacity for a solar energy project(s) in Ohio, subject to Commission approval and cost recovery (based on a PPA structure) through the PPA rider with details (except for the rate design provided for below) to be determined as part of the separate EL-RDR filing. The same approach and parameters described above in Sections III.I.1.a through III.I.1.e of the stipulation will apply to the solar project(s). In lieu of Section III.I.1.f that is applicable to the wind energy projects, AEP Ohio and its affiliates will commit to use best efforts to complete the solar energy projects by 2021. In addition, preference will be given to solar projects that are sited in Appalachian Ohio, create permanent manufacturing jobs in Appalachian Ohio, and commit to hiring Ohio military veterans. (Joint Ex. 1 at 31-32.)

3. The rate design to be used for recovery of any net costs or flow through of any net credits associated with both the wind and solar renewable energy projects described above in Sections III.I.1 and III.I.2 shall be a uniform per kWh charge for all monthly consumption up to 833,000 kWh per customer account. This rate design shall apply for the life of the projects. (Joint Ex. 1 at 32.)

4. MAREC and its members will support Commission approval of, and full cost recovery for, the wind projects described in the stipulation. AEP Ohio and MAREC will collaborate on siting policy advocacy and advocacy for a reasonable renewable portfolio standard post-S.B. 310 freeze. AEP Ohio agrees to advocate for a reasonable energy efficiency portfolio standard post-S.B. 310 freeze. (Joint Ex. 1 at 32.)

Transition Provision (Section III.I)

1. Regarding termination and transition of the ESP under R.C. 4928.143(E), the signatory parties agree that the following ordering transition must occur under the fourth-year test required by R.C. 4928.143(E) (Joint Ex. 1 at 32).

- a. Termination shall only be ordered following: (i) the Commission's test of the plan, which shall include consideration of the prospective quantitative and qualitative effects of the remaining term, including the impact of termination on the financial health of AEP Ohio; and (ii) a finding that the results of the test conclude that the remaining term of the ESP is no longer more favorable than an MRO and a finding that the remaining term of the ESP is substantially likely to result in significantly excessive earnings for the Company (Joint Ex. 1 at 33).
- b. Termination shall not affect the continued cost recovery under the PPA rider or the DIR (Joint Ex. 1 at 33).

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- c. Any additional credits funded by AEP Ohio under Section III.A.3 of the stipulation shall be reflected in the Company's earnings for purposes of the SEET and the MRO test under R.C. 4928.143 (Joint Ex. 1 at 33).

The Three-Part Test for Commission Approval (Section III.K)

The signatory parties agree²³ that the stipulation satisfies the three-part test traditionally used by the Commission to consider stipulations. Specifically, the signatory parties agree that: (a) the stipulation is a product of serious bargaining among capable, knowledgeable parties representing diverse interests; (b) the stipulation does not violate any important regulatory principle or practice; and (c) the stipulation, as a whole, benefits customers and the public interest. (Joint Ex. 1 at 33.)

MRO Test Results (Section III.L)

The signatory parties agree that the stipulation preserves and advances the positive results of the MRO versus ESP test under R.C. 4928.143(C) as found in the Opinion and Order in the *ESP 3 Case*²⁴ (Joint Ex. 1 at 34).

Procedural Matters (Section IV)

A. Recognizing the value of a timely ruling by the Commission to achieve the benefits described in the modified application, the signatory parties urge the Commission to render a decision adopting the stipulation no later than February 10, 2016, in order to capture some of the anticipated financial benefits relating to typically colder months with higher energy prices in early 2016 (Joint Ex. 1 at 34).

B. AEP Ohio will file testimony in support of the stipulation pursuant to the procedural schedule established by the Commission (Joint Ex. 1 at 34).

C. Except for enforcement purposes or to establish that the terms of the stipulation are lawful, neither the stipulation nor the information and data contained in the stipulation or attached to the stipulation shall be cited as a precedent in any future proceeding for or against any signatory party, if the Commission approves the stipulation. Nor shall the acceptance of any provision within the settlement agreement be cited by any party or the Commission in any forum so as to imply or state that any signatory party agrees with any specific provision of the settlement. More specifically, no specific element or item contained in or supporting the stipulation shall be construed or applied to attribute the results set forth in the stipulation as the results that any signatory party might

²³ Sierra Club, Direct Energy, and IGS agree not to oppose this provision.

²⁴ Sierra Club is not participating in this provision but agrees not to oppose it.

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support or seek, but for the stipulation in these proceedings or in any other proceeding. The stipulation contains a combination of outcomes that reflects an overall compromise involving a balance of competing positions, and it does not necessarily reflect the position that one or more of the signatory parties would have taken on any individual issue. Rather the stipulation represents a package that, taken as a whole, is acceptable for the purposes of resolving all contested issues without resorting to litigation. The signatory parties believe that the stipulation, taken as a whole, represents a reasonable compromise of varying interests. (Joint Ex. 1 at 34-35.)

D. If a court of competent jurisdiction invalidates the application of the PPA rider proposal in whole or in part, AEP Ohio will permit any part of the stipulation that has not been invalidated to continue while a good faith effort is made by the signatory parties to restore the invalidated provision to its equivalent value. The signatory parties agree to work in good faith, on an expedited basis not to exceed 60 days, to cure any court-determined deficiency. AEP Ohio will then file (or jointly file with the signatory parties) the modification to the PPA rider, or its successor provision, for expedited approval by the Commission, which approval shall not be withheld if the modified PPA rider, or its successor provision, provides a reasonable remedy to cure the deficiency. AEP Ohio's agreement to permit the stipulated provisions to go into effect in this manner is contingent upon the signatory parties supporting the modified PPA rider, or its successor provision. A signatory party may choose to oppose and express any concerns with the modified PPA rider, or its successor provision, to the Commission; however, if such concerns are not accepted by the Commission, then any signatory party that opposed the modified PPA rider, or its successor provision, will forfeit its stipulated provision(s). This commitment on severability is not intended and shall not be construed to affect the prohibition against retroactive ratemaking. No amounts collected shall be refunded as a result of this severability provision. (Joint Ex. 1 at 35.)

E. The signatory parties will support the stipulation if the stipulation is contested,²⁵ and no signatory party will oppose an application for rehearing designed to defend the terms of the stipulation (Joint Ex. 1 at 36).

F. The stipulation and AEP Ohio's ongoing commitments under the stipulation presume and are conditioned on an outcome of the rehearing issues pending in the *ESP 3 Case* and any appeals that affirm the continued existence of the PPA rider and that facilitate the application to extend the ESP 3 term consistent with the terms of the stipulation (Joint Ex. 1 at 36).

G. The stipulation is conditioned upon adoption of the stipulation by the Commission in its entirety and without material modification. If the Commission rejects

²⁵ Sierra Club, Direct Energy, and IGS are not obligated to support the stipulation.

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or materially modifies all or any part of the stipulation, any signatory party shall have the right within 30 days of issuance of the Commission's order to apply for rehearing. The signatory parties agree that they will not oppose or argue against any other party's application for rehearing that seeks to uphold the original unmodified stipulation. If the Commission does not adopt the stipulation without material modification upon any rehearing ruling, then within 30 days of such Commission rehearing ruling any signatory party may terminate and withdraw from the stipulation by filing a notice with the Commission. If the Commission does not act upon the application(s) for rehearing in support of the stipulation as filed within 45 days of the filing of the application(s) for rehearing, then any signatory party may terminate its signatory party status by filing a notice with the Commission of its withdrawal from the stipulation. (Joint Ex. 1 at 36.)

H. Unless the signatory party exercises its right to terminate its signatory party status or withdraw as described above, each signatory party agrees to and will support the reasonableness of the stipulation before the Commission, and to cause its counsel to do the same, and in any appeal that it participates in from the Commission's adoption and/or enforcement of the stipulation.²⁶ The signatory parties also agree to urge the Commission to accept and approve the terms of the stipulation as promptly as possible.²⁷ (Joint Ex. 1 at 37.)

I. As set forth in Section III.C of the stipulation, AEP Ohio agrees to file a separate application with the Commission seeking to extend its current ESP to May 31, 2024. AEP Ohio further agrees to include in that application, among other appropriate proposals to be developed, certain provisions and features specified in Section III.C of the stipulation. If the Commission denies AEP Ohio's request to include in its extended ESP any of the provisions and features specified in Section III.C, any adversely affected signatory party agrees to work in good faith with the Company to develop new provisions to restore or replace the invalidated provision to its equivalent value and jointly request approval of any new agreed to provisions by the Commission. If such signatory parties are unable to reach agreement, each of those signatory parties may petition the Commission for appropriate relief limited to the equivalent value of the specific provision that is not included in AEP Ohio's extended ESP. (Joint Ex. 1 at 37.)

J. The parties agree that specific performance is an appropriate remedy for enforcement of the stipulation. The signatory parties acknowledge and agree that specific performance is the only appropriate remedy for any breach of the stipulation, and under

²⁶ Whether or not Sierra Club exercises its right to terminate its signatory party status or withdraw as described above, Sierra Club and its counsel are not obligated to support the reasonableness of the stipulation before the Commission. Sierra Club and its counsel agree not to oppose the stipulation before the Commission.

²⁷ Sierra Club agrees not to oppose this provision.

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no circumstances shall monetary damages be allowed for any breach of the stipulation. In the event any action should be necessary to enforce the terms and conditions of the stipulation, each party shall bear its own attorneys' fees and costs, including the fees and costs of enforcing any judgment. The signatory parties shall receive written notice within 30 days of any alleged breach of the stipulation or its discovery. Upon receipt of any written notice of breach, the signatory party has 30 days to cure the alleged breach. If after 30 days the alleged breach has not been cured to the satisfaction of the signatory party alleging the breach, the signatory party alleging a breach of the stipulation may seek specific performance at the Commission, consistent with this paragraph. (Joint Ex. 1 at 37-38.)

C. Consideration of the Stipulation

As happens in many cases before the Commission, certain parties filed a stipulation, which they specifically describe as the culmination of discussions and accommodation of diverse interests. Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 30, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?

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- (3) Does the settlement package violate any important regulatory principle or practice?

The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve cases in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

As an initial matter, several of the non-signatory parties argue that the stipulation should not be held to the same standard as previously used by the Commission, as many of the components are not germane to the proposed PPA rider and are unrelated to the scope of these proceedings (OCC/APJN Br. at 13-16, 55; ELPC/EDF/OEC Br. at 52-54). However, under the three-prong test, the Commission always carefully reviews all terms and conditions of the proposed stipulation, in order to determine whether the stipulation is in the public interest. In making this determination, we exercise our independent judgment, based upon our statutory authority, the evidentiary record, and the Commission's specialized expertise and discretion. *Monongahela Power Co. v. Pub. Util. Comm.*, 104 Ohio St.3d 571, 2004-Ohio-6896, 820 N.E.2d 921, ¶ 29.

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?

a. Summary of Parties' Positions

Addressing the first part of the Commission's three-part test, AEP Ohio witness Allen testified that the stipulation is the product of serious bargaining among capable, knowledgeable parties. In support of his position, Mr. Allen explained that he attended settlement meetings held at the offices of the Commission, as well as several meetings with individual parties, which resulted in the stipulation. Mr. Allen further explained that the signatory parties represent a variety of diverse interests, including entities advocating on behalf of low-income customers, commercial customers, industrial customers, competitive retail electric suppliers, electric generators, and environmental interests. According to Mr. Allen, the stipulation is the result of a lengthy process of negotiation involving experienced counsel representing members of many stakeholder groups. Specifically, Mr. Allen noted that the parties met with AEP Ohio to discuss areas of potential settlement prior to commencement of the evidentiary hearing on September 28, 2015, and, following the conclusion of the hearing and the extension of the briefing schedule, continued their settlement meetings and communications over a period of several weeks before the stipulation was filed on December 14, 2015. Mr. Allen added that the parties involved in the negotiations were capable and knowledgeable with respect to the issues in these

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proceedings, particularly in light of the full evidentiary hearing that occurred prior to the last phase of negotiations and the more than 1,100 data request responses served by AEP Ohio. (Co. Ex. 52 at 1-2, 10-11.)

Parties opposing the stipulation aver the stipulation cannot meet the first criterion of the test used to evaluate the reasonableness of a stipulation, in light of two side agreements - one agreement between Sierra Club and AEPGR (Sierra Club/AEPGR Agreement) and the other agreement between IEU-Ohio and AEP Ohio (IEU-Ohio/AEP Ohio Agreement). Opposing intervenors primarily cite the IEU-Ohio/AEP Ohio Agreement. OMAEG and Dynegy state that the terms of the IEU-Ohio/AEP Ohio Agreement were not disclosed to any party during negotiations and that the agreement was only disclosed to all parties, signatory and non-signatory, through discovery after the stipulation was filed with the Commission. Accordingly, parties opposing the stipulation argue the integrity of AEP Ohio's negotiations with other signatory and non-signatory parties has been called into question such that the first component of the test cannot be met. *Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789, 856 N.E.2d 213, ¶ 86. (OMAEG Br. at 21-22; Dynegy Br. at 21-24.)

OCC/APJN and OMAEG contend the stipulation cannot comply with the first criterion of the three-part test, as the stipulation fails to include specific details of how AEP Ohio will comply with various provisions of the stipulation, the cost of each provision, primarily co-firing, retiring, and refueling of PPA units, and the rate impacts of each provision. Further, several opposing parties contend various provisions of the stipulation involve issues that do not directly relate to the PPA rider and evidence a lack of serious bargaining. In addition, OCC and APJN argue that the first prong of the test incorporates a diversity of interest component that this stipulation does not meet. (OCC/APJN Br. at 13, 32-42, 47-54; OMAEG Br. at 20-23.)

In response, AEP Ohio submits that, unlike the underlying case on which the opposing intervenors rely, IEU-Ohio is not a signatory party to the stipulation. *Consumers' Counsel* at ¶ 86. AEP Ohio emphasizes the IEU-Ohio/AEP Ohio Agreement requires IEU-Ohio to dismiss, withdraw, or limit its participation in several proceedings pending before the Commission and the Ohio Supreme Court, in addition to agreeing not to oppose the PPA stipulation. AEP Ohio notes the IEU-Ohio/AEP Ohio Agreement was provided in discovery and emphasizes the December 22, 2015 letter filed by IEU-Ohio in these dockets acknowledged the existence of the agreement. AEP Ohio argues that there is no basis to find that any party relied upon IEU-Ohio's agreement not to oppose the stipulation or was otherwise prejudiced by the IEU-Ohio/AEP Ohio Agreement. Thus, AEP Ohio contends the arguments asserting the agreement violates the first prong of the test to evaluate the stipulation are without merit. AEP Ohio notes that each of the provisions for which opposing intervenors claim there is insufficient information was the

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subject of a discovery response and could have been explored with Company witness Allen who testified in support of the stipulation. (Co. Reply Br. at 18-29.)

b. Commission Decision

The Commission acknowledges the existence of a side agreement can be relevant to a determination of whether serious bargaining occurred in the negotiation of a stipulation. *Consumers' Counsel* at ¶ 86. The Sierra Club/AEPGR Agreement was specifically referenced in the stipulation and essentially memorializes the commitments to pursue co-firing or conversion of specified PPA units (OMAEG Ex. 26; Joint Ex. 1 at 25). Therefore, the existence of the Sierra Club/AEPGR Agreement should have been obvious to all parties and the agreement was also provided in the course of discovery. The IEU-Ohio/AEP Ohio Agreement was not referenced in the stipulation and, therefore, the parties may not have known about the agreement. OMAEG and Dynegy state that the terms of the IEU-Ohio/AEP Ohio Agreement were not disclosed to any party during negotiations, although Company witness Allen testified some parties were aware of the IEU-Ohio/AEP Ohio Agreement (Tr. XIX at 4814). In the IEU-Ohio/AEP Ohio Agreement, IEU-Ohio agrees to not oppose the stipulation filed in these cases and agrees to withdraw from several other proceedings pending before the Commission and the Ohio Supreme Court, among other things (OMAEG Ex. 27; P3/EPISA Ex. 11).

The Commission notes that, in *Consumers' Counsel v. Pub. Util. Comm.*, the side agreement was between signatory parties and the side agreement was requested but not provided in discovery. *Consumers' Counsel* at ¶ 86. In this instance, the IEU-Ohio/AEP Ohio Agreement was acknowledged in the letter filed by IEU-Ohio on December 22, 2015, and the IEU-Ohio/AEP Ohio agreement was provided to all parties in the course of discovery (P3/EPISA Ex. 11; OMAEG Ex. 27). Further, AEP Ohio witness Allen testified that some but not all of the parties were aware of the IEU-Ohio/AEP Ohio Agreement before the stipulation was signed (Tr. XIX at 4814). Most importantly, the Commission notes the IEU-Ohio/AEP Ohio Agreement does not require IEU-Ohio to support or endorse the stipulation and IEU-Ohio is not a signatory party to the stipulation. As such, there is no indication that IEU-Ohio's agreement not to oppose the stipulation unduly influenced another party to these proceedings to sign or not to sign the stipulation. The Commission also emphasizes both the Sierra Club/AEPGR Agreement and the IEU-Ohio/AEP Ohio Agreement were provided in the course of discovery, consistent with R.C. 4928.145 (OMAEG Ex. 26; Co. Ex. 53; P3/EPISA Ex. 11; Tr. XXI at 5186-5188). Further, the Sierra Club/AEPGR Agreement and the IEU-Ohio/AEP Ohio Agreement have not been submitted to the Commission for approval and the Commission will not enforce the terms of the agreements. Thus, in this instance, the Commission finds the side agreements do not adversely affect whether serious bargaining occurred.

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The evidence of record conclusively demonstrates the participation of signatory and non-signatory parties in the negotiation sessions and demonstrates the knowledge and experience of the parties. The Commission also notes the parties participating in these cases are represented by experienced counsel familiar with Commission proceedings. The stipulation was negotiated after weeks of hearings on the Company's amended PPA application where numerous witnesses for AEP Ohio, various intervenors, and Staff offered testimony and were subject to cross-examination. (Co. Ex. 52 at 11; Tr. XXI at 5410-5411, 5419-5423.)

The Commission finds that it is not necessary that specific details of compliance, costs, and rate impacts for every commitment AEP Ohio agreed to undertake in the stipulation be known, at this time, for the stipulation to comply with the first prong of the test. The value of various provisions in the stipulation exists in AEP Ohio's commitment to make an application or filing with the Commission, or another signatory party's agreement to take certain actions, where there is otherwise no legal obligation to do so. Throughout the stipulation, AEP Ohio has agreed to develop the necessary details and file an application with the Commission for review and consideration. The stipulation cannot circumvent the authority of the Commission and, therefore, we find it reasonable for the stipulation to include provisions where the parties commit to the filing of an application for review by the Commission.

The Commission finds that the stipulation is the product of serious bargaining among capable, knowledgeable parties. All of the parties, including OCC, APJN, OMAEG, and Dynegy, were invited to attend multiple meetings to discuss settlement proposals, and were offered an opportunity to discuss the terms to be included in the stipulation. As AEP Ohio witness Allen testified, the parties in these cases routinely participate in rate matters before the Commission, are capable and knowledgeable with respect to regulatory matters, and are represented by experienced counsel. Additionally, contrary to OCC/APJN's position, the signatory parties represent a wide variety of diverse interests. Although OCC and APJN did not ultimately sign the stipulation, the interests of residential customers were represented during the settlement negotiations. (Co. Ex. 52 at 1-2, 10-11; Tr. XXI at 5419-5421.)

The three-prong test utilized by the Commission and recognized by the Ohio Supreme Court does not incorporate the diversity of interest component, as presented by OCC and APJN. We reject OCC/APJN's attempt to revise the test to evaluate stipulations based on the diversity of signatory parties (OCC Ex. 36 at 2; OCC Ex. 33 at 3). OCC also seeks to hold itself out as the only party speaking for the interests of residential consumers. The Commission has repeatedly determined that we will not require any single party, including OCC, to agree to a stipulation, in order to meet the first prong of the three-prong test. *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 13-1571-GA-ALT, Opinion and Order (Feb. 19, 2014) at 10; *In re FirstEnergy*, Case No. 12-1230-EL-SSO,

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Opinion and Order (July 18, 2012) at 26, citing *Dominion Retail, Inc. v. The Dayton Power and Light Co.*, Case No. 03-2405-EL-CSS, et al., Opinion and Order (Feb. 2, 2005) at 18, Entry on Rehearing (Mar. 23, 2005) at 7-8.

However, no particular customer class may be intentionally excluded from negotiations. The Ohio Supreme Court has previously expressed grave concern regarding the adoption of a partial stipulation where the stipulation arose from settlement talks from which an entire customer class was intentionally excluded. *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 233, 661 N.E.2d 1097 (1996). The record in these proceedings demonstrates that representatives of each of the customer classes, including the residential class, participated in the settlement negotiations (Co. Ex. 52 at 1-2, 10-11; Tr. at XXI at 5419-5423). There is no evidence in the record that an entire class of customers was excluded from the settlement negotiations. Furthermore, we note that OPAE is a signatory party to the stipulation. OPAE has described itself to the Commission as a "nonprofit organization representing the interest of over 60 nonprofits providing energy assistance to low income families throughout the state of Ohio" with the purpose "to promote affordable energy policies and preserve access to essential energy services for all Ohioans." In addition, the Commission notes that OPAE members operate bill assistance, weatherization, energy efficiency, and consumer education programs throughout Ohio.²⁸ On that basis, the Commission reasons that OPAE's ultimate clientele is primarily low and moderate-income residential consumers. Further, the Commission has previously considered OPAE an advocate on behalf of low and moderate-income customers. See, e.g., *In re FirstEnergy*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 26. Opposing intervenors have failed to offer any reason that the Commission should not regard OPAE in the same manner in these proceedings. Accordingly, we find that, based upon the record before the Commission, considering that all provisions of the stipulation and the other agreements among certain parties were fully and adequately disclosed, the stipulation is the product of serious bargaining among capable, knowledgeable parties.

2. Does the settlement, as a package, benefit ratepayers and the public interest?

a. Introduction

According to the second prong of our three-prong test, the Commission must determine whether the settlement, as a package, benefits ratepayers and the public interest. Although the non-signatory parties have raised numerous concerns regarding the stipulation, we are persuaded that the stipulation, as a package, benefits ratepayers and the public interest. As discussed below, the evidence in the record demonstrates that the

²⁸ *In re Commission Review of Ohio Adm.Code Chapters 4901:1-17 and 4901:1-18*, Case No. 03-888-AU-ORD, Joint Comments (June 12, 2003) at 4; *In re Ohio Department of Development*, Case No. 08-658-EL-UNC, Motion to Intervene (July 9, 2008) at 3.

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stipulation, as modified, contains consumer protections that will protect consumers against rate volatility and price fluctuations by promoting retail rate stability for all ratepayers in this state, modernize the grid through the deployment of advanced technology and procurement of renewable energy resources, and promote retail competition by enabling competitive providers to offer innovative products to serve customers' needs.

b. Summary of Signatory Parties' Positions

With respect to the second part of the three-part test, AEP Ohio witness Allen testified that the settlement, as a package, benefits ratepayers and the public interest. Specifically, Mr. Allen explained that the stipulation is designed to provide adequate, safe, reliable, and predictably priced electric service and to support economic development and job retention in the state of Ohio. Noting that the affiliate PPA and the PPA rider were initially proposed by AEP Ohio to promote retail rate stability and economic development, Mr. Allen testified that, as part of the stipulation, the Company has now proposed a revised affiliate PPA that includes a lower fixed ROE, producing customer savings of \$86 million, and a shorter contract term, resulting in reduced uncertainty. Mr. Allen added that the stipulation includes credits to customers that could amount to up to \$100 million during the last four years of the PPA. Finally, Mr. Allen noted that other customer benefits provided by the stipulation include a significant extension of the term of AEP Ohio's current ESP; commitments to advocate at the federal level; proposals to include enhancements to the competitive retail market in Ohio; commitments to enhance energy efficiency programs; commitments to reduce the carbon emissions of power plants in Ohio; commitments to seek to expand wind and solar energy resources by 900 MW in Ohio; and commitments to explore grid modernization. (Co. Ex. 52 at 1, 13-14.)

In terms of the estimated impact of the stipulation on customer rates, Mr. Allen testified that, upon implementation, the stipulation is projected to increase residential customer rates by approximately \$0.62 per month, or 0.5 percent, for a typical customer using 1,000 kWh per month, with the rates for all other customer classes estimated to either decline or increase by less than 1 percent. Mr. Allen noted that, in combination with AEP Ohio's recently implemented ESP, a residential customer using 1,000 kWh per month will experience a decrease on average of approximately \$9 per month as compared to March 1, 2015. Mr. Allen also noted that, over the term of the PPA, customers are forecasted to receive \$721 million in net credits from the PPA rider. (Co. Ex. 52 at 14-15, Ex. WAA-2.)

In its brief, AEP Ohio argues that the stipulation satisfies the second part of the three-part test for several reasons. First, AEP Ohio asserts that the evidence reflects that customers are expected to sufficiently benefit from the PPA rider's financial hedging mechanism, with a net financial benefit expected for the period covered by the Company's

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projections. Specifically, AEP Ohio notes that the record demonstrates that there is a reasonable expectation of a long-term financial benefit from the PPA rider, as supported by the Company's four different scenarios reflecting a range of impacts that load volatility can have on the rider's revenues and costs: a weather normalized load case; a case with a five percent increase in load, compared to the weather normalized case; a case with a five percent decrease in load, compared to the weather normalized case; and a case with an average of a five percent increase and five percent decrease in load for each year. AEP Ohio explains that the five percent higher load and lower load cases were presented to demonstrate the true hedge value of the PPA rider by showing that weather and other load variability factors can have an asymmetric impact on electric prices, such that, as compared to a given weather normalized case, load shifts up tend to increase prices more so than the price decreases that may result when load shifts down. According to AEP Ohio, its analysis shows that, if load increases due to a strengthening economy or weather volatility, as experienced during the recent polar vortex, both shopping and SSO customers will be exposed in an asymmetric manner to the resulting higher wholesale prices, which the PPA rider will then partially offset. AEP Ohio concludes that the five percent higher and lower load cases demonstrate the upward potential for customer benefit, while the average net credit calculation of \$721 million is a reasonable value to rely upon over the study period as a likely overall result. AEP Ohio also asserts that the PPA rider will protect customers from price volatility and supplement the benefits derived from the staggering and laddering of SSO auctions, which may mask the impact on customers of rising market prices but cannot offset the impacts in the same way as the PPA rider. In sum, AEP Ohio emphasizes that the PPA rider will benefit customers by using a diversified portfolio, sourced from 20 generation units, to provide a cost-based hedge against market prices, which provides a more balanced approach than relying solely on market-based pricing. (Co. Br. at 73-79, 91-98; Co. Reply Br. at 62-65, 74-79.)

AEP Ohio also points out that the use of forwards prices by OCC and other intervenors to project the PPA rider's impact is flawed in a number of ways. In particular, AEP Ohio argues that forwards prices are not a forecast of future spot market prices and do not have any connection to what future spot market prices might actually be; the market for electric energy forwards is illiquid, except in the short term, and, therefore, cannot provide a sound basis for a long-term forecast; forwards prices do not account for long-term factors such as the impact of the CPP on energy prices in the future; and forwards prices are not available for the latter part of the PPA term. In response to criticism that AEP Ohio used outdated data for its own PPA rider projections, the Company emphasizes that, contrary to certain parties' claims, the 2015 fundamentals forecast was not finalized, released, and available for use when the amended application was filed and that it was, therefore, reasonable for the Company to proceed with the amended application based on the 2013 fundamentals forecast, which Company witness Bletzacker testified is within a band of credibility. Further, AEP Ohio asserts that the load projections used in the 2013 fundamentals forecast are reliable and properly account for

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factors like the CPP and energy efficiency measures, contrary to arguments raised by certain intervenors. (Co. Reply Br. at 65-72.)

Next, AEP Ohio emphasizes that the stipulation provides significant customer benefits, including its modifications to the PPA rider proposal and the combination of both the OVEC PPA and the affiliate PPA in the rider to provide a significant financial hedge for all customers; the additional PPA rider credits of up to \$100 million to ensure efficient operations and maximize revenues; the initial \$4 million annualized credit and the rider's improved rate design; and the regulatory approvals and reporting commitments, which provide additional protections for customers. AEP Ohio notes that the difference between the amended application's initial variable ROE of 11.24 percent and the stipulation's fixed ROE of 10.38 percent for the shortened term of the PPA proposal yields savings of \$86 million for retail customers. AEP Ohio cites the stipulation's commitments regarding the proposed extended ESP filing as additional benefits, particularly the provisions addressing the automaker credit and the CIR pilot program, which are benefits that would not otherwise exist in the absence of the stipulation. Next, AEP Ohio points out that there are numerous provisions regarding grid modernization, carbon reduction and fuel diversification, and battery technology and Volt/VAR Optimization that provide important environmental, energy efficiency, demand reduction, and customer choice benefits that will help transform the Company into a utility of the future through significant resource investment in Ohio's energy future and empowerment of customer choice. (Co. Br. at 99-109; Co. Reply Br. at 72-74.)

Further, AEP Ohio notes that it has undertaken certain obligations that uniquely address environmental and renewable energy issues and significantly move forward advanced energy development in Ohio, while providing added benefits to the Company's customers, creatively advancing energy policy within the state, and facilitating opportunities to positively impact the environment. In particular, AEP Ohio emphasizes that the stipulation addresses the Company's commitment to deploy coordinated conversions of certain coal burning operational units to natural gas or, alternatively, retire or repurpose the coal units over a responsible and reasonable timeframe, which will advance carbon reduction and reduce other environmental impacts of coal use, as well as the Company's commitment to develop a total of at least 500 MW of nameplate capacity of wind energy projects and 400 MW of nameplate capacity of solar energy projects, which would become part of the portfolio of renewable assets within Ohio used to address CPP requirements. Further, AEP Ohio asserts that several provisions of the stipulation promote retail competition and additional customer shopping, including the CIR pilot program, pilot supplier consolidated billing program, and a pilot related to customer enrollments; address beneficial EE/PDR commitments; and provide commitments to proactively and cooperatively work to improve the PJM markets. Again, AEP Ohio emphasizes that many of these provisions provide significant benefits that can only be achieved as a result of the stipulation, while the environmental, renewable energy

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resource, and energy efficiency provisions have the added benefit of facilitating the state's compliance with the CPP by providing clarity regarding future planning and preserving numerous options for meeting carbon emission targets. (Co. Br. at 109-131; Co. Reply Br. at 80-83.)

OEG emphasizes that the stipulation, as a package, includes several beneficial modifications to AEP Ohio's amended application that are in the public interest. Specifically, OEG notes that the stipulation shortens the PPA term and protects customers from paying retirement-related costs associated with the PPA units; reduces the ROE received by AEPGR from a potential maximum of 15.90 percent to a fixed 10.38 percent, which reduces potential PPA costs by \$67.3 million annually, or \$539 million over the PPA term; adds a guaranteed \$100 million customer credit in the last four years of the PPA; establishes a reasonable cost allocation and rate design for the PPA rider; commits AEPGR to full information sharing with Staff; limits the circumstances under which the PPA's liquidated damages provision would apply and substantially reduces the potential amount of liquidated damages that customers would pay if the provision is triggered; and expands the Commission's authority over the PPA rider by expressly recognizing that the Commission can exclude or retain a PPA unit from the rider upon its sale or transfer, review the prudence of any future modifications to the PPA, and review the prudence of any depreciation rate changes under the PPA. OEG asserts that these provisions benefit customers by significantly reducing the potential adverse rate impacts associated with AEP Ohio's PPA proposal and expressly recognizing the Commission's authority to engage in rigorous oversight of the PPA and PPA rider. (OEG Br. at 3-6.)

Additionally, OEG contends that the supplemental provisions in the stipulation are aimed at achieving environmental, economic, energy choice, and reliability benefits for retail customers and the state and are, therefore, in the public interest. OEG adds that the total package of supplemental provisions in the stipulation is reasonable, particularly given that the Commission will have the opportunity to review and determine whether to approve many of the provisions in subsequent proceedings. Finally, OEG notes that the stipulation provides a preview of several beneficial components of AEP Ohio's next ESP filing, which OEG believes should ultimately be adopted by the Commission in the next ESP proceeding, including the extension and limited expansion of the IRP tariff and the increase in the IRP credit, establishment of the automaker credit to encourage increased production or expansion at automaker facilities, and the transmission pilot program that would allocated costs under the BTCR consistent with principles of cost causation. (OEG Br. at 6-11.)

Staff argues that the stipulation must be evaluated as a package and, as such, it includes a number of significant benefits that further the public interest. Staff also emphasizes that the stipulation will ensure that the PPA units are managed efficiently and bid competitively in the PJM markets, while supporting economic development and job

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retention in the state and facilitating the provision of adequate, safe, and reliable electric service. With respect to arguments that AEP Ohio will lack incentive to maximize revenues, Staff points out that the Company must work cooperatively with AEPGR to contain costs and that the Company's actions will be subject to the Commission's oversight. With respect to provisions of the stipulation that are not related to the PPA proposal, Staff notes that such provisions seek to provide significant value for ratepayers, such as by aiding low-income families and ensuring reliable electric service at hospitals, and, in any event, will be subject to subsequent Commission review, which will provide parties with proper due process at that time. (Staff Br. at 7-13; Staff Reply Br. at 4-5, 8, 10, 11-12, 14-16.)

IGS and Direct Energy assert that the provisions of the stipulation related to the guaranteed discount rate referral program, CIR, supplier consolidated billing program, and grid modernization and expansion of advanced metering will contribute to the development of the competitive market, enhance customer education regarding retail electric choice, promote comparable and unbundled rate structures, increase the availability of innovative products and services, and result in direct savings to customers (IGS/Direct Energy Br. at 4-9; IGS/Direct Energy Reply Br. at 5-9). MAREC emphasizes that the provision in the stipulation requiring AEP Ohio to develop at least 500 MW nameplate capacity of wind energy projects in Ohio would provide cost savings to customers through federal renewable energy production and investment tax credits, as well as provide substantial economic benefits through new jobs and local tax payments (MAREC Br. at 2-4).

Buckeye notes that it supports AEP Ohio's PPA proposal, because it advances rate stability by providing a hedge against market volatility and furthering fuel supply diversity, promotes electric system reliability by providing long-term cost support for important coal-fired baseload plants in Ohio, and is economically beneficial to the state by more than \$550 million annually. Buckeye emphasizes that permitting a portion of AEP Ohio's and AEPGR's generation portfolios to be dedicated to the Company's customers on a traditional cost-of-service basis, while relying on the market to serve the remaining portion, is a superior alternative to complete reliance on volatile markets and one that is consistent with Buckeye's own business model, particularly where the goal is to ensure that a sufficient and diverse portfolio of generation resources is in place to meet the requirements of Ohio consumers for reliable and affordable electric service. Buckeye adds that it prefers to continue its successful joint operation of the Cardinal Station with a partner like AEPGR that has a similar business model and long-term investment philosophy. Further, Buckeye argues that, if the Commission does not approve the PPA proposal, and if AEP Ohio and AEPGR immediately sell or retire their interests in OVEC and the Cardinal Station, the sale or retirement may result in a misalignment of interests between Buckeye and the new owners of the Cardinal Station and OVEC, causing Buckeye to incur stranded costs related to its significant unamortized investments in the Cardinal

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Station and OVEC, respectively; increased costs to Buckeye associated with the termination of AEPGR's operation and maintenance of the Cardinal Station and OVEC units and the provision of back-up power to Buckeye under the Cardinal Station Agreement (CSA); and increased transmission costs to Buckeye and its members with no increase in transmission reliability. (Buckeye Br. at 6-19.)

OHA asserts that the stipulation strikes a fair and reasonable balance between the interests of the shareholders of AEP Ohio's parent company and its Ohio customers, because, in exchange for financial stability for the PPA units, the Company's customers will receive the benefits of faster progress towards a cleaner and more energy efficient environment. As specific customer benefits, OHA emphasizes the stipulation's inclusion of provisions addressing AEP Ohio's commitments to file a carbon reduction plan and a grid modernization proposal, including the deployment of Volt/VAR Optimization technologies; to retire, refuel, or repower certain PPA units; to develop at least 900 MW of renewable energy resources; and to enable OHA to continue its work with members on the implementation of cost-effective energy efficiency measures and the reduction of the carbon footprint of hospitals in the Company's service territory. (OHA Reply Br. at 2-3.)

c. Summary of Non-Signatory Parties' Positions

The Market Monitor asserts that the PPA rider should not be approved for a number of reasons. First, the Market Monitor contends that the PPA rider improperly shifts costs and risks from shareholders to customers and distorts competitive incentives in the PJM capacity market. Next, the Market Monitor points out that it is not in the interest of Ohio customers to assume the risks and bear the costs associated with the PPA rider units, given that AEP Ohio does not believe that the units are profitable or expect that market conditions will make them profitable in the future. The Market Monitor also argues that the new PJM capacity market design increases the performance incentives for capacity resources; however, under AEP Ohio's PPA proposal, customers would bear the risks associated with the PPA units' performance and the Company would not have the same incentives to manage the performance of the units, because customers would pay any penalties. (IMM Br. at 2-5.)

Further, the Market Monitor maintains that the PPA rider would create subsidies that are analogous to subsidies that were found to be inconsistent with competition in the PJM wholesale power market design. *PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467 (4th Cir. 2014) (*Nazarian*); *PPL EnergyPlus, LLC v. Solomon*, 766 F.3d 241 (3d Cir. 2014) (*Solomon*). Specifically, the Market Monitor notes that the PPA rider would create strong incentives for AEP Ohio to offer its capacity at less than the competitive offer level, which would have price suppressive effects on the wholesale power markets and make it difficult for other generating units without subsidies to compete or build new generation. Additionally, the Market Monitor asserts that the market paradigm is the preferred

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approach for providing reliable wholesale power at the lowest possible cost and that the PPA rider is not consistent with the competitive retail and wholesale market design that exists in Ohio. Finally, the Market Monitor notes that PJM and FERC may address the threat posed by the PPA rider through market rule changes, in particular by expanding the minimum offer price rule (MOPR) to include all new and existing generating units that receive subsidies and preventing such units from being offered into the capacity market at less than an unsubsidized competitive offer level. The Market Monitor points out, however, that if AEP Ohio were thereby required to offer the PPA units at the competitive level and the units do not clear in the capacity market, there would be no market revenues and customers would receive no offset to the costs that they would be required to pay under the PPA rider. (IMM Br. at 5-9; IMM Reply Br. at 15-17.)

Dynegy also argues that AEP Ohio's PPA proposal, as modified by the stipulation, will distort the wholesale markets and negatively impact the retail market in Ohio. In particular, Dynegy contends that the general wholesale power market concept requires a market design that results in the appropriate incentives and that AEP Ohio's PPA proposal is inconsistent with the market paradigm; the wholesale PJM market has been delivering long-term energy pricing stability, which would be threatened by a return to regulation in Ohio; the PPA proposal is inconsistent with competition in the PJM wholesale power market and will create strong incentives for the Company to offer the capacity at less than a competitive offer level; and the distortion of wholesale markets results in retail market uncertainty and puts new generating siting at risk. Dynegy further argues that the PPA proposal would also enable AEPGR to unfairly compete against Dynegy and other wholesale merchant generators for years and that Dynegy's ownership relationship with AEPGR with respect to the jointly owned units will be impacted as a result of the PPA, as AEPGR will have a disincentive to make strategic decisions intended to maximize the profitability of the units. (Dynegy Br. at 8-21.)

Further, Dynegy maintains that the stipulation fails the second part of the three-part test for several other reasons. Dynegy argues that the annual PPA rider credit or charge is an amount that cannot be accurately estimated and will vary significantly from year to year, resulting in unknown market risk for ratepayers that is not justified by any provision of the stipulation; the risk to the competitive markets and the development of new generation in Ohio is not in the public interest; and the risk to ratepayers and the markets is not worth the illusory claim of rate stability, with the quarterly reconciliation process resulting in significant swings in rates, or the other purported benefits of the stipulation that are not related to the PPA rider, which constitute favor trading and should not be considered by the Commission. Dynegy also contends that neither AEPGR nor OVEC intends to close its plants; additional generation is being developed in Ohio; AEP Ohio has exaggerated the level of wholesale market volatility; and the Company should not be allowed to return the PPA units to a hybrid cost-of-service model at the expense of ratepayers and other merchant generators, which must depend solely on the markets to

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provide revenue and are harmed when subsidies suppress market prices below adequate or reasonable levels. (Dynergy Br. at 25-32; Dynergy Reply Br. at 5-14.)

RESA, Exelon, P3, and EPSA contend that the PPA proposal in the stipulation is contrary to the second part of the three-part test for several reasons. First, RESA, Exelon, P3, and EPSA claim that the PPA proposal was crafted as a subsidy for the PPA plants, because AEP is advocating for the affiliate PPA as part of its overall business strategy in pursuit of its own financial interests; only affiliate plants that allegedly are at economic risk were considered for the proposal; the proposal is intended to provide an affiliate with a guaranteed income stream and profit margin for years; and the proposal will shift market risk, environmental compliance risk, and the risk associated with Capacity Performance penalties from shareholders to ratepayers. RESA, Exelon, P3, and EPSA emphasize that numerous witnesses representing a diverse group of stakeholders testified that the PPA proposal shifts risks to ratepayers and constitutes a subsidy, which AEP Ohio did not refute. (RESA/Exelon Br. at 9-19; P3/EPSA Br. at 53-55.)

Additionally, RESA, Exelon, P3, and EPSA argue that the Commission should continue to support the development of competitive markets, whereas the PPA proposal would move Ohio back toward re-regulation, discourage bidders from participating in the SSO auctions, and deter the development of new gas-fired generation that would be in competition with the subsidized PPA plants. Claiming that AEP Ohio has no prospect of providing ratepayers with a financial hedge, RESA and Exelon also contend that the evidence establishes that AEP Ohio's current retail rates have historically been stable and are likely to decline due to the recent drop in the price of natural gas, which is not reflected in the Company's forecasts. RESA and Exelon urge the Commission to find that the evidence does not demonstrate that the PPA proposal will have the effect of stabilizing rates, as the PPA rider could be either a charge or a credit under AEP Ohio's four projections, which would cause customers' generation charges to fluctuate more than at present. RESA, Exelon, P3, and EPSA also point out that the OVEC portion of the PPA proposal is the same proposal that the Commission rejected, in the *ESP 3 Case*, on the basis that it was not shown to have the effect of stabilizing retail rates. (RESA/Exelon Br. at 19-28, 32-36; P3/EPSA Br. at 30-31, 47, 56; P3/EPSA Reply Br. at 31.)

In their reply brief, RESA and Exelon argue that customers do not want or need a Commission-imposed hedge. In particular, RESA and Exelon contend that the SSO auctions are successful, with staggering and laddering resulting in stable rates; CRES offers are not volatile, offer fixed rate contracts, and have exhibited a downward trend; and there is strong opposition to the PPA proposal among diverse customer groups, while the few proponents of the proposal received monetary perks in exchange for their signatures on the stipulation. RESA and Exelon further contend that the PPA rider captures wholesale market volatility and transfers it to retail rates. For their part, P3 and EPSA argue that AEP Ohio's threat that the PPA units may close is a political bluff, given

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that the amended application states that the units may be sold rather than closed; the Company's own witnesses admitted that there is no intention to close the units; and the co-owned units cannot be unilaterally closed by one owner. (RESA/Exelon Reply Br. at 2-11, 18-19; P3/ESPA Reply Br. at 9-16.)

With respect to the non-PPA terms of the stipulation, RESA and Exelon assert that the Commission's approval of the stipulation, including AEP Ohio's commitments to put forth certain proposals in future proceedings, would be inappropriate, as it could be construed as an obligation on the part of the Commission to approve the programs in those future proceedings. In regard to the provisions addressing the development of wind and solar projects in Ohio and the retiring, refueling, or repowering of certain generating units, RESA and Exelon maintain that the risk associated with these proposals would unreasonably be placed on ratepayers rather than AEP Ohio or shareholders. (RESA/Exelon Br. at 52-55.)

P3 and EPSA contend that multiple terms of the stipulation are simply monetary inducements offered by AEP Ohio in exchange for certain signatory parties' support or non-opposition with respect to the PPA proposal. Other provisions, according to P3 and EPSA, provide minimal benefits, if any, and do not outweigh the concerns associated with the PPA proposal. Finally, P3 and EPSA claim that numerous other provisions are unreasonable or unlawful, as they purport to bind the Commission (Commission's solicitation of comments addressing the state's long-term resource adequacy needs), are vague (BTCR pilot), discriminate in favor of the signatory parties (CIR and supplier consolidated billing pilot), impermissibly seek to modify the current ESP outside of an ESP case (automaker credit, partial transfer of IRP and EE/PDR costs to the EDR, and transition provisions), and inappropriately require cost recovery through the PPA rider beyond the current ESP and the contemplated extended term for projects that have not been proposed to the Commission (conversion of certain units to natural gas co-firing). (P3/EPSA Br. at 69-76; P3/EPSA Reply Br. at 23-26.)

According to OCC and APJN, AEP Ohio did not sustain its burden to prove that the stipulation is in the public interest, because there is too much ambiguity and uncertainty in the stipulation's terms, such as the resulting rate impact of many of its provisions, and the Company's own estimates reflect that residential customers would pay more under the stipulation than they would if only the PPA rider proposal were approved.²⁹ OCC and APJN also assert that the stipulation's purported benefits are overstated and that the PPA rider as a hedging mechanism is not necessary for customers, will result in increased rate volatility, and is subject to the same considerable uncertainty and potential for consumer

²⁹ In their joint initial and reply briefs, OCC and APJN refer to the second part of the three-part test for stipulations as the third part, and vice versa. In summarizing OCC/APJN's arguments herein, we refer to the second and third parts of the test in the proper way.

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harm that confronted the Commission in the *ESP 3 Case*. (OCC/APJN Br. at 31-45, 103-105, 154-157; OCC/APJN Reply Br. at 16-19.)

Next, OCC and APJN argue that OCC's own testimony justifies rejection of the stipulation. Specifically, OCC and APJN note that the stipulation's proposed conversion of certain units to gas co-firing lacks sufficient details regarding the cost to consumers; the CIR constitutes an artificial increase to the SSO; cash or cash equivalents were provided to induce certain signatory parties to sign the stipulation, with the costs of these provisions to be recovered from all customers; the development of 900 MW of wind and solar capacity will come at a hefty price for consumers; and the rate design of the PPA rider and the transfer of certain costs from the EE/PDR rider to the EDR will not result in reasonable pricing for residential customers. Also, OCC and APJN contend that the PPA proposal would harm customers for numerous reasons. OCC and APJN specifically note that the overall cost of the PPA rider, which is projected by OCC to be at least \$1.9 billion (or \$1.5 billion on a net present value basis), is substantial; the owners of the PPA units would have no incentive to manage costs or maximize revenues; and the PJM energy and capacity markets would be adversely affected through bidding strategies that could harm AEP Ohio's captive customers. In response to AEP Ohio's criticism of OCC witness Wilson's cost projections, which are based on futures prices, OCC and APJN argue that futures prices are reliable, because they reflect a consensus of market participants' expectations of prices in the coming months and years, including their expectations and forecasts of supply, demand, and price. OCC and APJN add that there is sufficient liquidity in electric energy forwards and that futures prices incorporate market participants' expectations regarding all relevant supply and demand factors, including the impact of the CPP or other carbon emissions requirements, contrary to AEP Ohio's claims. OCC and APJN also caution that the impact to customers could be much worse than OCC's \$1.9 billion projection, which presumes a revenue stream to offset the PPA units' costs, although there is considerable potential, in light of PJM's recommendations addressed below, that the units are offered into the market at cost but do not clear, resulting in no revenue offset. Further, OCC and APJN argue that the stipulation should not be considered a package under the three-part test, because the stipulation's terms do not have a sufficient nexus to each other and to the application. (OCC/APJN Br. at 45-53, 55-69, 101-103, 106-112; OCC/APJN Reply Br. at 8-11, 16-19, 21-27, 33.)

OMAEG argues that the stipulation will harm ratepayers and the public interest, because, with respect to the PPA proposal, the losses incurred in the operation of the plants covered by the PPA will be passed on to all electricity users in AEP Ohio's service territory, while there could be substantial harm to the competitive markets through price suppressive effects and the deterrence of new entry. Noting that AEP Ohio has failed to show that the PPA proposal was prompted at the behest of retail customers or that there is significant volatility at the retail level, OMAEG adds that the proposal fails to provide rate stability to customers, as it is based on unreliable and outdated forecasts and utilizes a

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quarterly reconciliation process. Regarding the non-PPA related provisions, OMAEG contends that the costs associated with the negotiated rate discounts, subsidies, and energy efficiency commitments will not be borne by AEP Ohio, but instead will be passed on to ratepayers that do not directly benefit. Specifically, OMAEG cites the provisions within the stipulation addressing the conversion of Conesville Units 5 and 6, the supplier consolidated billing program, renewable resources and energy efficiency measures, programs involving OP&E and OHA, and the expansion of the IRP tariff as provisions that are intended to benefit the narrow interests of the signatory parties to the detriment of other customers or groups, or ratepayers as a whole. (OMAEG Br. at 23-25, 54-61; OMAEG Reply Br. at 13-16, 21-22.)

Asserting that the PPA proposal is more burden than benefit, Walmart argues that the revised affiliate PPA improperly shifts risk from an unregulated affiliate to AEP Ohio's customers. Walmart also contends that the PPA proposal will inflict extensive costs on customers, including significant penalties if a unit is removed from the PPA; is based on outdated projections that overstate the potential revenue benefits of the PPA; and lacks an evidentiary basis for anything other than speculative customer benefits. Additionally, Walmart maintains that the PPA proposal provides AEP Ohio and AEPGR with cost recovery treatment that is traditionally afforded to vertically integrated utilities, without providing the Company's customers with the protections of regulatory oversight, given that the Commission would have no authority to modify the PPA, once it is approved, and would instead be limited to an after-the-fact review of the Company's actions. (Walmart Br. at 3-10.)

Kroger contends that the revised affiliate PPA does not benefit ratepayers and is contrary to the public interest, because it would force customers to subsidize AEPGR's generation units for years. According to Kroger, if AEPGR were confident in AEP Ohio's projections for the PPA rider, it would accept the burden of potential short-term losses in order to reap the projected long-term gains. Kroger believes that the PPA rider is likely to result in a net negative proposition for customers for a number of years. Kroger also notes that, even with the stipulation's proposed risk sharing mechanism, customers would unfairly assume the complete risk of losses in the early years of the PPA, which are projected to be the least favorable for customers. (Kroger Br. at 2-4; Kroger Reply Br. at 1.)

According to ELPC, OEC, and EDF, AEP Ohio has failed to show that the PPA rider or the stipulation as a whole will benefit ratepayers or the public interest. Initially, ELPC, OEC, and EDF assert that the PPA rider poses a significant risk of high costs to ratepayers and that AEP Ohio's projected rate impact should not be relied upon by the Commission, as it is based on an outdated market price forecast from 2013 that likely overestimates future energy prices. ELPC, OEC, and EDF add that the 2013 forecast is inconsistent with both AEP Ohio's 2015 market price forecast, which predicts on-peak energy and natural gas prices that are significantly lower, as well as current market expectations, which reflect

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energy and natural gas prices that are even lower than the 2015 forecast. ELPC, OEC, and EDF assert that the evidence indicates that the PPA proposal, as amended by the stipulation, may result in \$1.6 to \$1.9 billion in costs for customers, including hundreds of millions in costs over the next few years when the parties' forecasts offer the greatest certainty. ELPC, OEC, and EDF further assert that AEP Ohio's projections are inherently flawed. In particular, ELPC, OEC, and EDF claim that the 2013 market price forecast is based on assumed load levels that are higher than are actually likely to occur, in light of energy efficiency measures that will be implemented to comply with the CPP and the stipulation, as well as the requirements of R.C. 4928.66. They further claim that the 2013 forecast is inconsistent with AEP Ohio's own view of forecasted customer energy usage, as confirmed by the Company's long-term forecast reports filed with the Commission in 2013 and 2015, which indicate that total load projections have dropped by more than four percent for each year from 2015 through 2023. Finally, ELPC, OEC, and EDF point out that the 2013 market price forecast does not reflect the significant potential for Capacity Performance penalties. (ELPC/OEC/EDF Br. at 16-27.)

Regarding AEP Ohio's continued reliance on the 2013 market price forecast, ELPC, OEC, and EDF note that the Company incorporated a number of updates to its PPA rider projections over the course of these proceedings to account for new information, such as capacity price auction results, and offered no evidence that it could not re-run its dispatch model based on the 2015 market price forecast, particularly in connection with its filing of amended rider projections in December 2015 to account for the stipulation's modifications. ELPC, OEC, and EDF also note that AEP Ohio criticized intervenor forecasts of its prior PPA rider proposal, as put forth in the *ESP 3 Case*, for failing to utilize up-to-date information, including the most recent available price forecasts. Further, ELPC, OEC, and EDF point out that FERC and other state commissions have rejected utilities' attempts to rely on outdated information. ELPC, OEC, and EDF conclude that the Commission cannot reasonably rely on AEP Ohio's PPA rider projections, in light of the significant record evidence showing a downward trend in market prices that the Company itself believes will persist over the term of the proposed PPA rider. (ELPC/OEC/EDF Reply Br. at 10-15.)

Additionally, ELPC, OEC, and EDF argue that the costs associated with the PPA units are likely to be higher than projected, because AEP Ohio omitted projected compliance costs or even any quantitative description of potential costs for several environmental regulations that are likely to affect the units by 2024, as well as provided incomplete cost estimates for other applicable pending or current environmental regulations, which could directly offset the net PPA revenues flowing to customers and also render the units less economic in the PJM supply stack, reducing their potential market revenues. ELPC, OEC, and EDF also maintain that AEP Ohio's failure to conduct a competitive procurement process or otherwise weigh the potential costs of alternative hedging mechanisms, including energy efficiency measures, undermines the

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reasonableness of the PPA proposal and provides no basis for the Commission to determine that the PPA with AEPGR is a prudent affiliate deal for the alleged customer benefits that it will provide. (ELPC/OEC/EDF Br. at 27-38; ELPC/OEC/EDF Reply Br. at 15-17.)

Further, ELPC, OEC, and EDF contend that AEP Ohio has not demonstrated that the PPA rider offers customer benefits that outweigh the expected costs, specifically noting that the Company has not shown that retail customers are exposed to significant or unwanted short-term price volatility that is not already mitigated through fixed price contracts or the staggering and laddering of SSO auctions, or that the PPA rider would provide an effective hedge. According to ELPC, OEC, and EDF, neither has AEP Ohio offered any evidence, other than its flawed 2013 market price forecast, that market prices are expected to steeply rise over the next eight years, exposing retail customers to long-term price volatility, or that customers lack tools to address such volatility, such as energy efficiency measures and installation of behind-the-meter generation. ELPC, OEC, and EDF emphasize that AEP Ohio has not shown that the PPA rider will benefit customers by controlling the alleged long-term retail price volatility that the Company claims is not sufficiently mitigated by existing mechanisms. ELPC, OEC, and EDF add that, if the PPA rider is approved, energy efficiency and demand response resources, which typically benefit customers by lowering wholesale market prices through reduced peak loads, may come to harm customers by lowering the revenues received by the PPA units, which would present a dilemma in the Commission's consideration of future EE/PDR programs. (ELPC/OEC/EDF Br. at 38-46; ELPC/OEC/EDF Reply Br. at 17-18.)

Finally, ELPC, OEC, and EDF argue that AEP Ohio's contention that the PPA units are likely to retire, due to low PJM energy and capacity prices, is contradicted by the record, which reflects that PJM's new Capacity Performance requirements have increased capacity prices significantly; there is no evidence that reliability in PJM is at risk, with significant amounts of new generation being developed, and exceeding retirements, in Ohio and throughout PJM; the Company's projected transmission costs, which would occur in the event of the PPA units' retirement, are irretrievably flawed, as they are based on the unrealistic assumptions that all of the PPA units will retire in 2019 at the same time and simultaneously with the retirement of 11,800 MW of other generation in PJM, due to the CPP, but with no new generation factored in to replace it; the Company's analysis of the economic development benefits associated with the PPA rider is incomplete, because it does not address the effect of plant retirements on electric prices as the Commission required in the *ESP 3 Case*; and the non-PPA related provisions in the stipulation do not merit any significant weight in the Commission's determination of the stipulation's benefits, as many of the provisions only require the Commission to make a future filing with no guarantee of a beneficial outcome, while other provisions bind the Commission in significant ways or involve benefits that would occur even without the stipulation. (ELPC/OEC/EDF Br. at 46-54.)

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In its reply brief, IEU-Ohio asserts that the arguments of ELPC, OEC, EDF, and OMAEG regarding the IRP provisions of the stipulation are premature at this point, given that the merits of the provisions are not before the Commission in these proceedings. IEU-Ohio adds that, in any event, the arguments of ELPC, OEC, and EDF should be rejected because they are incorrect and would reduce customer incentives to make demand response available to AEP Ohio for the benefit of system reliability, while OMAEG's arguments are internally contradictory and unsupported. IEU-Ohio points out that OMAEG claims that non-signatory parties should have access to the expanded IRP program, but also contends, without record support, that the proposed expansion of the program would be too costly. (IEU-Ohio Reply Br. at 3-8.)

d. Commission's Factors

In the ESP 3 Case, the Commission authorized AEP Ohio, pursuant to R.C. 4928.143(B)(2)(d), to establish a zero placeholder PPA rider and enumerated a number of factors to be considered in the evaluation of any future PPA rider filing seeking cost recovery. Specifically, the Commission directed AEP Ohio to address, at a minimum, the financial need of the generating plant; the necessity of the generating facility, in light of future reliability concerns, including supply diversity; a description of how the generating plant is compliant with all pertinent environmental regulations and its plan for compliance with pending environmental regulations; and the impact that a closure of the generating plant would have on electric prices and the resulting effect on economic development within the state. The Commission further directed AEP Ohio, in its PPA rider proposal, to provide for rigorous Commission oversight of the rider, including a proposed process for a periodic substantive review and audit; commit to full information sharing with the Commission and its Staff; include an alternative plan to allocate the rider's financial risk between both the Company and its ratepayers; and include a severability provision. ESP 3 Case, Opinion and Order (Feb. 25, 2015) at 25-26.

i. Summary of Signatory Parties' Positions

In addressing the second part of the three-part test, AEP Ohio argues that its PPA proposal satisfies the factors enumerated by the Commission in the ESP 3 Case. Initially, regarding the financial need of the generating plant, AEP Ohio asserts that its forecasts show that the PPA units have a financial need, at least in the near term, given that near-term PJM capacity market revenues remain far below the fixed costs of the PPA units, even after expected Capacity Performance payments are incorporated. AEP Ohio adds that participation by demand response resources in PJM capacity auctions means additional uncertainty regarding capacity pricing outcomes, while low short-term capacity and energy market prices have increased the risk of premature retirement of the PPA units. AEP Ohio maintains that the financial challenge and resulting need that the PPA units face is due to depressed wholesale market pricing in the western part of PJM, coupled with

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both short- and long-term pricing volatility, and that the PPA rider is designed to allow the continued capital investment necessary to the long-term operation of the units. Regarding the second factor, AEP Ohio contends that it has demonstrated that the PPA units will play a vital role in promoting reliability and fuel diversity in the state. Specifically, AEP Ohio maintains that coal should remain a critical component of fuel diversification efforts and that the retirement of coal-fired units, which have the ability to store fuel on site and thus maintain reliability during adverse weather conditions, would increase energy market volatility, result in an over-reliance on natural gas facility generation including proposed projects that may not ultimately be placed in service, and necessitate costly transmission system upgrades. (Co. Br. at 32-43; Co. Reply Br. at 29-36.)

Next, AEP Ohio argues that it has demonstrated that the PPA units are already equipped with the environmental controls necessary to comply with six major existing and pending environmental regulations or that there are budgetary estimates for future compliance included within the financial analysis provided as part of the PPA rider's cost estimates, including, with respect to the CPP, a reasonable projected cost of \$15 per metric ton for carbon dioxide emissions starting in 2022. Regarding the fourth factor, AEP Ohio contends that approval of the PPA proposal will provide substantial economic benefits by supporting economic development in Ohio and protecting against the adverse impact of early plant closures on the state's economy and the local communities that are supported by the plants through direct benefits of more than 1,600 jobs, \$121 million in annual payroll income, and \$11.5 million in annual property taxes, with the ongoing value of the PPA units' operation estimated at \$650 million. AEP Ohio adds that closure of the PPA units would substantially impact Ohio's economy because new generation with equivalent capacity is not being constructed in the state. (Co. Br. at 43-58; Co. Reply Br. at 36-50.)

In terms of the Commission's oversight of the PPA rider, AEP Ohio asserts that its PPA proposal fully satisfies the requirement by affording the Commission many opportunities for rigorous oversight and substantive review of the PPA units' costs and revenues. AEP Ohio notes that, in the present proceedings, the Commission will determine whether the proposed PPA is beneficial for ratepayers and, therefore, whether it is prudent for the Company to sign the PPA, incur legacy costs, and pass any net PPA costs or credits through to customers via the PPA rider; thereafter, the Commission will continue to exercise ongoing oversight and review of PPA costs through the Company's proposed audit process, which will involve both accounting review of previously approved PPA costs and managerial review of the Company's decisions regarding newly incurred PPA costs, as well as a review of PPA revenues and the Company's actions in selling the output of the PPA units, including review of any Capacity Performance bonuses or penalties. AEP Ohio emphasizes that it has committed to seeking the Commission's pre-approval regarding the prudence of significant capital expenditures or other major decisions such as unit closure. In terms of timing, AEP Ohio proposes that the Commission would review PPA rider revenues in the audit for the year in which the

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revenues were included in the rider, while costs would be reviewed in the audit for the year in which the costs were incurred. Further, AEP Ohio asserts that the information sharing commitment in the stipulation, combined with the Company's prior commitments to share the PPA units' cost and revenue data with the Commission, fulfill the requirement for full information sharing with the Commission and Staff. (Co. Br. at 58-69; Co. Reply Br. at 50-56.)

With respect to allocation of the PPA rider's financial risk, AEP Ohio asserts that the rigorous review of costs being passed through the PPA rider exposes the Company, not its customers, to the risk of disallowance, while the stipulation's \$100 million credit obligation and reduced ROE are other risks assumed by the Company or AEPGR. Finally, AEP Ohio notes that the stipulation includes a severability provision to ensure that the ESP would continue in orderly fashion in the event that a court invalidates the PPA rider. (Co. Br. at 69-72; Co. Reply Br. at 56-61.)

Staff notes that, although it does not believe that AEP Ohio's amended application satisfies the Commission's conditions set forth in the *ESP 3 Case*, the stipulation addresses many of Staff's concerns. Specifically, Staff explains that the stipulation, among other things, provides for a shortened PPA term, lower ROE, rigorous Commission review of the PPA rider, full information sharing, severability provision, and a sharing mechanism to allocate the rider's risk between AEP Ohio and ratepayers. (Staff Br. at 17-21.) OEG asserts that AEP Ohio's PPA proposal, as modified by the stipulation, is compliant with the Commission's requirements from the *ESP 3 Case* (OEG Br. at 18-19).

Buckeye asserts that AEP Ohio's amended application, as modified by the stipulation, satisfies the Commission's criteria. Buckeye also notes that it is not opposed to reasonable modifications to AEP Ohio's PPA proposal that address the concerns of the Commission or the other parties, as long as the Company does not oppose the modifications. Buckeye argues, however, that the obligations of AEP Ohio and AEPGR to Buckeye, as a joint owner of the generating units in question, that exist under the Inter-Company Power Agreement (ICPA) and the CSA should not be abridged in any circumstance as a result of these proceedings, with any conflicts between obligations under the ICPA and CSA and obligations under the stipulation resolved in favor of the ICPA and CSA. For that reason, Buckeye states that it has excluded itself from the provisions of the stipulation that relate to its status as a joint owner of the Cardinal Station and OVEC, in order to reserve its rights and remedies under the ICPA and CSA. (Buckeye Br. at 19-22.)

ii. Summary of Non-Signatory Parties' Positions

The Market Monitor argues that AEP Ohio has failed to demonstrate any actual financial need of the PPA units; has not shown that the units are needed for resource

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diversity or reliability or explained why customers are not better off with the lowest cost market based prices for capacity; has not proved that subsidization of the units is needed to provide stable electric prices or to promote economic development; and has failed to show that the PPA proposal will not interfere with Ohio's compliance with the CPP or other environmental regulations (IMM Reply Br. at 3-5, 8-12).

RESA, Exelon, P3, and EPSA contend that AEP Ohio has not satisfied most of the Commission's criteria, particularly by neglecting to present any evidence addressing several factors in relation to the OVEC units. With respect to financial need of the PPA generating plants, RESA, Exelon, P3, and EPSA assert that there is no evidence of the financial history for any of the plants, although the evidence does reflect that AEPGR is performing profitably, the PPA plants are not going to close, and the plants cleared in PJM's recent capacity auction and are, thus, committed to operating for several more years. Regarding the necessity of the PPA units in light of future reliability needs, RESA, Exelon, P3, and EPSA argue that AEP Ohio failed to address this criterion with respect to the OVEC entitlement and presented a flawed reliability analysis that considered the affiliate PPA units as a group rather than individually, as instructed by the Commission. RESA and Exelon add that AEP Ohio's PPA proposal will not alter its current supply mix and, because there is no plan to close the plants, reliability and supply diversity are not issues to be considered. P3 and EPSA emphasize that the co-owned status of the PPA plants weighs against any concern for premature closure. Further, RESA, Exelon, P3, and EPSA maintain that AEP Ohio failed to establish the impact that a closure of each PPA plant would have on electric prices and the resulting effect on economic development in the state. According to P3 and EPSA, AEP Ohio also failed to propose an appropriate plan for allocating the PPA rider's financial risk between the Company and ratepayers. Finally, RESA, Exelon, P3, and EPSA contend that, under AEP Ohio's PPA proposal as amended by the stipulation, the Commission's oversight will not be rigorous and information sharing will be minimal and ineffective. (RESA/Exelon Br. at 38-45; P3/EPSA Br. at 32-33, 35-45, 47-51; P3/EPSA Br. at 16-23.)

With respect to the financial need of the generating plant, OMAEG claims that, as an initial matter, the Commission lacks authority to consider the issue because market forces determine financial need. OMAEG adds that, in any event, AEP Ohio cannot show a legitimate financial need and instead faults PJM's capacity market design and claims that the PPA units need subsidies in the near term in order to remain competitive pending an anticipated rise in energy costs. OMAEG points out that concerns regarding the PJM capacity market construct were recently addressed through FERC's adoption of PJM's Capacity Performance proposal, which has resulted in increased clearing prices. OMAEG also emphasizes that AEP Ohio's statements regarding the financial need of the PPA units are inconsistent with its corporate parent's position that the plants are well-positioned from a cost and operational perspective to participate in the competitive market. Turning to the issue of reliability and fuel diversity, OMAEG asserts that there is sufficient resource

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adequacy in the PJM region, given that PJM exceeded its target reserve margin by 4.1 percent in the most recent base residual auction, and that the Commission should rely on PJM's expertise to alleviate any perceived concerns regarding the future reliability of the electric grid in Ohio. Regardless, OMAEG contends that there is no realistic prospect that the PPA units will soon retire. OMAEG also emphasizes that no notice of any impending retirement has been provided to PJM as would be required; AEP Ohio has overstated its retirement claims by failing to account for the fact of co-ownership in its flawed \$1.6 billion transmission upgrade estimate; and RMR arrangements, new generation assets, energy efficiency projects, and distributed generation can be used to mitigate system impacts and capacity shortfalls caused by a closure. Noting that fuel diversity is another matter within PJM's purview, OMAEG argues that, in any event, replacement of the coal-fired PPA units with more efficient gas-fired units would actually enhance the diversity of Ohio's generation mix. OMAEG concludes that AEP Ohio cannot demonstrate that the PPA units are necessary in light of reliability concerns. (OMAEG Br. at 25-34; OMAEG Reply Br. at 6-8, 11-12.)

Addressing environmental compliance costs, OMAEG argues that ratepayers should not be required to bear the risks associated with such costs. Noting that the increasingly stringent environmental controls imposed by the CPP will significantly increase the PPA units' compliance costs in the future, OMAEG asserts that AEP Ohio's PPA proposal does not safeguard ratepayers against unjust and unreasonable charges or protect the state's effectiveness in the global economy. In terms of the economic impact from a plant closure, OMAEG argues that extending the life of aging and expensive coal plants would raise the price of electricity and harm economic development in the state. Specifically, OMAEG maintains that AEP Ohio's forecasts are flawed and should not be relied upon by the Commission, because they are inherently speculative and inconsistent with the Company's claim that the PPA units are at risk; overstate expected energy market revenues, as reflected in the Company's 2015 fundamentals forecast and forwards prices, and also projected load and capacity prices; and are used selectively by the Company. Additionally, OMAEG offers that requiring customers to pay for the operating risks associated with the PPA plants, including any costs incurred when a unit does not run, environmental compliance costs, legacy costs, retirement costs, and the termination fee provided for under the affiliate PPA, will likely increase the overall cost of the PPA proposal above OCC witness Wilson's projection. Noting that there are other tools to address market volatility, OMAEG also contends that the PPA rider does not resemble an insurance product, contrary to AEP Ohio's claims, and that it will not act as a significant financial hedge. Finally, OMAEG asserts that AEP Ohio's economic development analysis is flawed and insufficient to sustain the Company's burden of proof; the significant costs projected for the PPA rider will harm economic development in the state, particularly in the energy-intensive manufacturing sector; and the Company has overstated the economic benefits associated with keeping the PPA units afloat, but understated the economic value

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to be gained by the entry of cleaner, more efficient natural gas generating units. (OMAEG Br. at 34-49; OMAEG Reply Br. at 18-20.)

Regarding the other considerations identified by the Commission in the *ESP 3 Case*, OMAEG points out that AEP Ohio proposes a process for review and audit of the PPA rider that would exclude participation by intervenors; fails to memorialize any information sharing with the Commission or Staff in either PPA and seeks to protect any provided information with the utmost level of confidentiality; and places the PPA rider's risks solely on ratepayers, although they are least able to manage the risks of owning and operating the PPA plants (OMAEG Br. at 49-54; OMAEG Reply Br. at 8-10).

OCC and APJN also assert that AEP Ohio has failed to prove the financial distress of any generating unit, given that recent earnings statements and investor presentations reflect that AEP's assets are increasing substantially in value and the PPA units are positioned to compete in the generation markets; AEP Ohio has the financial capability to cover any projected short-term investment that is required at the outset of the PPA; and the Company's own forecasts confirm that, even without the PPA rider, AEPGR could operate the PPA units profitably. OCC and APJN add that there are market-based alternatives to the PPA rider, such as privately secured financing and bilateral contracts with specific commercial and industrial customers that could benefit from more stable pricing, while the proposed ROE is unjust, unreasonable, unprecedented, and should be no higher than AEPGR's average cost of debt. With respect to the second factor, OCC and APJN argue that PJM, rather than the Commission, is responsible for electric generation reliability. OCC and APJN add that even AEP Ohio acknowledges that PJM is capable of ensuring resource adequacy; there is no indication that any of the PPA units will close without the PPA, which should be dictated by market forces in any event; the PPA proposal will not contribute to supply diversity, while the market is already working to diversify Ohio's portfolio mix through the construction of new generation; and the Company's analysis of the transmission cost impact in the event of plant closures is not credible, as it does not account for new generation, includes a substantial amount of non-PPA unit retirements, and does not specify the impact of the PPA units' retirement on the transmission system. (OCC/APJN Br. at 69-80, 112-124; OCC/APJN Reply Br. at 19-20, 34-35.)

Turning to the third factor, OCC and APJN claim that AEP Ohio has not shown, and cannot show due to significant uncertainty surrounding the CPP and other environmental regulations, that the PPA units are compliant with current environmental regulations or that they will comply with pending environmental regulations, while OCC's testimony reflects that customers will likely pay much more for environmental compliance measures than what the Company projects for the period of 2015 through 2024. Next, OCC and APJN assert that, while AEP Ohio has provided some analysis on the economic impact of plant closures using a number of faulty assumptions and the

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outdated economic base model, the Company has not assessed the impact of such closures on electric prices nor offered a witness that is qualified to render an opinion on the economic analysis required by the Commission. Finally, OCC and APJN contend that AEP Ohio's PPA proposal does not properly allocate the financial risks, which would be placed solely on customers, or provide for rigorous Commission oversight or information sharing, as the proposal omits transparency and participation by interested parties and could require customers to pay liquidated damages in the event of a disallowance of costs or discontinuance of the PPA rider. (OCC/APJN Br. at 81-94, 124-144; OCC/APJN Reply Br. at 20-21, 31-32, 39-44.)

In addition to the Commission's designated factors, OCC and APJN assert that AEP Ohio should also be required to demonstrate compliance with additional factors that address consumer benefits, such as an independent assessment of future price scenarios; the impact of offer strategies on customers; incentives to control costs and make rational retirement decisions; the economic impact of higher retail rates; an analysis of a least-cost combination of new and existing generation and transmission assets that would deliver the claimed benefits of the PPA proposal; the cost of achieving price stability through competitive solicitation; and the cost of meeting current and expected environmental regulations with generation and transmission alternatives to the PPA proposal (OCC/APJN Br. at 144-154).

e. Recommended Modifications to the Stipulation

i. Summary of PJM's Position

In its amicus brief, PJM asserts that Section III.A.5.a of the stipulation, which addresses the proposed annual compliance reviews of the PPA rider, may impact Ohio's interest in attracting competitive generation to meet its future economic development needs and the overall competitiveness of the wholesale market in the state. Noting that it takes no position on the stipulation as a whole, PJM recommends that, if the stipulation is approved, the Commission should clarify that, under Section III.A.5.a of the stipulation, a reasonable offer behavior for AEP Ohio would be to offer the PPA units into the PJM markets at a level no lower than their "actual costs," as that term is understood by PJM and applied consistent with its tariff and manuals without consideration of the offsetting revenues provided by Ohio retail customers under the stipulation. PJM believes that this clarification is necessary to ensure that the affiliate PPA does not artificially suppress prices in a manner that would hurt the development of new generation in Ohio. Further, PJM recommends that the Commission clarify that the risk associated with Capacity Performance penalties remains with the owner of the PPA units, as the entity that can mitigate the risk, and that AEP Ohio may not seek recovery of any penalties from customers through the PPA rider. (PJM Br. at 4-9.)

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Finally, PJM asserts that arguments that approval of the stipulation is necessary to ensure electric system reliability in Ohio are misplaced. PJM points out that it is the entity ultimately responsible for reliability of the bulk electric system in the PJM region; recent retirements of coal-fired generating units have been absorbed through PJM's robust forward capacity market and regional transmission planning process and the retired generation has been replaced with newer resources, such that resource adequacy targets have been met and exceeded year after year; there are substantial new plants under construction or proposed to be constructed in Ohio; the RMR provisions of PJM's tariff are another means to ensure reliability, although PJM has infrequently found it necessary to rely upon these provisions, even with the recent retirements; and the Capacity Performance construct is intended to guarantee that generators perform as needed. PJM urges the Commission to remain cognizant that electric system reliability is assured by PJM in a comprehensive fashion and that reliability assurance does not hinge on the PPA units continuing in service. (PJM Br. at 9-12.)

AEP Ohio responds that it intends to fully comply with all PJM tariff requirements and any other applicable rules in bidding the PPA units' capacity. According to AEP Ohio, although the Commission may review the prudence of AEP Ohio's bidding activity within PJM rules, PJM's recommendation that the Commission effectively impose an additional PJM bidding rule on the Company is improper and unfair, given that PJM has not sought to impose a similar requirement on other existing generators that receive cost-based compensation. AEP Ohio adds that decisions about the recovery of Capacity Performance penalties by retail customers is a matter that falls exclusively within the Commission's jurisdiction and that PJM's recommendations improperly reach into retail matters, while seeking to impose a special rule for the PPA proposal that does not apply to other similarly situated market participants. AEP Ohio notes that, unless the Company is responsible for an imprudent decision or action in managing or implementing the PPA terms, a Capacity Performance charge should be treated as any other cost associated with operation of the units and passed through the wholesale PPA and, ultimately, the retail PPA rider. (Co. Reply Br. at 58-61, 91-93.)

In response to PJM, OEG asserts that the Commission has the requisite authority under the Energy Policy Act of 2005 and R.C. 4928.02(A) to approve the PPA rider as a part of its obligation to ensure the adequacy and reliability of electric generation in Ohio through fuel diversity. OEG asserts that the PPA proposal will promote fuel diversity by helping maintain the operation of coal-fired generation, a key component of fuel diversity in a region that is becoming more heavily reliant on natural gas generation. Additionally, OEG advocates that the Commission reject PJM's recommendation that AEP Ohio be prohibited from bidding the PPA units into the PJM capacity market as a price taker. OEG points out that PJM's recommendation would unreasonably impose a condition on AEP Ohio's bidding strategy that PJM does not require of other bidders; would result in less capacity revenue flowing into the PPA rider, as less of the PPA units' capacity would

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likely clear, which would harm the rider's projected economic benefits; and could be viewed as an attempt by the state to artificially inflate market prices. (OEG Reply Br. at 14-17.)

ii. Summary of OEG's Position

OEG also recommends that the Commission make several express findings to reinforce the terms of the stipulation. Specifically, OEG argues that the Commission should expressly state that no retirement-related costs associated with the PPA units, aside from approved depreciation changes, may be collected from retail customers; should expressly clarify that any subsequent rejection of the PPA or the PPA-related stipulation provisions by a state or federal court will not trigger the PPA's liquidated damages provision; should reserve the right to reevaluate, modify, or terminate the PPA rider, without triggering the liquidated damages provision, if the MOPR is applied to the PPA units during the PPA term; should expressly find that there is no definitive evidence demonstrating that approval of the PPA rider would distort the PJM wholesale markets; and should expressly find, in anticipation of arguments that the PPA is contrary to FERC standards for affiliate transactions, that the costs of the PPA are projected to be below market over the term of the PPA. (OEG Br. at 19-22.) P3 and EPSA respond that the Commission should not adopt OEG's recommended findings. Specifically, P3 and EPSA note that any finding by the Commission that there will be no wholesale market distortion would be contrary to the positions taken by PJM, the Market Monitor, and other witnesses that work and compete in the wholesale markets; and that the Commission should not find that the costs of the AEPGR PPA will be below market, because AEP Ohio has not offered any type of guarantee or commitment with respect to its PPA rider projections. (P3/EPSA Reply Br. at 32-36.)

AEP Ohio asserts that OEG's three proposed clarifications are inappropriate, because they attempt to modify the stipulation. Further, AEP Ohio notes that OEG's two proposed findings in support of the stipulation are reasonable, if the Commission also expressly states that the PPA rider is aimed at retail ratemaking, and as long as the Commission does not apply FERC's standards for affiliate transactions, in making the findings. *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 (1991) (*Edgar*). Finally, AEP Ohio requests that the Commission reiterate its long-held opinion that there is retail competition in Ohio and that the Company's customers are not captive, while also making clear that, in approving the stipulation, the Commission is affirmatively finding that the PPA proposal accords with all Ohio corporate separation laws and regulations and that the evidence in the record of these proceedings contradicts the affiliate abuse concerns raised by various intervenors. AEP Ohio notes that FERC has traditionally deferred to similar findings by the Commission in evaluating affiliate transactions. (Co. Reply Br. at 125-131.)

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iii. Summary of Non-Signatory Parties' Positions

P3 and EPSA recommend that, if the PPA proposal is approved, AEP Ohio should be required to use its best efforts to maximize revenues from the sale of the energy, capacity, and ancillary services from the PPA units into the PJM markets or through bilateral contracts, in order to offset ratepayers' obligations under the PPA rider. P3 and EPSA also suggest that, as a proper risk sharing mechanism, a cap on the potential charges that customers will incur under the PPA rider should be required. (P3/EPSA Br. at 76-78; P3/EPSA Reply Br. at 20-21, 31.) RESA and Exelon argue that, if the PPA proposal is approved, the Commission should impose appropriate incentives, aside from the stipulation's \$100 million credit commitment, to ensure that ratepayers are not exposed to substantial risk when PPA costs exceed revenues, such as through requirements that at no time will the annual PPA rider exceed a ceiling amount and that the aggregate rider credit at the end of the term must be at least equal to any rider charges plus carrying charges (RESA/Exelon Reply Br. at 19-24). Kroger requests that, if the Commission approves the PPA proposal, the rate design of the PPA rider be modified, such that the rider's costs would be recovered on a demand basis for demand metered customers instead of through an energy charge (Kroger Br. at 4-5; Kroger Reply Br. at 1-2).

Walmart argues that, if the Commission approves the PPA proposal, the Commission should reject the stipulation's ROE of 10.38 percent and instead adopt an ROE in the range of 9.69 percent to 9.99 percent. In support of its argument, Walmart asserts that AEP Ohio failed to offer any evidentiary basis for the ROE of 10.38 percent proposed in the stipulation, which Walmart finds, in any event, unreasonable when compared to the average ROE of 9.86 percent approved for similarly situated utilities across the nation since 2012. Walmart adds that the proposed ROE is higher than what was adopted by the Commission in AEP Ohio's most recent distribution rate case; does not reflect the declining trend in authorized ROEs; and does not account for the reduction in risk from the guaranteed cost recovery under the PPA proposal. (Walmart Br. at 10-14.) Noting that it would be inappropriate to include an ROE in the affiliate PPA, OCC and APJN recommend that, if the PPA rider proposal with an ROE is nevertheless approved, the ROE be set no higher than AEPGR's average cost of debt, both long-term and short-term (OCC/APJN Reply Br. at 34-35).

OMAEG recommends that, if the Commission approves the stipulation's provision regarding the expansion of the IRP tariff and credit, the Commission should afford the opportunity to all eligible customers rather than limit it to members of signatory and non-opposing parties; should retain the current level of credit payments as to minimize the cost burden on other customers; and require AEP Ohio to bid the interruptible load as a capacity resource into PJM's capacity auctions, with any revenues received from bidding the interruptible load into the capacity market used to offset the cost of providing the IRP program. Additionally, OMAEG contends that the stipulation's severability provision

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should be modified, because it unreasonably precludes any collected amounts from being refunded, even if a court determines that the PPA rider is unlawful. OMAEG requests that the Commission strike the provision or, alternatively, direct that any amounts recovered through the PPA rider be made subject to refund. (OMAEG Br. at 60-61; OMAEG Reply Br. at 20-21.) OCC and APJN also criticize the severability provision's failure to provide for a refund of any charges that are subsequently deemed unlawful (OCC/APJN Br. at 45).

AEP Ohio responds that, if the PPA rider is approved and goes into effect, and operation of the PPA units is conducted in reliance upon that approval, it is appropriate that the financial results provided by the rider are not retrospectively unwound. With respect to the IRP, AEP Ohio notes that the stipulation only commits the Company to proposing changes to the IRP tariff and that OMAEG can raise its arguments in the ESP extension proceeding. (Co. Reply Br. at 117-118.)

f. Commission Decision

The Commission again emphasizes the importance of our mission in assuring all customers access to reliable, safe, and cost-effective services, as well as the difficulty of balancing numerous important interests in deciding these sensitive and complex issues. The Commission has thoroughly considered the arguments raised by the parties, PJM, and the Generation Developers, as well as the recommended modifications to the stipulation, and we find that the stipulation, as modified below, meets the second part of the three-part test. Based upon our review, we find that the record in these proceedings demonstrates a projected net credit to customers of \$37 million over the current ESP term through May 31, 2018, or \$214 million through May 31, 2024, under the term of the PPA rider. Further, we find that the stipulation, as modified, will protect consumers against rate volatility and price fluctuations by promoting retail rate stability for all ratepayers in this state, modernize the grid through the deployment of advanced technology and procurement of renewable energy resources, and promote retail competition by enabling competitive providers to offer innovative products to serve customers' needs.

As an initial matter, the Commission notes that the second part of the test specifically requires that we evaluate the stipulation as a package. In prior cases, the Commission has considered and approved stipulations that address a wide variety of issues, often resolving several pending proceedings at the same time, and specifically emphasizing that the stipulation must be viewed as a package for purposes of the second part of the three-part test. *See, e.g., In re Ohio Power Co.*, Case No. 94-996-EL-AIR, et al., Opinion and Order (Mar. 23, 1995) at 20-21; *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 99-1729-EL-ETP, et al., Opinion and Order (Sept. 28, 2000) at 44; *DP&L Case*, Opinion and Order (Sept. 2, 2003) at 29. We have repeatedly found value in the parties' resolution of pending matters through a stipulation package, as an efficient and cost-effective means of bringing their issues before the Commission, while also, at times,

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avoiding the considerable time and expense associated with the litigation of a fully contested case. *See, e.g., In re FirstEnergy*, Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 42; *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 11-5568-EL-POR, et al., Opinion and Order (Mar. 21, 2012) at 17. We, therefore, reaffirm that the stipulation offered by the signatory parties in these proceedings must be viewed as a whole.

i. PPA Rider Projections

In addressing the second part of the three-part test, the non-signatory parties primarily raise concerns with the projected rate impact of the PPA proposal. Although, as discussed below, the Commission finds that rate stability is an important consideration, we agree that a rate stability proposal, such as the PPA rider, must not impose unreasonable costs on customers and, again, under the second part of the three-part test, we are charged with reviewing the stipulation to determine whether it benefits ratepayers. During the course of these proceedings, the Commission was presented with several different PPA rider scenarios based on differing data inputs and assumptions, all of which are predictions of future conditions. The Commission's first task, therefore, is to evaluate the parties' projections, in order to determine a reasonable overall estimate of the PPA rider's net credit or charge based on the evidence of record.

In support of the amended application, AEP Ohio witness Pearce developed forecasts of revenues and costs based on various data, including Company witness Bletzacker's long-term forecast of PJM wholesale power prices and Company witness Hawkins' capital structure and ROE. Specifically, Dr. Pearce used PLEXOS, which is an hourly production cost model used to forecast the dispatch of units in the PJM power market, to determine the market revenues and variable costs of production for the generating units based on a generation forecast for each unit. The model utilizes assumptions for each unit's cost of energy, scheduled maintenance outages, and forced outages, along with forecasted market prices of energy, which were provided by Mr. Bletzacker, to determine forecasted generation output, costs, and energy revenues for each unit. In order to incorporate changes necessitated by the stipulation, AEP Ohio witness Allen modified Dr. Pearce's analysis by updating the period of analysis to January 1, 2016, through May 31, 2024, reducing the ROE from the initial formula rate of 11.24 percent to a fixed 10.38 percent, and incorporating the results of PJM's recent Capacity Performance auctions for the 2016/17, 2017/18, and 2018/19 delivery years. As noted above, AEP Ohio presented four scenarios, which are intended to demonstrate the effect of variation in load due to severe weather or economic factors, including the asymmetric impact that such factors have on electric prices, where increases in load tend to increase prices more so than load reductions decrease prices. (Co. Ex. 2 at 11-20, Ex. KDP-2; Co. Ex. 52 at Ex. WAA-2; Tr. II at 543; Tr. XVII at 4388, 4405-4406; Tr. XVIII at 4568-4569, 4574-4575.)

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Based on the analysis of AEP Ohio witnesses Pearce, Bletzacker, and Allen, the Company asserts that a net credit of \$721 million is the best evidence of the projected benefit of the PPA rider during the term of the rider, with a net credit of \$209 million projected over the current ESP term, while the stipulation recommends an initial rider rate based on a \$4 million annualized credit for 2016, which is consistent with the Company's weather normalized case that predicts a net credit of \$37 million for the existing ESP period, or \$214 million over the term of the rider (Co. Ex. 52 at 15, Ex. WAA-2; Joint Ex. 1 at 6).³⁰ The non-signatory parties reach a different conclusion, with OCC estimating that the PPA rider would result in a net cost of at least \$1.9 billion over the term of the rider and \$580 million over the current ESP term (OCC Ex. 34 at 5).

The Commission finds, however, that OCC's PPA rider projection is fundamentally flawed for a number of reasons. OCC witness Wilson's projection, which is derived from AEP Ohio's five percent lower load case, uses Company witness Pearce's analysis in terms of the expected costs of the PPA units, but incorporates forwards electric energy prices in place of the Company's hourly energy prices, thus modifying the projected revenues. Mr. Wilson's criticism of Dr. Pearce's analysis, therefore, is essentially based on his belief that forwards contracts are a preferable means of estimating future energy prices. Forwards prices, however, are not a forecast of future spot market prices and they should not be relied upon as a basis for long-term forecasts of energy prices. Further, unlike AEP Ohio's fundamentals forecast, the futures prices used by Mr. Wilson do not account for factors such as the impact of future carbon emission regulations, which is another reason that they are not an accurate predictor of future energy prices. Finally, there is a lack of futures market liquidity, other than in the immediate near term, as the record clearly reflects. Over the roughly eight-year term of the PPA, there are simply too few forwards contracts that can be used to form a reliable projection of the PPA rider's impact. As AEP Ohio emphasizes, Mr. Wilson appears to acknowledge this fact. For months beyond October 2020, for which there were no AEP-Dayton Hub Day Ahead forwards prices, Mr. Wilson used the monthly forwards prices for the period of November 2019 through October 2020 as proxies for the period of November 2020 through December 2024. We do not find it reasonable to rely on an analysis that merely recycles the monthly futures prices for November 2019 through October 2020 across the final four years, approximately, of the PPA.³¹ (Co. Ex. 45-48; Co. Ex. 50 at 1-6; OCC Ex. 15 at 51-52; OCC Ex. 34 at 9-10; Tr. V at 1470; Tr. XV at 3817-3819; Tr. XXII at 5488-5489, 5494.)

³⁰ The parties' PPA rider projections are stated in nominal dollars. In summarizing the parties' projections for the current ESP term, the Commission has used the entire projected credit or charge for 2016 and 2017, as well as the projected credit or charge for the first five months of 2018.

³¹ Aside from AEP Ohio's projections, OCC witness Wilson offered the only projection of the PPA rider's impact under the stipulation. During the hearing on AEP Ohio's amended application, Sierra Club witness Chernick and IGS witness Leanza offered testimony that, like Mr. Wilson's projection, relies heavily on futures contracts (Sierra Club Ex. 37 at 24-33; Sierra Club Ex. 40 at 4-5; IGS Ex. 7 at 4-5, 6-7). Further, as Sierra Club and IGS are signatory parties, the testimony of Mr. Chernick and Mr. Leanza was

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AEP Ohio witnesses Pearce, Bletzacker, and Allen, however, have provided a thorough analysis of the PPA rider's estimated impact, which incorporates the only actual forecast of long-term energy prices in the record. Despite the non-signatory parties' critical assessment of AEP Ohio's projections, the Commission is not persuaded by their arguments and the fact remains that no other party has presented a full projection of energy prices and the net revenues under the PPA rider. As noted above, even OCC witness Wilson's projection is based, in large part, on the analysis of AEP Ohio's witnesses. Additionally, although several parties argue that the 2013 fundamentals forecast used by AEP Ohio is outdated and that the Company should have updated its projections using the 2015 fundamentals forecast, the U.S. Energy Information Administration (EIA) noted in its Annual Energy Outlook (AEO) for 2015 that the projected electricity prices for the Reference case, over the long term, actually increased in comparison to the Reference case in the AEO for 2014. Specifically, EIA found that:

In the AEO2015 Reference case delivered natural gas prices to electricity generators are lower than in the AEO2014 Reference case in the first few years of the projection but higher throughout most of the 2020s. From 2020 to 2030, the generation cost of component of end-use electricity prices is, on average, 4 % higher in AEO2015 than in AEO2014.

(Co. Ex. 18 at E-7.) Therefore, it is possible that, even if Mr. Bletzacker had used an updated fundamentals forecast, higher electricity prices may have resulted in AEP Ohio's PPA rider projections becoming more favorable to customers rather than less favorable.

Accordingly, based upon the evidence in the record, the Commission finds that AEP Ohio's PPA rider analysis is reliable and should be used to determine an estimate of the rider's net impact. In particular, we find that AEP Ohio's weather normalized case, which was used by the signatory parties as the basis for recommending the PPA rider's annualized initial \$4 million credit for 2016, is a reasonable and conservative projection. We, therefore, conclude that the PPA rider is reasonably estimated to provide a net credit of \$37 million over the current ESP term, or \$214 million over the PPA rider term, for AEP Ohio's ratepayers (Co. Ex. 52 at Ex. WAA-2).

In the *ESP 3 Case*, the Commission was not persuaded, based on the record, that AEP Ohio's PPA rider proposal in that case, which included only the OVEC entitlement, would provide customers with sufficient benefit from the rider's financial hedging mechanism or any other benefit commensurate with the rider's potential cost. *ESP 3 Case*,

not updated following the filing of the stipulation. Accordingly, we give their testimony no weight in determining a reasonable estimate of the PPA rider's impact.

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Opinion and Order (Feb. 25, 2015) at 25. In the present proceedings, AEP Ohio has offered a PPA proposal that includes the OVEC entitlement as well as the output from the proposed affiliate PPA, which, as addressed further below, has substantial value as a financial hedge and rate stability mechanism that is based approximately 30 percent on the cost of service of the PPA units and 70 percent on the retail market, and which has been further improved through the signatory parties' modifications to the proposal in the stipulation. To the extent that the \$214 million net credit projected under AEP Ohio's weather normalized case is realized over the PPA rider term, the PPA rider will provide a direct financial benefit, along with a valuable hedging mechanism, to ratepayers. Additionally, as discussed in greater detail below, the stipulation provides numerous other customer benefits. We, therefore, find that the stipulation's PPA proposal is in the public interest and that it should be approved, as modified below, through May 31, 2024.

Finally, the Commission notes that, in the event that AEP Ohio's extended ESP application is approved, Section III.J of the stipulation (Joint Ex. 1 at 32-33) and R.C. 4928.143(E) apply. Again, we base our decision approving the PPA rider today on AEP Ohio's projection that is predicted to result in a net credit of \$214 million.

ii. PPA Rider Rate Impact Mechanism

The Commission acknowledges that the projections presented in these cases are simply predictions of future market prices and costs; thus, even the most reliable projections may be proven wrong in the future, particularly over an eight-year timeframe. Therefore, in order to protect customers against rate volatility and price fluctuations and to provide additional rate stability for customers, the Commission will modify the stipulation to include a mechanism to limit the rate impacts of the PPA rider, consistent with the testimony of Staff witness Choueiki (Staff Ex. 1 at 19) and RESA witness Bennett (RESA Ex. 1 at 10). This mechanism will be asymmetrical; there will be no limit on the net credits that may be provided to customers under the PPA rider.

We direct AEP Ohio to limit customer rate increases related to the PPA rider at five percent of the June 1, 2015 SSO rate plan bill schedules for the remainder of the current ESP period through May 31, 2018. The five percent limit shall be determined not by overall customer rate classes, but on an individual customer-by-customer basis. The customer rate impact mechanism applies only to the PPA rider. Any rate changes that arise as a result of past proceedings, including any distribution-related proceedings, or in subsequent proceedings, are not factored in the five percent limit. The calculation of customer rate increases related to the PPA rider shall not include any cost associated with the renewable energy projects implemented under Section III.I of the stipulation. Further, the five percent limit shall be normalized for equivalent usage to ensure that at no point any individual customer's bill impact related to the PPA rider shall exceed five percent. Any revenue reduction resulting from the implementation of the customer rate impact

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mechanism shall be reflected in the calculation of the PPA rider's over/under-recovery balance for recovery in AEP Ohio's next quarterly update filing.

The Commission notes that AEP Ohio voluntarily included the PPA rider as part of its ESP and chose to file an ESP to fulfill the obligation to provide SSO service under R.C. 4928.141. Further, AEP Ohio has the option, under R.C. 4928.143, to reject any Commission modifications to the ESP and withdraw its application for an ESP. Therefore, if AEP Ohio proceeds with the PPA rider by filing tariffs and finalizing a PPA with AEPGR based upon the term sheet, we will construe such actions as the voluntary acceptance of the mechanism limiting the rate impacts of the PPA rider. However, it is our intent that the mechanism be construed as part of the PPA rider for purposes of the severability clause in the stipulation, and if the mechanism is rejected by a court of competent jurisdiction, that the PPA rider continue as described in the severability clause.

The Commission also notes that our approval of the PPA rider, as a retail hedge, is based upon retail ratemaking authority under state law, which does not conflict with or erode federal laws or the responsibility of FERC to regulate electricity at wholesale. Charges at wholesale are exclusively within the jurisdiction of FERC. Here, the Commission specifies the reasonable amount to pay at retail. AEP Ohio is under no requirement by this Commission or FERC to enter into the arrangements proposed under the PPA proposal. With regard to any potential contract, AEP Ohio is aware, prior to the execution of the contract, of the Commission's modifications to the stipulation. Regarding AEP Ohio's contractual entitlement to a 19.93 percent share of the electrical output of the OVEC generating units, the Commission does not direct or mandate a contract for any amount of the entitlement at wholesale. Rather, our approval of the PPA rider is limited to an authorization of an amount to pay at retail. *Penn. Power Co. v. Pennsylvania Pub. Util. Comm.*, 127 Pa. Commw. 97, 561 A.2d 43 (1989); *Pike County Light and Power Co. v. Pennsylvania Pub. Util. Comm.*, 77 Pa. Commw. 268, 465 A.2d 735 (1983).

iii. Benefits of the Stipulation

Having determined that the best projection or forecast, based upon the record, of the credit to be produced by the PPA rider is \$214 million over the term of the rider, we will turn to other factors to be considered in determining whether the rider is in the public interest. The Commission finds, based on the record evidence, that the stipulation will provide numerous benefits for customers that are in the public interest and consistent with the policy of the state, as set forth in R.C. 4928.02. With respect to the provisions related to the procurement of additional renewable energy resources in Ohio (Joint Ex. 1 at 30-32; Co. Ex. 52 at 14), the Commission notes that renewable energy plays an integral role in promoting a reliable and cost-effective grid. The Commission will continue to look to the markets as the primary drivers of an adequate supply of energy from any source, including renewable energy. Additionally, the Commission will continue to support

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bilateral contracts that lead to the development of renewable projects. The stipulation provides for a commitment to procure 500 MW of wind capacity and 400 MW of solar capacity. The Commission supports the construction of new renewables in this state. The state has previously seen a number of wind-related projects approved for siting through the Board, many of which have yet to be constructed. However, solar projects are not as prevalent. Solar projects would enhance the diversity of available generation options. The Commission first encourages that bilateral contracting opportunities be explored to provide support for the construction of renewables. To the extent that bilateral opportunities are not available, the Commission will entertain and review a cost recovery filing, first focusing on enhancing solar opportunities. We also direct AEP Ohio to demonstrate that bilateral opportunities were explored and that a competitive process was utilized to source and determine ownership of any project to be built.

With respect to the PPA proposal, we find that customers will benefit from the PPA rider as a financial hedging mechanism. The PPA rider will supplement the benefits derived from the staggering and laddering of the SSO auctions and protect retail customers from price volatility in the market. The record reflects that the PPA rider will provide added rate stability during periods of extreme weather, when the rider can be expected to offset severe price spikes. The different scenarios reflected in AEP Ohio's projection of the PPA rider's impact demonstrate the effect of variation in load due to severe weather or economic factors, including the asymmetric impact that such factors have on electric prices, where increases in load tend to increase prices more so than load reductions decrease prices. If load increases due to weather or economic conditions, shopping and SSO customers will be exposed to the resulting higher wholesale prices, which the PPA rider will partially offset. The 3,111 MW of capacity under the affiliate PPA and the OVEC PPA is a significant amount that will provide value as a financial hedging mechanism that supports stable retail rates. Although certain non-signatory parties argue that customers do not want or need a hedge to stabilize their rates, rate stability is an essential component of AEP Ohio's ESP, as we recognized in the *ESP 3 Case*, and R.C. 4928.143(B)(2)(d) expressly authorizes the Commission to establish a rate stability mechanism. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 25. The PPA rider provides the benefit of a more balanced approach than relying exclusively on the market, through a diversified portfolio with a cost-based hedge, sourced from 20 generating units representing roughly a third of AEP Ohio's connected load, that protects against volatile market prices. (Co. Ex. 1 at 8-10; Co. Ex. 2 at 11-21, Ex. KDP-2; Co. Ex. 6 at 5; Co. Ex. 10 at 7-8, Ex. WAA-2; Co. Ex. 51 at 2-3, 4-5, 7-8, Ex. WAA-R3; Co. Ex. 52 at 13-14, Ex. WAA-2; MAREC Ex. 1 at 6-7; Tr. XVII at 4385-4388, 4405-4406; Tr. XVIII at 4574-4575; Tr. XX at 4978.)

In addition to the benefit of rate stability, the PPA proposal will facilitate generation fuel supply diversity and work to offset the price volatility impact that any single fuel source may have on electric rates. Fuel source diversity is a matter of great importance to

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the Commission, and the PPA proposal will help to ensure that a diverse fuel source mix is maintained in Ohio. (Co. Ex. 1 at 8-10, 23; Co. Ex. 2 at 16-17, 22-24; Co. Ex. 6 at 12-13; Co. Ex. 11 at 3-4; Co. Ex. 52 at 14.) As previously acknowledged by the Commission, there is also considerable uncertainty with respect to pending environmental regulations, and the PPA proposal will afford the state flexibility in complying with any future requirements of the CPP, by providing greater fuel source diversity (Co. Ex. 4 at 15-19). *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 24, Second Entry on Rehearing (May 28, 2015) at 4-6. Further, the PPA proposal will guarantee that the PPA units continue to provide jobs and other economic benefits to the region, while avoiding the potential for increased transmission costs that may result from premature retirements (Co. Ex. 1 at 10, 13-15, 25-26; Co. Ex. 5 at 11; Co. Ex. 7 at 4-5, 6-10; Co. Ex. 10 at 11-13; Co. Ex. 52 at 13-14).

Additionally, the stipulation's modifications to the PPA proposal put forth in AEP Ohio's amended application, including the changes to the affiliate PPA outlined in Attachment A to the stipulation, will also benefit customers. Specifically, the stipulation reduces the ROE for the affiliate PPA from an initial variable rate of 11.24 percent (with a range up to 15.9 percent) to a fixed 10.38 percent, resulting in savings of \$86 million, and shortens the term of the PPA to approximately 8 years. The stipulation also provides that AEP Ohio will fund credits to ratepayers of up to \$100 million over the last four years of the PPA term, if the actual revenues under the PPA rider are at a level that would otherwise impose a charge or provide a credit that is less than the amount of the credit commitment. This provision of the stipulation, therefore, also adds value for ratepayers, as a means to ensure that the PPA rider operates to the benefit of customers, as expected, and to incent AEP Ohio to make certain that the PPA units are managed efficiently. (Joint Ex. 1 at 5, Att. A; Co. Ex. 2 at Ex. KDP-1; Co. Ex. 8 at 6-7; Co. Ex. 52 at 14, Ex. WAA-2.)

Aside from the stipulation's enhancements to the PPA proposal, the stipulation also includes numerous commitments by AEP Ohio to offer proposals in future proceedings that are intended to promote economic development and retail competition, facilitate energy efficiency measures, reduce carbon emissions, expand the development of renewable resources, and pursue grid modernization in the state. Initially, the Commission notes that, because these proposals are subject to further review in future proceedings, our recognition of the benefits of the proposals should not be construed as a predetermination of the outcome of those future proceedings, which will be decided based upon the record in each case. Rather, at this point in time, we find value for customers in AEP Ohio's commitment to bring these proposals before the Commission for further consideration (Tr. XIX at 4870).

With respect to specific customer benefits, the Commission notes that the automaker credit is intended to encourage economic development by creating an incentive for automakers to use or locate their manufacturing facilities within the state. AEP Ohio has also committed to filing, by December 31, 2016, a carbon reduction plan for promoting

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both fuel diversification and carbon emission reductions, as well as filing, by June 1, 2016, a grid modernization business plan that will include initiatives related to advanced metering infrastructure installation, investment in distribution automation circuit reconfigurations, Volt/VAR Optimization, removing obstacles to distributed generation, and net metering tariffs. As we have previously stated, there is significant long-term value and benefit for customers with the implementation of advanced metering infrastructure, distribution automation, and other smart grid technologies. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 51-52. Regarding Volt/VAR Optimization in particular, AEP Ohio has committed to propose, through settlement efforts in Case No. 13-1939-EL-RDR, to deploy 160 circuits of Volt/VAR Optimization, rather than the 80 circuits proposed in that case, and to include a future proposal to deploy all cost-effective Volt/VAR technology, while also agreeing not to count the savings associated with the Volt/VAR Optimization toward triggering the shared savings mechanism, although the energy savings would be applied toward the Company's overall EE/PDR achievement above and beyond the savings benchmarks agreed upon in the stipulation. (Joint Ex. 1 at 11, 26-27, 28, 29-30; Co. Ex. 52 at 14; Tr. XIX at 4863-4865; Tr. XX at 4932; ELPC Ex. 18.)

Although the Commission will review and decide whether to approve AEP Ohio's grid modernization business plan in a separate proceeding, we note that, under R.C. 4928.02(D), it is the policy of the state to encourage innovation through the implementation of smart grid programs and advanced metering infrastructure. The Commission further notes that the modernization of the grid in AEP Ohio's service territory is also consistent with efforts to make the grid more reliable and cost effective for consumers. We encourage AEP Ohio to ensure that the proposed grid modernization business plan considers the future transition to a grid that engages customers and supports flexibility in meeting resource adequacy needs.

Other customer benefits of the stipulation include AEP Ohio's commitment to contribute \$500,000 in shareholder funding to a public institution of higher education in Ohio for the purpose of advancing clean energy research and development; commitment to propose a supplier consolidated billing pilot program, with half of the costs paid by the CRES signatory parties; several commitments involving increased investment in EE/PDR programs at Ohio hospitals, including Volt/VAR Optimization deployment; and the expansion of the IRP program (Joint Ex. 1 at 10-11, 13-15, 16-17; Co. Ex. 52 at 14; Tr. XVIII at 4540-4541, 4644-4645; Tr. XIX at 4714; Tr. XXII at 5593-5594). Additionally, we find that a number of other provisions of the stipulation are in the public interest, as they will afford the state a considerable degree of flexibility in meeting the carbon reduction requirements that may result from the CPP or other future environmental regulations. These include the PPA proposal itself, which supports supply diversity; AEP Ohio's commitment to convert certain generating units to natural gas co-firing or to retire, refuel, or repower to 100 percent natural gas within a specific timeframe; the Company's commitment to propose the development of at least 900 MW of solar and wind resources in Ohio; and

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various commitments made by the Company to implement energy efficiency and demand response measures. (Joint Ex. 1 at 13-16, 19-28, 30-32; Co. Ex. 52 at 14; Tr. XIX at 4710-4711.)

iv. Commission's Factors

With respect to the factors enumerated in the *ESP 3 Case*, the Commission directed AEP Ohio, at a minimum, to address four specific factors, which the Commission would balance, but not be bound by, in deciding whether to approve the Company's request for cost recovery in its filing. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 25. AEP Ohio filed an amended application, in part, to address the Commission's factors, as well as the other requirements set forth by the Commission in the *ESP 3 Case*, while the stipulation addresses in further detail the directives provided in the *ESP 3 Case*. Although we address the factors identified in the *ESP 3 Case*, we also note that our determination of whether to approve the proposed PPA rider is based on our retail ratemaking authority under state law, which does not conflict with the Federal Power Act or FERC's responsibility to regulate electricity at wholesale. While the Commission is sympathetic to concerns surrounding potential additional transmission costs, resource diversity, and local economic impact, the Commission's decision does not turn on such issues. The Commission has, however, considered the evidence offered by AEP Ohio and the other parties with respect to the factors and requirements from the *ESP 3 Case*, as part of our analysis of the second part of the three-part test.

AEP Ohio's testimony reflects that near-term capacity market revenues are not sufficient to support necessary capital investment, even with the revenue uplift from the recent Capacity Performance auctions, and have increased the risk of premature retirement of the PPA units (Co. Ex. 1 at 17; Co. Ex. 2 at 31; Co. Ex. 5 at 13-14). The record further reflects that the PPA units will support supply diversity in the state. AEP Ohio's testimony indicates that the continued operation of the coal-fired PPA units will help to protect against a potential over-reliance on natural gas generation facilities and ensure that the region has a diversified fuel source portfolio. (Co. Ex. 1 at 8, 13; Co. Ex. 3 at 6-7.) Regarding compliance with current or pending environmental regulations, AEP Ohio witnesses testified that the PPA units are either already equipped with the environmental controls necessary to comply with six important environmental regulations, including the CPP, or that there are budgetary estimates for future compliance incorporated within the financial analysis provided as part of the PPA cost estimates (Co. Ex. 4 at 4-5, 20-21; Co. Ex. 5 at 7).

AEP Ohio witnesses also addressed the expected impact of PPA unit closures on economic development and electric prices within the region, explaining that the continued retirement of generating units would necessitate costly transmission upgrades. Noting that the PPA units provide over \$650 million in annual economic benefits, they

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emphasized that the units employ over 1,600 workers and provide \$121 million in direct annual payroll income and \$11.5 million in annual property taxes, as well as more than 4,000 additional jobs and nearly \$244 million of additional income, to the region. (Co. Ex. 1 at 10, 13, 25-26; Co. Ex. 7 at 10; Co. Ex. 10 at 11-13, Ex. WAA-3, Ex. WAA-4.) Finally, the other PPA proposal requirements set forth by the Commission in the *ESP 3 Case* were addressed in AEP Ohio's testimony or in the Company's amended application (Co. Ex. 1 at 27-29; Co. Ex. 10 at 10-11; Co. Ex. 13 at 3-4).

It is apparent from the stipulation that the signatory parties took steps to address the Commission's factors and requirements from the *ESP 3 Case*, given that the stipulation includes sections regarding review of the PPA rider, information sharing, risk sharing, and severability (Joint Ex. 1 at 5, 7-9, 35). Although we find, following our consideration of the evidence of record, that the factors and requirements from the *ESP 3 Case* have been thoroughly addressed by AEP Ohio in its testimony and by the signatory parties in the stipulation, the Commission believes that certain clarifications and modifications to the stipulation are necessary to ensure that the requirements from the *ESP 3 Case* are satisfied as fully intended by the Commission. Initially, regarding the requirement to include a plan to allocate the PPA rider's financial risk between AEP Ohio and ratepayers, the stipulation's lower fixed ROE and \$100 million credit commitment, as well as the potential for disallowance of imprudent costs, are not a sufficient plan to allocate the rider's financial risk (Joint Ex. 1 at 5, 7, Att. A). We conclude, however, that, in combination with the other modifications adopted herein by the Commission, there is a proper sharing of financial risk between AEP Ohio and ratepayers, as well as an appropriate balance between legitimate customer concerns about prices and the interests of other stakeholders. We also clarify that AEP Ohio should not seek to recover any portion of the \$100 million credit commitment from ratepayers in any future Commission proceeding. With respect to the terms of the stipulation's severability provision, we find that the prohibition on refunds, in the event of an invalidation of the PPA rider proposal, should be removed from the stipulation, as it is a matter for determination by the Commission or reviewing court (Joint Ex. 1 at 35).

v. Annual Prudency Review

The Commission emphasizes that we will conduct an annual prudency review of any retail charges flowing through the PPA rider. Section III.D.5.a addresses annual compliance reviews before the Commission to ensure that actions taken by AEP Ohio when selling the output from generation units included in the PPA rider into the PJM market were not unreasonable (Joint Ex. 1 at 7). In response to the concerns raised by certain intervenors, the Commission finds it necessary, at this point, to provide some clarity as to whether specific actions will be deemed not unreasonable for purposes of retail cost recovery. First, we will modify the stipulation to ensure that AEP Ohio, rather than ratepayers, will bear the burden of any Capacity Performance penalties, which will

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not be considered prudent expenditures. AEP Ohio, therefore, should not seek to recover, through the PPA rider, any costs associated with Capacity Performance penalties. However, we will further modify the stipulation to provide that all Capacity Performance bonuses will be retained by AEP Ohio. Additionally, the Commission reserves the right to prohibit recovery of any costs related to any unit for any period exceeding 90 days for any forced outage during the term of the PPA rider, unless otherwise recommended by Staff and approved by the Commission. We also direct that AEP Ohio should not flow through the PPA rider the net costs or revenues associated with AEPGR's obligations or entitlements with respect to Buckeye's Cardinal Units 2 and 3 under the CSA. Our decision is based solely on the record in these proceedings and does not preclude AEP Ohio from filing a supplemental application to include the net effects of Cardinal Units 2 and 3 in the PPA rider. We find that these modifications and clarifications will ensure that the stipulation is in the public interest and that financial risk is properly allocated.

We disagree with claims that the annual prudency review is inadequate or illusory. The annual review provided for under the stipulation is intended to address Staff's recommendations (Staff Ex. 1 at 17-18; Co. Ex. 52 at 2), and the Commission has always provided for the periodic review and reconciliation of riders created under an ESP. It is well-established that state commissions can review whether a utility prudently entered into a particular transaction in light of the alternatives. *Pike County Light and Power Co. v. Pennsylvania Pub. Util. Comm.*, 77 Pa.Comm.w. 268, 465 A.2d 735 (1983). FERC acknowledges the authority of states to review the prudence of transactions. *Duke Energy Retail Sales, LLC*, 127 FERC ¶ 61,027 (2009). This authority also has been recognized by federal courts:

Regarding the states' traditional power to consider the prudence of a retailer's purchasing decision in setting retail rates, we find no reason why utilities must be permitted to recover costs that are imprudently incurred; those should be borne by the stockholders, not the ratepayers. Although *Nantahala* underscores that a state cannot independently pass upon the reasonableness of a wholesale rate on file with FERC, it in no way undermines the long-standing notion that a state commission may legitimately inquire into whether the retailer prudently chose to pay the FERC-approved wholesale rate of one source, as opposed to the lower rate of another source.

Kentucky West Virginia Gas Co. v. Pennsylvania Pub. Util. Comm., 837 F.2d 600, 609 (3d Cir. 1988) (citing *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953 (1986)).

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Further, we note that AEP Ohio has consented to this review as an integral part of the PPA rider under the ESP pursuant to R.C. 4928.143, specifically including both the costs of generating power and the transactions involving the sale of the power into the PJM market (Joint Ex. 1 at 7). *Kentucky West Virginia Gas Co.*, 837 F.2d at 617 (finding that utility could not complain about process used by Commission to which it had consented).

Some parties have raised the possibility that AEP Ohio would sell the output from the generation units included in the PPA rider to an affiliate at a below-market price. AEP Ohio has made it clear that its intent is to sell the energy, capacity, and ancillary services into the PJM markets and that any sales under a bilateral contract would be subject to the Commission's review (Tr. XVIII at 4616-4617, 4655-4657; Tr. XIX at 4722-4724, 4735-4736). This is an issue of importance, considering the success of retail shopping. It is the desire of the Commission that such shopping continues. We emphasize that any bilateral transaction between AEP Ohio and any affiliate would be stringently reviewed to ensure that it did not adversely affect retail electric service competition in this state. The Commission notes that, consistent with Commission precedent, AEP Ohio will bear the burden of proof in demonstrating the prudence of all costs and sales during the review, as well as that such actions were in the best interest of retail ratepayers; however, no presumption of management prudence will apply to any bilateral sales by the Company to affiliates.

With respect to bidding behavior, the Commission is mindful of the issues raised by PJM in its brief. The Commission appreciates the continued investments in generation in our region by merchant generators. The Commission notes that PJM could impose the very same bidding standards on all bidders, or all similarly-situated bidders, in PJM auctions rather than only on the plants at issue in these proceedings. We are not persuaded that the PPA plants should be held to different standards than other generation plants, particularly those in states that already provide for full cost recovery of generation plants. Retail cost recovery may be disallowed as a result of the annual prudence review if the output from the units was not bid in a manner that is consistent with participation in a broader competitive marketplace comprised of sellers attempting to maximize revenues. As noted above, AEP Ohio will bear the burden of proof in demonstrating that bidding behavior is prudent and in the best interest of retail ratepayers.

Regarding the process for ongoing Staff review and annual audits of the PPA rider, the Commission expects that the process will be carried out in a manner that is consistent with the process for AEP Ohio's prior fuel adjustment clause (FAC) mechanism. Accordingly, with respect to AEP Ohio's quarterly PPA rider filings, which should include appropriate work papers, Staff should review each such filing for completeness, computational accuracy, and consistency with any prior Commission determinations regarding the adjustments. If Staff raises no issues prior to the billing cycle during which the quarterly adjustments are to become effective, the adjusted PPA rider rates shall

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become effective for that billing cycle. The PPA rider, however, remains subject to adjustment during the annual audit and reconciliation, through which Staff, or another auditor selected by the Commission, will review the accuracy and appropriateness of the rider's accounting and the prudence of AEP Ohio's decisions and actions as set forth in the stipulation. In order to facilitate the audit of AEP Ohio's PPA rider filings, the Company should open a new case each year in which the Company should file its quarterly PPA rider adjustments and in which the audit report for that year should also be filed. The quarterly PPA rider adjustments should be filed on or before March 1, June 1, September 1, and December 1 of each year, unless otherwise agreed upon by Staff and AEP Ohio. AEP Ohio and Staff should work together to determine the specific content and format for the quarterly PPA rider filings. We also note that, as with AEP Ohio's FAC mechanism, interested stakeholders may seek to intervene and participate in the annual audit process, consistent with any established procedural schedule.

The stipulation provides that the PPA rider rate would be based initially on an annualized \$4 million credit for 2016, subject to reconciliation (Joint Ex. 1 at 6). We find that this provision should be modified, such that the PPA rider rate remains at its current rate of zero through May 31, 2016. AEP Ohio is, therefore, authorized to flow the net effects of the OVEC PPA and the affiliate PPA through the PPA rider, beginning on June 1, 2016. As part of AEP Ohio's first quarterly adjustment filing that occurs on or before September 1, 2016, the Company should include a true-up to reflect actual values and an updated forecast of the PPA rider's projected impact, which should be based on the most recent data available to the Company. With its initial filing and annually thereafter, AEP Ohio will provide to Staff customer bill impacts and proposed rate mitigation measures, if necessary. With respect to legacy costs, the Commission directs AEP Ohio to provide to Staff audited accounting information establishing the amount of legacy costs. Further, the Commission directs the auditor in the first annual audit to verify the information provided by AEP Ohio to serve as a baseline for future audits.

vi. Other Modifications and Clarifications

In response to the parties' arguments and recommendations, the Commission finds that a number of additional modifications and clarifications are necessary. As recommended by OEG, the Commission finds that any subsequent rejection of the PPA or the PPA-related stipulation provisions by a state or federal court should not be deemed to trigger the PPA's liquidated damages provision (Joint Ex. 1 at Att. A). We also reserve the right to reevaluate or modify the PPA rider, without triggering the liquidated damages provision, if there is a change to PJM's tariffs or rules that prohibits the PPA units from being bid into PJM auctions. Finally, notwithstanding our approval of the PPA rider, we direct that AEP Ohio should not seek to recover, from ratepayers, the costs associated with any conversion, whether considered co-firing, refueling, or repowering, or the costs associated with the retirement, of the PPA units, through the PPA rider or any other cost

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recovery mechanism, as recovery of such costs would not be consistent with the statutory framework set forth in R.C. 4928.143 or any other provision of R.C. Chapter 4928. The stipulation's cost recovery provisions found in Sections III.D.9, III.D.10, and III.D.12, except as pertaining to transmission upgrade costs or non-transmission alternative costs, should be modified accordingly (Joint Ex. 1 at 19-21, 26). Any potential depreciation rate changes remain subject to a prudence determination by the Commission, pursuant to Section III.A.6 of the stipulation (Joint Ex. 1 at 9).

The Commission does not agree that certain provisions in the stipulation are nothing more than monetary inducements offered by AEP Ohio in exchange for the support of the signatory parties. The stipulation's provisions directing specific payments to OHA and OPAE require these parties, on behalf of Ohio hospitals and low-income customers, respectively, to take a number of steps to implement specific energy efficiency programs, and, as discussed above, energy efficiency measures provide significant customer benefits (Joint Ex. 1 at 13-16). The payments are, therefore, to be made in exchange for specific services and programs that add value to the stipulation as a package. The Commission acknowledges our prior admonition that direct payments to intervenors of a refund of prior payments are strongly disfavored. *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 05-376-EL-UNC, Order on Remand (Feb. 11, 2015) at 11-12. Although we do not agree that the payments to OHA and OPAE are analogous to the refunds provided to specific intervenors in that case, the Commission does find that it is appropriate to direct AEP Ohio, working in conjunction with OHA and OPAE, to file annual or more frequent compliance reports, with the initial report filed no later than December 31, 2016, confirming that the parties' commitments set forth in the stipulation are being met. Thereafter, based upon the compliance reports, the Commission may order an independent audit of the funding. If such an independent audit is ordered, the independent auditor will be selected by the Commission, and the costs of the audits will be borne by AEP Ohio, without recovery from ratepayers. AEP Ohio is directed to work with Staff to determine the appropriate scope and frequency of the compliance reports and audits. We note that, with respect to payments to other parties to promote energy efficiency programs, all energy efficiency savings obtained through such programs are thoroughly reviewed through the evaluation, measurement, and verification (EMV) process by AEP Ohio's independent EMV auditor, as well as the Commission's statewide EMV auditor.

As final matters, we note that provisions of the stipulation that purport to bind the Commission in the manner in which it conducts its business, handles its dockets, or renders its decisions remain within the Commission's discretion. These include provisions addressing the Commission's treatment of confidential information (Joint Ex. 1 at 7-8), the Commission's solicitation of comments regarding long-term resource adequacy needs in the state (Joint Ex. 1 at 9), the Commission's consideration of renewable energy projects (Joint Ex. 1 at 31, 32), and the Commission's citation of the stipulation as precedent (Joint

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Ex. 1 at 34). Additionally, although the Commission has broad discretion with respect to rate design, we find that the provisions in the stipulation that would transfer certain costs from the EE/PDR rider to the EDR (Joint Ex. 1 at 16) are proposals that should be included in AEP Ohio's application to extend the ESP through May 31, 2024. The stipulation also provides that AEP, for the term of the PPA rider, intends to maintain its corporate headquarters in Columbus, Ohio, and will maintain a nexus of operations in the state relating to operation and support of the PPA units (Joint Ex. 1 at 16). We find that the stipulation should be clarified, such that, if AEP does not maintain its corporate headquarters in Columbus, Ohio, or a nexus of operations in the state, during the period of the PPA rider, the Commission may determine, in its sole discretion, to terminate the rider. With these modifications and clarifications, the Commission finds that the stipulation, as modified, benefits ratepayers and the public interest, in accordance with the second prong of our test for the consideration of stipulations.

3. Does the settlement package violate any important regulatory principle or practice?

a. Introduction

Initially, the Commission again emphasizes the complexity of the issues in these proceedings, as well as the necessity that we balance multiple interests. Moreover, the Commission must be cognizant of the state policies set forth in R.C. 4928.02. While we appreciate the issues raised by non-signatory parties, we find that the stipulation, as modified by the Commission, protects consumers against rate volatility and price fluctuations by promoting retail rate stability for all ratepayers in this state, modernizes the grid through the deployment of advanced technology and procurement of renewable energy resources, and promotes retail competition by enabling competitive providers to offer innovative products to serve customers' needs, consistent with state policy to ensure the availability to consumers of adequate, reliable, safe, efficient, non-discriminatory, and reasonably priced retail electric service; to encourage innovation, including smart grid programs; to protect at-risk populations; and to facilitate the state's effectiveness in the global economy. R.C. 4928.02(A), (D), (L), and (N).

b. Statutory Authority

Several parties opposing the stipulation reason that the Commission lacks jurisdiction, under Ohio law, to approve the PPA rider and the stipulation, arguing the Commission's jurisdiction is limited to retail rates and services. OCC and APJN argue that it is the core responsibility of FERC, not the Commission, to protect consumers by overseeing the wholesale electric markets. In light of FERC's exclusive federal jurisdiction, opposing intervenors aver that the Commission is without jurisdiction under Ohio law to approve the PPA rider. (OCC/APJN Br. at 16-19; OMAEG Br. at 16-20.)

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Opposing intervenors note that the Commission determined that the PPA rider is a generation credit or charge. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 22. As such, non-signatory parties assert the Commission lacks the authority to approve the PPA proposal or the stipulation outside of an ESP proceeding and also lacks the authority to extend the PPA rider beyond the current ESP term. (P3/EPSC Br. at 57-60; RESA/Exelon Br. at 28-31.)

The Commission, in accordance with the requirements of R.C. 4928.143(B)(2)(d), approved the PPA rider mechanism in the *ESP 3 Case* but did not approve the recovery of any PPA costs. After concluding the PPA rider could be a provision of an ESP, the Commission ultimately determined that AEP Ohio's PPA proposal, which included only the OVEC entitlement, would not provide retail customers with sufficient benefit from the rider's financial hedging mechanism or any other benefit commensurate with the rider's potential cost. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 21, 25. Recognizing that AEP Ohio had pending before the Commission, in the above-entitled matters, the initial application to incorporate an additional PPA in the PPA rider mechanism, the Commission established the PPA rider as a placeholder, at an initial rate of zero, for the term of the ESP and directed that implementation details would be determined in a future proceeding. *ESP 3 Case* at 19, 25. The Commission finds that the present PPA proceedings are, therefore, an outcome of the *ESP 3 Case*, in order to facilitate a more in-depth review of the Company's PPA proposal, and, if approved by the Commission, to populate the rate in the PPA rider. This process is consistent with other ESP proceedings where the Commission has approved zero placeholder riders and subsequently populated the rate of the 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 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 FirstEnergy*, Case No. 08-935-EL-SSO, et al., Second Opinion and Order (Mar. 25, 2009) at 15.

Accordingly, the Commission does not believe it is strictly necessary, in these rider proceedings, to reassess the statutory basis for the PPA rider. Nonetheless, in response to the parties' arguments, we will affirm that the PPA rider mechanism can be included as a provision of an ESP, based on the record before us. *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 706 N.E.2d 1255 (1999). The Commission finds that the PPA rider mechanism, as proposed in the amended application and the stipulation, meets the three requirements set forth in R.C. 4928.143(B)(2)(d). See, e.g., *ESP 2 Case*, Entry on Rehearing (Jan. 30, 2013) at 15-16; *In re Dayton Power and Light Company*, Case No. 12-426-EL-SSO, et al., Opinion and Order (Sept. 4, 2013) at 21-22. R.C. 4928.143(B)(2)(d) dictates that a component of an ESP must be a term, condition, or charge relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service. The PPA rider, as presented in the

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amended application and the stipulation, is a credit or charge that would appear on customers' bills (Co. Ex. 52 at Ex. WAA-2). Thus, the Commission concludes that the first requirement of R.C. 4928.143(B)(2)(d) is met, as the PPA rider would consist of a charge or credit incurred by customers under the ESP.

To be an element of an ESP, R.C. 4928.143(B)(2)(d) also requires that the PPA mechanism relate to at least one of the following: limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals. The PPA rider, as presented in the amended application and the stipulation, is non-bypassable and would operate as a financial limitation on customer shopping for retail electric generation service. The effect of the PPA rider is that the bills of all customers would reflect a price for retail electric generation service that is approximately 30 percent based on the cost of service of the PPA units and 70 percent based on the retail market, thus functioning as a financial hedge against complete reliance on the retail market for the pricing of retail electric generation service. The PPA mechanism proposed in the amended application and the stipulation includes approximately 3,100 MW of generation, a significantly greater amount than the level of the OVEC entitlement alone, as initially proposed in the *ESP 3 Case*. (Co. Ex. 2 at 15-19; OEG Ex. 1 at 10; Tr. XVII at 4249, 4378; Tr. XX at 5062.)

Finally, R.C. 4928.143(B)(2)(d) requires that the charge have the effect of stabilizing or providing certainty regarding retail electric service. The PPA rider proposed in the amended application and the stipulation would operate as a financial hedging mechanism, with the effect of stabilizing or providing certainty regarding retail electric service. The PPA rider would smooth out fluctuations in market prices, because the rider would rise or fall in a way that is counter cyclical to the wholesale market. The PPA rider, therefore, is intended to mitigate, by design, the effects of market volatility, providing customers with more stable retail pricing and a measure of protection against substantial increases in market prices, with quarterly reconciliations to actual costs and revenues. The record reveals that, on a demand or capacity basis, the PPA rider proposed in the amended application and the stipulation would equate to retail electric rates that are based approximately 30 percent on the cost of service and 70 percent on the market. Thus, the Commission reasons, consistent with the ESP statute, that the PPA rider mechanism is capable of stabilizing retail electric rates. (Co. Ex. 1 at 8-10; Co. Ex. 2 at 11-21, Ex. KDP-2; Co. Ex. 6 at 5; Co. Ex. 10 at 7-8, Ex. WAA-2; Co. Ex. 51 at 2-3, 4-5, 7-8, Ex. WAA-R3; Co. Ex. 52 at Ex. WAA-2; OEG Ex. 1 at 10, 13; MAREC Ex. 1 at 6-7; Tr. II at 543; Tr. XVIII at 4568-4569, 4574; Tr. XX at 4978.)

Consistent with the requirements of R.C. 4928.143(B)(2)(d), the Commission's objective is to ensure sufficient and adequate oversight of the costs to be incurred and the benefits to be received by AEP Ohio's retail customers, both shopping and SSO, through

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the PPA rider. The record reveals that shopping has been robust in AEP Ohio's service territory, with approximately 51 percent and 52 percent of commercial and industrial customers, respectively, receiving electric service from a CRES provider, while more than 32 percent of residential ratepayers are shopping customers, as of June 30, 2015 (Co. Ex. 38). CRES rates, as reflected in the retail contract offers for residential customers, reflect a level of volatility that would be reduced by the PPA rider (Co. Ex. 51 at 3-5). While we find that the PPA rider is a financial limitation on customer shopping pursuant to the requirements of R.C. 4928.143(B)(2)(d), the rider does not prohibit or otherwise curtail customers from securing their electric service from a CRES provider nor will the rider restrict current CRES customers. Shopping and SSO customers are not captive customers. In other words, customers will continue to have the ability to select a CRES provider or return to the SSO. The PPA mechanism is intended to act merely as a financial hedge for shopping and SSO customers against price changes in the retail market.

c. State Policy

Regarding the third part of the three-part test, AEP Ohio witness Allen testified that the stipulation does not violate any important regulatory principle or practice. Mr. Allen further testified that the stipulation, as a compromise among the diverse group of signatory parties, promotes the state policy provisions set forth in paragraphs (A), (B), (C), (D), (E), (J), (L), and (N) of R.C. 4928.02. Mr. Allen added that the stipulation advances important regulatory policies and practices by providing a hedge against rising energy prices; promoting competitive service offerings, diversity of suppliers, and advancements in technology for infrastructure and efficient information access; increasing energy efficiency; and addressing the resolution of other regulatory matters often considered by the Commission. (Co. Ex. 52 at 1, 12-13; Co. Br. at 109.)

Several intervenors opposing the PPA rider and the stipulation argue they violate various state policy provisions of R.C. 4928.02. OCC and APJN contend that the stipulation cannot meet the third prong of the test, as the stipulation advocates for the transfer of 50 percent of the costs associated with the IRP credits from the EE/PDR rider to the EDR. OCC and APJN claim the transfer is not reasonable and would cause harm to residential customers. OCC and APJN reason that, with the transfer approved, costs will not be allocated on the principle of cost causation and, therefore, the proposal is not reasonable under R.C. 4928.02(A). OCC and APJN also submit approval of the PPA rider would result in the cross-subsidization of generation by distribution customers, contrary to R.C. 4928.02(H). ELPC, EDF, and OEC argue the PPA rider is inconsistent with the promotion of effective competition in the retail market, as set forth in R.C. 4928.02(H). (OCC/APJN Br. at 68-69; ELPC/EDF/OEC Br. at 55.)

AEP Ohio states the continuing portrayal of the PPA rider as contrary to Ohio law and policy by opposing intervenors directly contradicts the Commission's decision in the

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ESP 3 Case and should be rejected again. Staff also submits that the stipulation does not violate any important regulatory principle or practice and promotes the state policies listed in paragraph (A), (C), (D), (E), (J), (L) and (N) of R.C. 4928.02. The Company advises that the supplier consolidated billing pilot is intended to squarely address the policies advocated in R.C. 4928.02(C) and (E) to encourage customer choice and the IRP tariff is intended to address the policies advocated in R.C. 4928.02(N) and to advance economic development in Ohio. The Company notes, in the *ESP 3 Case*, the Commission determined the PPA rider is a generation-related rider recovering generation-related costs. *Elyria Foundry Co. v. Pub. Util. Comm.*, 114 Ohio St.3d 305, 2007-Ohio-4164, 871 N.E.2d 11, ¶ 50; *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 21, 26. (Co. Br. at 108-109; Co. Reply Br. at 12, 81-82; Staff Br. at 13-14.)

Pursuant to R.C. 4928.02(A), it is the policy of the state of Ohio to ensure the availability to consumers of adequate, reliable, safe, efficient, non-discriminatory, and reasonably priced retail electric service. The PPA rider is another mechanism that may be used to stabilize retail electric rates and ensure reasonably priced retail electric service. R.C. 4928.02(H) requires the Commission to ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies. The Commission finds that the PPA rider mechanism, as modified in this Opinion and Order, is consistent with that state policy and the remainder of R.C. 4928.02. The PPA rider mechanism, as adopted herein, will avoid Ohio retail customers' total reliance on market-based pricing and weather extremes. Accordingly, the Commission believes adoption of the PPA rider continues to be consistent with our obligation under R.C. 4928.02(A) to ensure the availability to consumers of reasonably priced retail electric service. We reject claims the PPA rider would violate R.C. 4928.02(H). Contrary to the arguments of opposing intervenors, the PPA rider mechanism does not facilitate the recovery of generation-related costs through distribution or transmission rates. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 26.

The Commission is not convinced by the claims of several parties that the PPA rider is anticompetitive. Initially, we note that wholesale competition and retail competition are different. Wholesale competition involves generators of power selling energy, capacity, and ancillary services into the PJM market. Retail competition involves CRES suppliers reselling power purchased from the wholesale market to retail consumers.

The PPA rider is non-bypassable and, thus, will have the same impact on shopping customers' bills as on SSO customers' bills. The PPA rider creates no advantage to shopping and no disadvantage to shopping. Likewise, the PPA rider has the same impact on a shopping customer irrespective of which CRES provider serves the customer and irrespective of whether the customer is part of an aggregation or served individually by a CRES provider. Further, AEP Ohio will continue to source all of the SSO load through competitive auctions. Accordingly, we find that the PPA rider is consistent with the state

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policy to "[e]nsure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs." R.C. 4928.02(B).

We are mindful, however, of concerns that AEP Ohio may enter into bilateral contracts with an affiliate in order to give the affiliate a competitive advantage. As an initial matter, AEP Ohio witness Allen testified that the Company intends to sell the energy and capacity in PJM's markets and does not expect to enter into bilateral contracts (Tr. XVIII at 4617, 4655-4657; Tr. XIX at 4736). Nonetheless, as discussed above, there are imposed safeguards in the annual prudency review process to protect against anticompetitive behavior by AEP Ohio. Any bilateral contracts between AEP Ohio and an affiliate will be stringently reviewed, and no presumption of management prudence will apply to a bilateral sale to an affiliate. These protections are more than sufficient to protect against anticompetitive subsidies under R.C. 4928.02(H).

d. IRP Program

OMAEG argues that, in Section III.C.7 of the stipulation, AEP Ohio proposes to expand the IRP tariff and increase the credit offered to current IRP customers. Under certain conditions, OMAEG argues AEP Ohio proposes to expand the MW available through the IRP to signatory parties and non-opposing parties only, without any record support. OMAEG contends there is no logical reason for AEP Ohio to propose to broaden the IRP tariff eligibility and to increase credits for signatory parties and non-opposing parties. According to OMAEG, non-signatory parties also have the ability to implement demand response programs and making the program available to a select class is anticompetitive. OMAEG also argues that the increase in the credit is significant, at an estimated additional cost to customers of \$27.1 million, and inconsistent with the Company's claims in the *ESP 3 Case*, where AEP Ohio argued the level of interruptible credits should be maintained.³² (OMAEG Br. at 58-61.)

ELPC, OEC, and EDF assert that Section III.C.11 of the stipulation violates R.C. 4928.6613. According to ELPC, OEC, and EDF, R.C. 4928.6611 to 4928.6613 permit certain utility customers to opt out of a utility's EE/PDR portfolio plan and exempt the customer from the associated cost of the utility's EE/PDR programs. Opposing intervenors interpret Section III.C.11 of the stipulation to permit IRP customers to opt out of the obligation to pay for the EE/PDR rider but still participate in the interruptible tariff and receive the associated credit. (ELPC/OEC/EDF Br. at 57-58.)

In reply, AEP Ohio declares that there is no conflict between a customer's participation in the IRP tariff and the customer's exercise of the opt-out provision under

³² *ESP 3 Case*, Second Entry on Rehearing (May 28, 2015) at 8.

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R.C. 4928.6612. According to AEP Ohio, the IRP tariff existed prior to the enactment of S.B. 310 and has remained available to customers taking interruptible service. As to the reallocation of a share of the cost of the credits provided under the IRP tariff to the EDR, as provided in the stipulation, AEP Ohio contends that the portion of the cost of those credits being recovered via the EE/PDR rider has likewise been reduced by the same amount and the mechanism for recovery aligned with the purpose of the tariffs and the credits. AEP Ohio believes it is noteworthy that the IRP credits are not addressed by or funded through the current EE/PDR portfolio plan. (Co. Reply Br. at 114-115.)

In its reply brief, IEU-Ohio notes that a component of the stipulation is AEP Ohio's agreement to file an ESP application by April 30, 2016, to extend its ESP through May 31, 2024. Among the provisions AEP Ohio has agreed to include in the ESP application is a provision to expand the scope of the IRP tariff and to increase the credit rate. IEU-Ohio submits that the provisions cited by ELPC/OEC/EDF and OMAEG are also provisions to be included in the ESP application to be filed by AEP Ohio. Accordingly, IEU-Ohio reasons that the provisions of the stipulation that ELPC/OEC/EDF and OMAEG oppose are not ripe for review. Further, IEU-Ohio avers that ELPC/OEC/EDF's premise is incorrect. IEU-Ohio states that the IRP is not part of the EE/PDR plan and notes that, if ELPC/OEC/EDF's arguments were accepted, it would reduce the incentive for customers with demand response capabilities to make those capabilities available to AEP Ohio, causing injury to other customers and likely reducing system reliability. Similarly, IEU-Ohio argues OMAEG's position is internally contradictory and unsupported by the record. (IEU-Ohio Reply Br. at 2-8.)

The Commission rejects the claims and arguments of ELPC/OEC/EDF and OMAEG. The provisions that opposing intervenors cite are provisions to be included in AEP Ohio's next ESP application, as required by the stipulation, and, for that reason, ELPC/OEC/EDF's and OMAEG's arguments regarding the provisions are premature. The Commission finds that it is not a violation of an important regulatory principle or practice for the stipulation to enumerate provisions to be included in a subsequent filing. Additionally, interested parties will be able to raise their issues in the future proceeding, which the Commission will decide based on the record. Accordingly, we reject the claims of ELPC/OEC/EDF and OMAEG that the IRP provisions of the stipulation violate an important regulatory principle or practice.

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e. Allocation of Costs and Credits

OCC and APJN argue that PPA rider credits and charges should not be allocated based on the PJM five monthly peak demands, which, in OCC/APJN's opinion, unfairly and arbitrarily assigns a disproportionate share of the rider's cost to residential customers. OCC and APJN advocate allocation of the PPA rider cost based on a combination of demand and energy, netting the difference between the costs and the sales of the generation products. OCC and APJN also argue that the transfer of 50 percent of certain costs associated with the IRP credits from the EE/PDR rider to the EDR would violate the principle of cost causation. (OCC/APJN Br. at 68-69.)

Similarly, Kroger argues the PPA rider rate design is not fair to all customers, particularly high load factor customers like Kroger. Kroger notes the predominant costs to be included in the PPA rider are demand related costs and, therefore, argues costs should be allocated to the rate classes and recovered in a similar manner. Kroger asserts the PPA rider's cost allocation is a violation of the principle of cost causation. (Kroger Br. at 4-5.)

The Company averts the opposing parties' criticism of the rate design presented in the stipulation, by noting that the Ohio Supreme Court has recognized the Commission's "considerable discretion in matters of rate design." *Indus. Energy Users-Ohio v. Ohio Power Co.*, 140 Ohio St.3d 509, 2014-Ohio-4271, 20 N.E.3d 699, ¶ 27, citing *Consumers' Counsel v. Pub. Util. Comm.*, 125 Ohio St.3d 57, 2010-Ohio-134, 926 N.E.2d 261, ¶ 20; *Citywide Coalition for Util. Reform v. Pub. Util. Comm.*, 67 Ohio St.3d 531, 534, 620 N.E.2d 832 (1993). Contrary to OCC/APJN's opposition to the stipulation's proposal to transfer certain costs from the EE/PDR rider to the EDR, AEP Ohio notes that, in the *ESP 3 Case*, OCC argued just the opposite - that the IRP credits should be collected through the EDR to assure that the costs of those credits are borne by all customers and, otherwise, mercantile customers who are receiving the benefits of the IRP may opt out of the EE/PDR rider. AEP Ohio argues it is disingenuous for OCC to now argue that the proposed treatment of IRP credits violates any regulatory principle or practice. The Company argues OCC witness Fortney changed his position as set forth in written testimony and throughout the course of his testimony at hearing. AEP Ohio states it is inappropriate to modify the cost allocation in the stipulation in the absence of any analysis to support OCC's position. (Co. Br. at 152-154; Co. Reply Br. at 118-120.)

Section III.A.4 of the stipulation specifies the rate design for the PPA rider (Joint Ex. 1 at 6). At Sections III.D.4 and III.D.5 of the stipulation, AEP Ohio stipulates to the transfer of certain costs from the EE/PDR rider to the EDR, upon the approval of the stipulation, ultimately revising the rate design (Joint Ex. 1 at 16). The Commission is vested with broad discretion on issues of rate design. *Indus. Energy Users-Ohio v. Ohio Power Co.*, 140 Ohio St.3d 509, 2014-Ohio-4271, 20 N.E.3d 699, ¶ 27. We, therefore, reject arguments raised by OCC, APJN, and Kroger regarding the PPA rider's rate design. Further, the

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Commission has previously recognized that the IRP program offers numerous benefits, including the promotion of economic development and the retention of manufacturing jobs. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 40. Accordingly, given the Commission's considerable discretion with respect to rate design, we find it would not violate an important regulatory principle or practice, if a share of the IRP credits is collected via the EDR, and, in any event, we have directed AEP Ohio to include the stipulation's cost transfer provisions in its extended ESP application.

f. Corporate Separation

Several intervenors aver the amended PPA application and the stipulation violate R.C. 4928.17, the corporate separation statute. Non-signatory intervenors reason that AEP Ohio transferred its generation assets to AEPGR, and AEPGR engages in sales for resale as a FERC-regulated entity. Intervenors opposing the PPA argue that, as shown in the revised affiliate PPA, AEP Ohio would be a member of the operating committee, along with AEPGR and AEPSC, with oversight of the operations and other significant issues related to the PPA units. Dynegy argues that the PPA proposal essentially puts AEP Ohio back into the generation business, in violation of R.C. 4928.17. Further, several intervenors contend the existing code of conduct does not adequately address AEP Ohio's direct involvement with the generation units. According to certain intervenors, the PPA proposal and the stipulation make it clear that the statutorily required separation between competitive and non-competitive services will not be maintained and, for that reason alone, the Commission cannot approve AEP Ohio's amended PPA application and the stipulation. Dynegy also submits that the stipulation violates AEP Ohio's open access distribution tariff, which directs that AEP Ohio not tie or otherwise "condition the provision of the Company's regulated services * * * to the taking of any goods and/or services from the Company's affiliates." (RESA/Exelon Br. at 45-49; P3/EPSC Br. at 60-62; Dynegy Br. at 33-35.)

AEP Ohio notes that a complaint has been filed with FERC and, therefore, believes the Commission should not interfere with FERC's adjudication of the complaint or attempt to apply FERC requirements. However, AEP Ohio submits that opposing parties misrepresent FERC's application of the *Edgar* standard in *AEP Generation Resources, Inc.*, 145 FERC ¶ 61,275 (2013). AEP Ohio argues, contrary to the claims of intervenors, that FERC declined to apply the *Edgar* standard on the basis that the power supply agreement was a short-term agreement for a transition period that supports this Commission's restructuring efforts. Furthermore, AEP Ohio states that, subsequently, FERC granted AEP Ohio a waiver on affiliate sales transactions, including the *Edgar* standard, in FERC Docket No. ER14-593-000, et al., on February 5, 2014. Thus, AEP Ohio reasons it is not required to obtain FERC approval to enter into the revised affiliate PPA as referenced in the stipulation. (Co. Reply Br. at 94-97.)

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AEP Ohio claims that the arguments asserting approval of the PPA rider and stipulation would violate R.C. 4928.17 are fundamentally flawed. AEP Ohio avers that the prefatory language in R.C. 4928.17 makes it clear that the corporate separation mandates do not apply to items authorized in the ESP statute, R.C. 4928.143. According to the Company's interpretation of the statutes, R.C. 4928.143(B)(2)(d) permits provisions relating to "limitations on customer shopping for electric generation service" as part of an ESP. Accordingly, AEP Ohio reasons that intervenors' arguments to the contrary conflict with this explicit exception. Furthermore, AEP Ohio offers that nothing in the ESP statute refers to competitive generation service and none of the services provided by an EDU under the ESP are competitive services, notwithstanding that they include generation, and a non-bypassable stability charge under the ESP statute, like the PPA rider, cannot be considered a charge for competitive service. AEP Ohio also notes that the intervenors' corporate separation theory conflicts with R.C. 4928.143(B)(2)(b) and (B)(2)(c), as those provisions contemplate non-bypassable generation charges for all shopping and non-shopping customers relating to newly-built capacity. AEP Ohio argues that opposing intervenors have not established any actual problem or violation with the approved corporate separation plan or the affiliate code of conduct and, should such issues arise, the Company states the Commission is fully capable of enforcing AEP Ohio's corporate separation plan and the code of conduct rules. (Co. Reply Br. at 110-113.)

As noted in the section of this Opinion and Order addressing issues of preemption, and consistent with the Commission's determination in the *ESP 3 Case*, we will not address the federal constitutional issues put forth by the parties in these proceedings, as we conclude such arguments are best reserved for judicial determination. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 26.

In regard to the claim that the PPA rider and stipulation violate AEP Ohio's code of conduct in its open access distribution tariff, the Commission finds that the argument overlooks the basic premise that the PPA rider operates as a financial hedge for retail customers, not as a physical hedge. Ohio retail customers will not receive the physical generation from the PPA units. The energy, capacity, and ancillary services from the PPA units would be sold into the PJM markets and, after accounting for costs, the net credit or charge would flow through the PPA rider to customers. In this manner, AEP Ohio's regulated services are not linked to the goods or services from AEPGR. The Commission finds that the opposing intervenors' claims that the PPA rider and the stipulation would violate the corporate separation requirements of R.C. 4928.17 also lack merit. We conclude that R.C. 4928.17 sets forth a number of corporate separation provisions that generally apply to AEP Ohio as an electric utility. However, the statute mandates certain exceptions, providing that an electric utility's compliance is required, "[e]xcept as otherwise provided in sections 4928.142 or 4928.143 * * * of the Revised Code." Having determined in these proceedings, as well as the *ESP 3 Case*, that a PPA rider is authorized

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pursuant to R.C. 4928.143(B)(2)(d), the Commission finds opposing intervenors' arguments regarding R.C. 4928.17 misplaced. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 19-26.

g. Transition Revenues

OCC and APJN assert that the PPA rider is in violation of R.C. 4928.38, which prohibits an electric utility from receiving transition revenues, also referred to as stranded costs, from the start of CRES through the end of the market development period. At this point, OCC and APJN posit that AEP Ohio is required to operate fully on its own in the competitive market. OCC and APJN reason that the PPA rider is based on collecting above market revenues from AEP Ohio's ratepayers, which will ultimately be transferred to AEPGR, an unregulated affiliate and owner of the PPA units, to ensure a guaranteed return on and of AEPGR's investment. (OCC/APJN Br. at 98-100.)

The Company notes that the Commission previously rejected OCC/APJN's transition cost argument in the *ESP 3 Case* and argues that OCC/APJN's claims mischaracterize the PPA rider. AEP Ohio offers that the record in these cases demonstrates that customers are expected to receive a net quantitative benefit over the term of the PPA and there is no legal or factual basis to support the notion that the PPA units are stranded investments. AEP Ohio asks that the Commission reject this argument again. (Co. Br. at 106-107.)

The Commission disagrees that the PPA rider would permit AEP Ohio to collect untimely transition costs in violation of R.C. 4928.38. As we determined in the *ESP 3 Case*, the PPA rider constitutes a rate stability charge related to limitations on customer shopping for retail electric generation service and may, therefore, be authorized pursuant to R.C. 4928.143(B)(2)(d). *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 26. Nothing in the amended PPA application or the stipulation changes the Commission's position on this issue.

h. Preemption

In various ways, opposing intervenors challenge the Commission's jurisdiction to consider AEP Ohio's amended PPA application and the stipulation. Opposing intervenors contend the Commission's approval of the PPA proposal, as it stands in both the amended PPA application and the stipulation, is field and conflict preempted under the Federal Power Act and would interfere with FERC's exclusive jurisdiction over the wholesale markets.³³ Opposing parties argue that the affiliate PPA, under which AEPGR would sell to AEP Ohio the capacity, energy, and ancillary services generated by the PPA units, is a wholesale transaction that falls exclusively under federal jurisdiction. For example, OCC and APJN reason that, because the PPA rider would provide AEP Ohio with a fixed

³³ 16 U.S.C. § 824 et seq.

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amount for the energy and capacity sold in the PJM markets, which is a wholesale transaction, the Commission is preempted from approving the PPA proposal. OCC and APJN emphasize that the sale would be revenue neutral to AEP Ohio, meaning that the sale is fixed at the contract price of the PPA. (OCC/APJN Br. at 16-22.)

ELPC, EDF, and OEC submit that AEP Ohio has failed to meet the requirements of FERC's test for affiliate agreements and corporate separation requirements under R.C. 4928.17(A)(3), as well as other standards requiring the Company to demonstrate that the revised affiliate PPA does not provide anticompetitive advantages or a financial subsidy. Opposing parties note FERC's concern in *Edgar* with affiliate agreements or transactions, where the utility may give unduly favorable terms to an affiliate because higher profits can accrue to common shareholders. OMAEG declares that Commission approval of the PPA rider and associated cost recovery usurps FERC's exclusive jurisdiction to regulate the wholesale power market, including the wholesale capacity market. According to OMAEG, FERC's jurisdiction includes the reasonableness of wholesale rates and the rules or practices affecting wholesale rates. Accordingly, OMAEG reasons the Commission is preempted under the supremacy clause from approving the PPA proposal and adopting the stipulation, citing *Nazarian* and *Solomon*. (OMAEG Br. at 16-20; P3/EPSC Br. at 65-66; ELPC/EDF/OEC Br. at 56-57.)

In the *ESP 3 Case*, the Commission acknowledged the parties' arguments on the issue of federal preemption. We declined, however, to address constitutional issues, noting that, under the specific facts and circumstances of the proceedings, such issues are best reserved for judicial determination. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 26. Recognizing that, on October 19, 2015, the U.S. Supreme Court granted a petition for a writ of certiorari to review *Nazarian*³⁴ and that a complaint has been filed at FERC in regard to these proceedings,³⁵ we continue to find it appropriate to defer questions of constitutionality for determination by the courts. Therefore, to the extent that the facts and circumstances of these cases would require the Commission to address constitutional issues as raised by the parties, we reiterate and confirm that such arguments are best reserved for judicial determination.

i. Commission Decision

The Commission recognizes that opposing intervenors have put forth numerous arguments that several specific provisions of the stipulation violate an important regulatory principle or practice. In accordance with this component of the test, as recognized by the Supreme Court of Ohio, the Commission must determine whether the stipulation package violates any important regulatory principle or practice. In light of our

³⁴ *Hughes v. PPL EnergyPlus, LLC*, 136 S.Ct. 382 (2015).

³⁵ FERC Docket No. EL16-33-000.

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consideration of the specific provisions of the stipulation presented as discussed above, the Commission finds that the stipulation, in whole, and as modified herein, does not violate any important regulatory principle or practice and, therefore, complies with the third criterion of the test for evaluating the reasonableness of stipulations.

4. ESP/MRO Test

In its brief, AEP Ohio contends that the PPA rider will constitute an additional quantitative and qualitative benefit of the ESP that can be added to the benefits that the Commission already recognized in finding that the Company's ESP is more favorable than an MRO in the *ESP 3 Case*. Specifically, AEP Ohio asserts that, even before considering the many qualitative benefits that will flow from approval of the PPA rider, the Company's projections reflect that the rider will provide a net quantitative benefit to customers of more than \$209 million over the current ESP term through May 31, 2018. AEP Ohio asserts that, because the net positive impact of the PPA rider will make the ESP that much more favorable in the aggregate than the expected results of an MRO, it is unnecessary for the Commission to conduct another ESP/MRO test, as long as the Commission agrees that the rider is a net benefit for customers. AEP Ohio concludes that it is a simple matter of arithmetic to add the net positive benefits of the PPA rider proposal to the existing net positive results of the ESP/MRO test conducted in the *ESP 3 Case*. (Co. Br. at 131-133; Co. Reply Br. at 84-86.)

RESA, Exelon, P3, and EPSA argue that the Commission should determine that an ESP/MRO analysis must be conducted in these proceedings and find that there is insufficient evidence as to whether, with AEP Ohio's PPA proposal in place, the Company's current ESP is more favorable in the aggregate than an MRO. RESA, Exelon, P3, and EPSA note that AEP Ohio did not present a formal ESP/MRO analysis addressing quantitative and qualitative factors or the results of a competitive bid process that would demonstrate the market rate. RESA and Exelon assert that OCC witness Wilson's projected net cost over the current ESP term, coupled with AEP Ohio witness Allen's admission that the PPA rider's impact is likely to fall somewhere between the five percent higher and lower load cases, show that, even if the PPA proposal could be quantified in reliable fashion, the ESP would no longer be more favorable than an MRO, particularly in light of the rider's significant unknown risks that outweigh any qualitative benefits of the ESP. P3 and EPSA add that the Commission does not have the authority to implement the PPA rider for a time period beyond the current ESP 3 term, because the Commission cannot perform the ESP/MRO analysis without a future ESP proposal pending before the Commission. (RESA/Exelon Br. at 36-38; P3/EPSA Br. at 33-34, 45-46, 51-52; RESA/Exelon Reply Br. at 11-16.)

OMAEG asserts that the Commission should evaluate the PPA rider's impact on the ESP/MRO test. OMAEG notes that, based on OCC witness Wilson's analysis, the

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forecasted cost of the PPA rider for the current ESP term is \$580 million, which, when factored into the Commission's application of the test in the *ESP 3 Case*, renders the ESP less favorable than an MRO. (OMAEG Br. at 61.) Claiming that only quantitative factors should be considered under the statutory test, OCC and APJN argue that the PPA proposal must be rejected, because its projected cost of \$580 million would cause the ESP to fail the statutory test by \$527 million and, in any event, there are significant, unknown costs associated with the stipulation's other provisions, which have not been quantified by AEP Ohio (OCC/ APJN Br. at 160-163; OCC/ APJN Reply Br. at 35-37).

The Commission notes that, although this is not an ESP case and, therefore, the ESP/MRO test does not apply here, we will nevertheless address the test in the present proceedings, in order to consider and resolve the parties' arguments on this issue. In light of our above finding that the stipulation, including the PPA rider proposal, will result in a net benefit for customers, we agree with AEP Ohio's assertion that the Company's ESP, which is currently approved to continue through May 31, 2018, remains more favorable than the expected outcome under an MRO. In the *ESP 3 Case*, we 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, is more favorable in the aggregate as compared to the expected results that would otherwise apply under R.C. 4928.142. With respect to the quantitative benefits of the ESP, the Commission found 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. *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 94-95, Second Entry on Rehearing (May 28, 2015) at 51-52, 55-57.

AEP Ohio's projection, under the weather normalized case, indicates that the PPA rider is expected to provide a net quantitative benefit to customers of \$37 million over the current ESP term through May 31, 2018, or \$214 million over the term of the PPA rider (Co. Ex. 52 at Ex. WAA-2). With the stipulation's numerous other quantitative and qualitative benefits,³⁶ as well as our modifications to the stipulation to ensure that ratepayers will benefit from the PPA rider, we do not agree with the non-signatory parties' contention that the PPA proposal in the stipulation upsets the positive results of our previous ESP/MRO analysis. As AEP Ohio correctly asserts, when the net positive benefit of the PPA rider proposal is combined with the existing net positive results of the ESP/MRO test conducted by the Commission in the *ESP 3 Case*, the result must remain, as a matter of basic addition, a net benefit, with the ESP becoming that much more favorable in the aggregate than the expected results of an MRO. We, therefore, reject the non-signatory parties' arguments on this issue.

³⁶ The Commission has previously rejected OCC/ APJN's argument that only quantitative factors may be considered in the ESP/MRO analysis. See, e.g., *ESP 3 Case*, Opinion and Order (Feb. 25, 2015) at 94, Second Entry on Rehearing (May 28, 2015) at 56-57; see also *In re Columbus Southern Power Co.*, 128 Ohio St.3d 402, 2011-Ohio-958, 945 N.E.2d 501.

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V. CONCLUSION

Upon consideration of the record in these proceedings, the Commission finds that the stipulation entered into by the signatory parties is reasonable and should be adopted, with the modifications set forth in this Opinion and Order. Accordingly, we further find that the amended application filed by AEP Ohio on May 15, 2015, should be approved as modified by the stipulation and further modified by this Opinion and Order. The Commission notes that, following the conclusion of rehearing, the filing of tariffs consistent with this Opinion and Order, including its modifications to the stipulation, shall be deemed as acceptance of the Order and the modifications by AEP Ohio. Any such acceptance, however, will be subject to rights of appeal under R.C. Chapter 4903. As a final matter, the Commission notes that any argument, request for modification of the stipulation, or pending motion that has not been specifically addressed in this Opinion and Order has been thoroughly considered and should be denied.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) AEP Ohio is a public utility as defined in R.C. 4905.02 and an electric utility as defined in R.C. 4928.01(A)(11), and, as such, is subject to the jurisdiction of this Commission.
- (2) In the *ESP 3 Case*, the Commission modified and approved AEP Ohio's application for an ESP for the period beginning June 1, 2015, through May 31, 2018, including a placeholder PPA rider.
- (3) On October 3, 2014, in the above-captioned proceedings, AEP Ohio filed an application for approval to enter into a new affiliate PPA with AEPGR.
- (4) On May 15, 2015, AEP Ohio filed an amended application, again seeking approval of a new affiliate PPA with AEPGR and also requesting authority to include the net impacts of both the affiliate PPA and the Company's OVEC contractual entitlement in the placeholder PPA rider approved in the *ESP 3 Case*.
- (5) The following parties were granted intervention in these proceedings: FES, IEU-Ohio, OEG, Kroger, Sierra Club, Buckeye, MAREC, OAEE, Walmart, OEC, Market Monitor, OHA, EPO, EDF, OMAEG, RESA, OCC, Direct Energy, IGS, P3, EPSA, OPAC, Dynegy, APJN, ELPC, Exelon, and EnerNOC.

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OAAE filed a notice of withdrawal from these proceedings on September 18, 2015.

- (6) A procedural conference regarding the PPA application was held on September 22, 2015.
- (7) An evidentiary hearing commenced on September 28, 2015, and concluded on November 3, 2015.
- (8) On December 14, 2015, a stipulation was filed by AEP Ohio, Staff, OEG, OHA, MAREC, OPAC, Buckeye, Sierra Club, FES, Direct Energy, and IGS, which was intended to resolve all of the issues in these cases.
- (9) An evidentiary hearing on the stipulation commenced on January 4, 2016, and concluded on January 8, 2016.
- (10) Briefs and reply briefs were filed on February 1, 2016, and February 8, 2016, respectively.
- (11) The stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted, as modified by this Opinion and Order.
- (12) AEP Ohio should be authorized to implement its proposed PPA rider rates, consistent with the stipulation and this Opinion and Order.

ORDER:

It is, therefore,

ORDERED, That the stipulation be adopted and approved, as modified by this Opinion and Order. It is, further,

ORDERED, That the amended application filed by AEP Ohio on May 15, 2015, to establish PPA rider rates be approved and modified, consistent with the terms of the stipulation and this Opinion and Order. It is, further,

ORDERED, That AEP Ohio be authorized to file tariffs, in final form, consistent with the stipulation and this Opinion and Order. AEP Ohio shall file one copy in these case dockets and one copy in its TRF docket. It is, further,

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ORDERED, That the effective date of the new tariffs shall be a date not earlier than the date upon which the final tariff pages are filed with the Commission. It is, further,

ORDERED, That AEP Ohio shall notify its customers of the changes to the tariff via bill message or bill insert within 30 days of the effective date of the revised tariff. A copy of this customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least 10 days prior to its distribution to customers. It is, further,

ORDERED, That the motions for protective order filed by AEP Ohio, OCC, Sierra Club, and P3/EPSC be granted for 24 months from the date of this Opinion and Order. It is, further,

ORDERED, That various parties' motions for extension of the procedural schedule and ELPC's interlocutory appeal be denied. It is, further,

ORDERED, That Noble's untimely motion to intervene in these proceedings be denied. It is, further,

ORDERED, That AEP Ohio's motion to strike Noble's reply brief be granted. It is, further,

ORDERED, That the motions seeking leave to file amicus briefs filed by the Generation Developers be granted. It is, further,

ORDERED, That OMAEG's and OCC/APJN's requests for reversal of certain procedural rulings be denied. It is, further,

ORDERED, That the motions to stay the proceedings filed by Noble and OCC, APJN, and OMAEG be denied. It is, further,

ORDERED, That AEP Ohio's motion to strike PJM's testimony be denied as moot. It is, further,

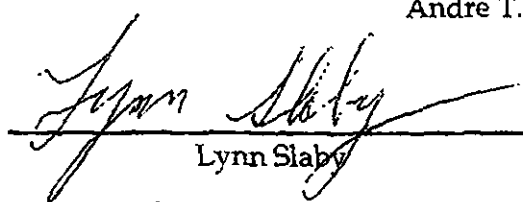
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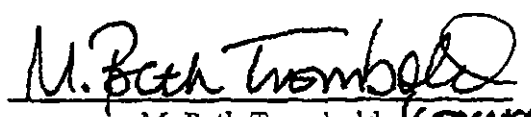
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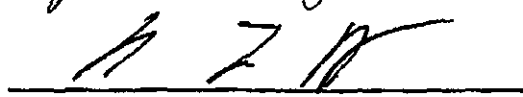
ORDERED, That a copy of this Opinion and Order be served on all parties of record.

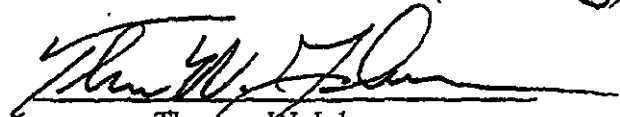
THE PUBLIC UTILITIES COMMISSION OF OHIO


Andre T. Porter, Chairman


Lynn Slaby


M. Beth Trombold (concurring)


Asim Z. Haque


Thomas W. Johnson

CONCUR

SJP/GNS/sc

Entered in the Journal

MAR 31 2016


Barcy F. McNeal

Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application Seeking)
Approval of Ohio Power Company's)
Proposal to Enter into an Affiliate Power) Case No. 14-1693-EL-RDR
Purchase Agreement for Inclusion in the)
Power Purchase Agreement Rider.)

In the Matter of the Application of Ohio)
Power Company for Approval of Certain) Case No. 14-1694-EL-AAM
Accounting Authority.)

CONCURRING OPINION OF COMMISSIONER M. BETH TROMBOLD

I write separately from my colleagues because I feel it is important to emphasize the expectation on which today's Opinion and Order is based.

The energy market is dynamic and complicated, and the issues raised in this proceeding are difficult and not given to simple solutions. The application in this case was submitted by the Company in mid-2014. For over 18 months, the Commission has worked diligently to decide the case in a manner consistent with Ohio law while balancing many interests and providing extensive due process.

Every Ohioan relies on public utility companies for the critical services they provide; therefore, we want those companies to be financially sound and stable. We have also worked long and hard in Ohio to establish a robust competitive electric marketplace to the benefit of consumers and growing businesses. Importantly, Ohio consumers want safe, reliable electricity at affordable rates as well as innovative products and services that meet their needs and interests. To be sure, it's all a very delicate balance.

In the case before us today, the Commission must consider whether the Stipulation, as a package, benefits ratepayers and the public interest. The analysis made by the Commission in reaching this conclusion is articulated in the Opinion and Order. In short, the Commission concludes that Ohio consumers will benefit from several items in the Stipulation such as provisions that will result in grid modernization and more renewables. These provisions will enable the Commission to advance important conversations with our utilities about the future of the electric industry and incorporating "next generation technologies" into our electric distribution grid.

In addition, the Stipulation continues utility demand response programs important to the viability of our large industrial companies, and creates pilot programs necessary for our competitive retail suppliers to advance Ohio's retail marketplace.

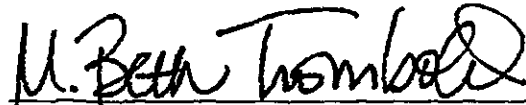
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The Purchase Power Agreement (PPA) included in the Stipulation has been discussed at great length in this docket and elsewhere.

One of the challenges of utility regulation is that it is based on *forecasts*, and forecasts are just that: a prediction about an uncertain future. We all know there have been changes in the market in recent years caused by the weather, the economy, technological innovations, and environmental considerations that have resulted in market prices no one predicted despite our best attempts to forecast them.

The PPA mechanism proposed by the Company is designed to operate as a financial hedge against such price volatility, wherein consumers pay more when market prices are low but pay less when market prices are high. Based on the forecasts submitted by the Company and evidence in the record, it is my clear expectation, just as it is Commissioner Haque's, that the PPA rider approved today will result in a credit (i.e. benefit) to ratepayers over the next eight years (Co. Ex. 52, Ex. WAA-2).

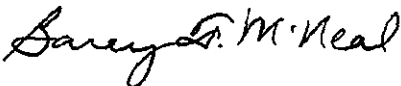


M. Beth Trombold, Commissioner

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MAR 3 1 2016



Barcy F. McNeal
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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Accounting Authority.)

CONCURRING OPINION OF COMMISSIONER ASIM Z. HAQUE

As these cases have been pending before the Commission for a considerable period of time, and due to the concern expressed by the consumers of this great State (along with interest shown by spectators nationally), I feel compelled to write separately to explain my decisions today. I also want to take this opportunity to provide my thoughts about the current status of the electric industry here in Ohio. My hope is that this opinion will be insightful to those looking for more guidance on how and why these decisions were made, the issues that face the electric industry today, and our collective path forward.

I. THE PPA DECISIONS

In adjudging these cases over the past two plus years, so many questions have been posed by the general public and those on the periphery of these cases. *Why did the utilities bring these cases? Why should the Commission evaluate them when it has committed the State to competitive markets? Are the PPAs a good deal for consumers? Are the utilities asking consumers to subsidize plants that are no longer competitive in the market? Does the PUCO (and the State of Ohio) care about the environment?* These are all fair questions to ask.

We must always remember, however, that the Commission serves a quasi-judicial function, and the cases we evaluate have legal standards of review that should create the frame for our analysis. I am, by formal training and by inherent nature, a lawyer. I understand policy well enough. But to me, when it comes to actually deciding cases, the technical arguments, the law, the testimony, the cross-examination, the overall record, and the briefing, must prevail.

From a legal perspective, I analyzed these cases differently than in our first American Electric Power (AEP) PPA-related decision, *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al., Opinion and Order (Feb. 25, 2015), whereby the Commission found a PPA construct to be legal, but did not allow for a generating unit to actually be placed in the rider. The key difference here, legally, is that AEP (and FirstEnergy) filed a settlement stipulation with the

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Commission. As a result, while the legal standard of review still requires that the utilities bear the burden of proof, the true test for legality in these cases is the three-part stipulation test established by this Commission and upheld by the Supreme Court of Ohio. That test reads as follows:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

Admittedly, the plain language of this test leaves some room for Commission interpretation. Over the course of my next term, I hope to add some doctrinal principles to this test that future Commissions can rely upon for reference. I will in fact attempt to do some of this here.

A. The Three Part Stipulation Test

1. Serious Bargaining Among Capable, Knowledgeable Parties

First, is the stipulation a product of serious bargaining among capable, knowledgeable parties? I agree with the conclusions set forth in both Opinions and Orders, but let me add a bit more. As to whether the parties are capable and knowledgeable, the Commission should look to the *quality* of the parties that have signed the stipulation. *Quantity* of parties, in my mind, is meaningless.

The Commission is well-acquainted with the parties that typically intervene in major proceedings before the Commission, and the various interests they represent. The Commission is also well-aware that if a party intervenes and signs a stipulation, but is not a typical intervenor, whether that party has a symbolic and meaningful representation in that particular case. Again, it is *quality* of the parties that is determinative, not quantity. In the cases at hand, this *quality* bar was reached by both AEP and FirstEnergy.

Let me also provide some feedback on the concept of side agreements and whether they impact the first part of the stipulation test. I am not a tremendous fan of these side agreements, and I worry about their proliferation in these types of proceedings. There were two side agreements executed in these cases that I want to mention. One side agreement was between AEP and IEU-Ohio. The other side agreement was between FirstEnergy and IGS Energy. The AEP/IEU side agreement settles major pieces of litigation between the parties, and the only component of the side agreement that overtly touches the PPA case is

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IEU's agreement not to oppose the AEP stipulation. This, in my mind, would not impact the first part of the stipulation test. AEP and IEU can agree to settle their claims whenever they choose, and for whatever monetary or non-monetary terms they agree upon. The agreement was properly disclosed pursuant to the law, and again, I do not find that this agreement impacts the serious bargaining among knowledgeable, capable parties.

The FirstEnergy and IGS Energy side agreement was also properly disclosed, but that agreement requires, essentially, that the Commission consider a future adjustment to our oversight of default service pricing through a future filing. My preference is that something like this would have been included in the actual stipulation. At the same time, I am aware of the tight timeframe that the Commission placed on the stipulation hearings, and my notion is that the parties perceived it to be administratively cleaner (which it is) to execute their side agreement rather than file an amended stipulation since the parties agreed on terms during the actual stipulation hearing. I understand these circumstances, the agreement was properly disclosed under the law, but my preference is that a side agreement term that requires eventual Commission action or oversight be placed within the actual confines of the stipulation to ensure that serious bargaining is occurring among knowledgeable parties. Ultimately, my concern about this particular side agreement, under these circumstances, does not yield a failure of the first part of the stipulation test.

2. As a Package, Benefits Ratepayers and the Public Interest

i. Introduction

This is hard. There is no other way to say it. Whether these stipulations, as a package, benefit ratepayers and the public interest is the pivot point for these stipulations. It is through this part of the stipulation test that some of the broader questions articulated above can be addressed. But first, let me provide some commentary on the plain language of the second part of the stipulation test. To me, it is clear who *ratepayers* are. *Ratepayers* encompass those persons or entities that pay for utility service in the service territory of the stipulating utility. This could range from a single residential consumer that lives in a small apartment, to a large auto manufacturer that consumes massive amounts of electricity all day and through the night in order to keep the manufacturing line moving. All are *ratepayers* within a utility's given service territory.

Defining the *public interest* is harder. It would seem to me that the *public* should mostly consist of the same definitional set that I established above for *ratepayers*. However, it could encompass more. It could encompass those who are less fortunate and who do not have a domicile. It could encompass those who live outside of the service territory of the subject utility but still within the State (i.e. a decision made in the FirstEnergy service territory that impacts persons or entities located in the Duke service territory), and it could even encompass those persons and entities that do not take service from a utility regulated

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by the Commission (e.g. persons or entities that take service from municipally owned utilities and co-operatives). Thus, *public interest* is broader than *ratepayers*, and has the potential to include persons and entities beyond those who pay rates within the subject utility's service territory.

ii. PPA Rider Charges and Credits

First, let's talk about the rate impacts of the PPA rider in the AEP and FirstEnergy service territories. There were projections for the riders presented in both cases, and all of the projections presented had their merits. Here's what I think I know from these projections. I think that, based upon the projections and the evidence in the record, there is general consensus that the PPA riders will result in a charge to consumers for at least the first 2-3 years of the riders. Because the Commission feels somewhat certain of this, we have attempted to build in certain consumer protections to ensure that bills do not increase beyond a certain limit.

Beyond those first few years, it is unclear whether the PPA riders will result in more charges to ratepayers, or if the riders will result in credits being applied to the bills of ratepayers. The utilities believe that the riders will create bill credits. The Ohio Consumers' Counsel and others believe that the riders will continue to create charges. The expert witnesses in the case have presented divergent data points that yielded very different projections. However, I've seen so many dynamic changes in the market since I've taken office that it's hard for me to be convinced that any expert can truly project with accuracy beyond a few years out. I've seen market changes due to weather (e.g. polar vortex), scientific and technological innovation (e.g. shale extraction and more cost-effective renewable development), market fixes (e.g. PJM's capacity performance product), environmental considerations (e.g. US EPA environmental regulations), and there are so many more drivers that could impact the market.

Here's what I can say. After a period of charges, I expect to see credits from the PPA riders. I'm not going to give definitive timelines, but that is my expectation. If this mechanism is truly a hedge, wherein consumers will pay when market prices are low, but will be credited money back when market prices are high, then what exactly is the point of the hedge if ratepayers never experience the credits? If ratepayers never experience the credits, then the PPA rider mechanism would then act as a somewhat illusory insurance policy.

Let me also argue the utilities' side of this. Let us say that after 2-3 years of Rider PPA charges, environmental regulations are promulgated that serve to prohibit fracking, or serve to limit the ease of interstate transport of natural gas, or some other unforeseen circumstance that would serve to drive up the price of natural gas beyond its historically low price of the present. If that happens, the operating costs of our natural gas-fired

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generation fleet will increase, thereby increasing market prices. Again, the PPA riders work contra to the market. If market prices rise, then the PPA riders produce credits to ratepayers, and of course the flip is also true. If market prices increase sharply for these reasons associated with the natural gas fleet, or for any other reason, then the credits that the utilities provide to ratepayers could offset increased market prices. It is certainly a possibility.

Because predictions of market prices beyond a few years are speculative, we must monitor the riders to ensure that ratepayers are purchasing the hedge that has been marketed to them. This should not be perceived as a blank check, and consumers should not be treated like a trust account. It's not right. At the same time, consumers, you have the potential to benefit from this if market prices increase. I know that experts opposing PPAs are saying *now* that there is no way that this will happen. Please read my commentary on wholesale markets below, and understand that the energy industry is very dynamic with many, many moving parts that have the potential to impact these markets and make them unpredictable.

iii. The Rest of the Stipulation Packages

It is extremely important to note that cost is not the only factor that this Commission is to weigh in determining whether the stipulations benefit ratepayers and are in the public interest. In *In re Application of Columbus Southern Power Company*, 129 Ohio St.3d 46 (2011), the Supreme Court of Ohio addressed this issue of whether the PUCO could consider more than cost in determining whether a stipulation benefits ratepayers and is in the public interest. In that case, IEU-Ohio challenged AEP's peak demand reduction plan stipulation, presenting what it believed to be a more cost-effective approach to prove that AEP's stipulation did not benefit ratepayers and was not in the public interest. The Supreme Court of Ohio held that, "While cost is surely a relevant concern to be balanced... it is not the only concern, **and the commission is entitled to consider more.**" (*emphasis added* at 51).

Here, I think the public benefits from a few major categories of terms agreed to in the stipulations, especially the grid modernization and clean generation technologies provisions. Many states have opened dockets and are undertaking "utility 2.0" or "utility of the future" grid modernization endeavors. The State of Ohio is due for this conversation. For some time now, I've wondered how we could possibly persuade the electric utilities to have conversations with us about the future of their industries: how they expect to incorporate next generation (and often third party) technologies into the distribution grid, how they expect to cater to millennial consumers who want more control and understanding over how and what they consume, how to better incorporate clean technologies into everything that they do, etc. These conversations could yield revolutionary endeavors that would surely benefit the public interest. The stark reality is that until these PPA cases were resolved, no such conversations would occur.

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Also, clean generation technologies are advanced in these stipulations with renewable, energy efficiency and even battery storage provisions. In fact, a major environmental advocate, the Sierra Club, signed onto the AEP stipulation. It would be foolhardy for me not to recognize the tremendous amount of public sentiment expressed over the past two years associated with these cases and their environmental ramifications. The environmental community surely will not be pleased that the Commission is approving PPA riders for coal plants and a nuclear plant, but at the same time, the Commission recognizes the importance of cleaner generation technologies by approving certain endeavors in these Opinions and Orders. Again, I do not believe that there would have been a path forward for such commitments without these stipulations.

There are more stipulated terms to discuss that elicited the signatures (or non-opposition) of a number of very important parties in these proceedings. Our largest consumers will be able to take advantage of utility demand response programs. Economic development opportunities are created. Our competitive retailers will be given the opportunity to advance endeavors that could serve to enhance the retail marketplace. And there is more. Surely, it is fair to ask how much all of this will cost. Much of these costs will be determined in future proceedings before the Commission, and so we will find out if the perceived present benefits are actually worth the costs. That question, however, sheds light on the very difficult balance between a current financial impact to ratepayers, and future benefits (and even savings) for those same ratepayers after this initial investment. I save this conundrum for another day, however.

In summary, while it is unclear what the net impact of the PPA riders will be over the next eight years, the concept itself has merit as it could serve as a hedge against marketplace volatility. At the same time, from purely a monetary perspective, we must ensure that constant and large charges do not become the norm, as this would mitigate the conceptual benefit that the hedge has to offer. The other benefits in the stipulation packages, eliciting the signature of parties in these proceedings, push the stipulations just beyond the pivot point, allowing for a finding that these stipulations pass this second part of the stipulation test.

3. Violate any Important Regulatory Principle or Practice

This third part of the stipulation test, again, allows for some Commission discretion. What is a *regulatory principle* and a *regulatory practice*, and even then, which of these principles and practices are *important*? Do these principles and practices encompass more than the law set forth in the Ohio Revised Code and the rules set forth in the Ohio Administrative Code? Would these principles and practices encompass the current policy positions of the State and perhaps the Chairman of the PUCO? Do these principles and practices encompass generally accepted regulatory norms adopted by a majority of state

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utility commissions, the National Association of Regulatory Utility Commissioners, the Mid-Atlantic Conference of Regulatory Utility Commissioners, the National Regulatory Research Institute, etc.?

In trying to provide some guidance here, I am of the opinion that, at the very least, the stipulation cannot violate a statute of the Ohio Revised Code or a rule of the Ohio Administrative Code. For this reason, I concur with the language set forth in the Opinions and Orders stating that the third part of the stipulation test has been satisfied. The Commission spent much of 2014 and early 2015 mired in the quandary of whether the PPA mechanism was legal under Ohio law, and more specifically, the ESP statute. The Commission's conclusion on that issue in the AEP ESP III case has been made. I do not wish to revisit that decision or its justification here.

I would, however, like to provide some commentary on the factors set forth by the Commission in AEP ESP III that were meant to serve as evaluative criterion for the Commission in determining whether to grant or deny future PPA requests. The plain language leading into those factors reads in a more permissive, than mandatory manner. That is, the Commission can take those factors into account, but it doesn't necessarily have to. If these cases were not presented to us as stipulations, I would have looked more to those factors as guide posts in my decision-making. However, again, the presentation of these cases as stipulations very much changed my legal standard of review, and thus, my analysis. To note, I do not believe that either company successfully proved that the PPA units are needed to preserve reliability. Based upon the legal standard of review though, this failure to meet one of the Commission's permissive factors is not fatal.

II. The Current Status of the Industry

My time on the Commission thus far has been one of ultimate flux in the electric industry. I sometimes cannot believe both the fortune and misfortune in my timing. As I was coming onto the Commission, the Commission was completing its vision of transitioning utilities to full competition via the most recent Dayton Power & Light (DP&L) ESP. Now, states and their electric utilities are trying to determine how to best plan for the modernized "utility 2.0" future grid, in tandem with demands for cleaner energy, more thoughtful consumer engagement, and of course, having to deal with market dynamics that are favoring some assets and disfavoring others. I pen this portion of my concurrence not for purposes of legacy though. As I have been appointed to another term, my intent is the diametric opposite. I pen this portion of my concurrence to try and provide the utility community with a glimpse of how I presently view the industry and its various stakeholders and interests. From here, and based upon these thoughts, my hope is that we can chart a clear path for this industry, together.

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A. Competition

I begin with the concept of competition. There has been plenty of rhetoric espoused stating that the granting of PPAs will destroy competition in the State of Ohio. I will address this concern, but an important distinction needs to first be made. There is a difference between *wholesale* competition and *retail* competition. *Wholesale* competition involves the generators of electricity competing to sell the power that they produce into a marketplace for the best possible price. *Retail* competition involves entities that purchase this power from the wholesale marketplace, and then resell that power to consumers.

In the State of Ohio, *wholesale* competitors include the generation companies affiliated with AEP, FirstEnergy, DP&L, Dynegy (who last year purchased the generation fleet owned by Duke Energy Ohio's generation affiliate) and other independent power producers in the State. Generation owned by municipals and co-ops (whom the PUCO do not regulate) also partake in wholesale competitive markets. *Retail* competitors include companies like Direct Energy, IGS Energy, Constellation, Just Energy, the retail affiliates of the aforementioned four electric companies and many, many more. I will address retail competition first, followed by wholesale competition.

1. Retail Competition

The status of retail competition in the State of Ohio is strong, and will continue to be strong going forward. Nothing in these Opinions and Orders should be construed as me being unsupportive of retail competition. Retailers have become the true innovators in the State. They are bringing home energy management products, distributed generation, innovative pricing and so much more to their customers. I am supportive and very appreciative of our retailers' efforts to continue to innovate and make customers' lives better.

In analyzing the PPA riders, the mechanisms contemplated could hurt the retail market in a few ways that we must be cognizant of. The first way is if there is confusion about what the Commission has done here. Again, retail competition is working, and it should not be harmed by law or policy based upon a misunderstanding of the Commission's decisions today. The second way is if either the AEP-Ohio or FirstEnergy (the distribution companies) sell their power purchased via the PPAs to their retail affiliates (AEP Retail and FirstEnergy Solutions) via bilateral contract. Per the Opinions and Orders, no presumption of prudence will exist here.

Retail competition is thriving. These companies are innovators. I want to continue to see them thrive and we need to ensure that the potential harms that could arise from these decisions never come to fruition.

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2. Wholesale Competition

As I have already stated, my eventual decisions in these cases were made by analyzing the stipulations against the three part test. My decisions were based upon the concept of the PPAs being utilized as a retail hedge and rooted in state law. Although our decisions do not rely on Federal or wholesale issues, I want to utilize this "industry status" section to provide some observations on wholesale market operation, specifically the PJM wholesale market.

I am a believer in wholesale markets for reasons associated with the discipline of economics. Clearly though, state governments have been expressing some recent trepidation with the markets. There are more states than Ohio that are exercising, or contemplating to exercise their retail jurisdictional authority associated with existing generation (mostly nuclear), or have attempted to incent new generation. Why? What is the root cause of this? I am not entirely sure. Conceptually for the markets, what I think would be essential is that trust and confidence exist in the markets from not only the actual market participants, but in this case, those who are forced to deal with the collateral damage associated with market operation.

State governments are the entities that invariably manage wholesale market collateral damage because they are the most directly accountable to the consumers and job creators in their respective States. I have said this publicly on a few occasions. If the states, who are the most directly accountable to consumers for the impacts of wholesale markets (even though they do not plan or operate them) start to feel pressure, whether from their consumers, utilities, interest groups, etc., and this pressure is either supplemented by, or helps to bolster a lack of trust and confidence in the markets themselves, then states will contemplate exercising their given legal authority associated with their in-state generation.

When prices were high during the polar vortex, consumers and businesses in the State of Ohio called the PUCO and state government offices to express their displeasure. They don't know who PJM is. They don't know who FERC is. When a coal plant in Appalachia is shut down and hundreds are losing their livelihoods, these families send letters to the PUCO and state government offices to tell us of their hardships. They don't know who PJM is. They don't know who FERC is. Again, states feel accountable for the impacts of markets that are not in their control.

That's not to say that there aren't solutions. I have had the professional pleasure of interacting with the executives at PJM as well as FERC Commissioners. They are forthright and brilliant people in their own right, and they have very challenging jobs. They have, in my experience, also been very receptive to the concerns of the states. But again, state government behavior is expressing some trepidation which will need to be addressed. The

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below thoughts/concerns are a start. These are mainly byproduct questions from these PPA cases:

- Are the markets prepared if, for whatever the reason, we see a spike in natural gas prices, especially with the continued shedding of plants from the coal and nuclear generation fleets?
- How close are we to technically reliable and cost-effective utility scale renewables, and are they adequate replacements for the coal and nuclear fleets?
- The nuclear fleet appears to be in the most difficult position, with retirements occurring or being threatened in other states. With nuclear continuing to be a large chunk of generating capacity in PJM, do we need to treat them differently in the wholesale markets in order to preserve them?
- Is the demise of the coal fleet overblown? That is, will there continue to be a large coal fleet that clears wholesale markets *sans* environmental (carbon) reform?
- If environmental (carbon) reform finally goes through, whether it be the Clean Power Plan or other reform, and the nuclear fleet continues to struggle, and renewables aren't ready, what is your plan to ensure a reliable grid?

Perhaps these questions seem preposterous to the reader. Perhaps the answers to these questions are obvious. Perhaps each of these questions can be answered by stating simply that the markets will account for and take care of all of these potential scenarios. Perhaps the policy underpinnings of my questions, concerns about cost and reliability, are not appropriate to ask when dealing with markets. If market prices are high, then that's the market. If power is scarce, then that's the market. Admittedly, if you had my job though, and had to think about consumers big and small just trying to "make it" on a day-to-day basis here in my State, a State in which I have lived all over and have always called home, you may understand my concern.

B. Our Electric Utilities

The Commission and our electric utilities need to work as partners going forward. These cases were filed two or so years ago, and the Commission has been playing defense ever since. Going forward, we need to have a conversation about your future. How can we work to better the lives of consumers in the State of Ohio while also ensuring that you maintain your economic viability? My hope is that we will have this important conversation within the confines of our grid modernization dockets and beyond. We need to work as partners going forward for the betterment of the State.

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C. The Environmental Community

In my eyes, you have officially arrived here at the Commission. When I first started litigating at the Commission some five years ago, I think the perception of your participation is that you were more fringe advocacy parties that would not likely gain traction in large rate cases. Now, unequivocally, you have a seat at the table, and you deserve to be praised for your advocacy and ascension.

My only request is that your advocacy of social principle is firmly grounded in regulatory reality. It is not technically feasible, nor is it presently cost-effective to simply replace our coal, nuclear and gas fleets with renewables and energy efficiency. Perhaps it could happen, but not nearly in the immediate future. As I have stated numerous times when speaking about the Clean Power Plan, cleaner air and a cleaner environment are very fine policy objectives. We must be intelligent and intellectually honest in how we get there from a State regulatory perspective.

D. The Coal Fleet

Coal has a rich history here in Ohio. It has supported Ohio communities and families. It has helped preserve reliability of the grid and the cost-effectiveness of power. I continue to be engaged at a national level to help try and find solutions for coal. Clearly, because of its environmental attributes, coal does not hold the same favor that it once did. This, combined with the price of natural gas, makes for a very challenging market environment for coal.

Cleaner coal solutions like carbon capture and other forms of carbon management are discussed *ad nauseum* in Washington, but there appears to be some relative consensus that these technologies, at present, are cost prohibitive. Further, based upon current market dynamics, I wonder if their cost effectiveness may arrive too late for the existing coal fleet.

I have become familiar with the research of Dr. L.S. Fan and his chemical looping work at The Ohio State University. These types of research endeavors could revolutionize the coal industry. As a State regulator, I don't know that I can do much more to move research endeavors to market other than to say "I support you." I think, however, that lending whatever support we can to such research endeavors makes all the sense in the world. I continue to search for solutions for this industry, and I am very hopeful that solutions present themselves.

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E. Merchant Generators

We are very grateful to have you here, and these decisions should in no way be viewed as a condemnation of your operations here in the State. Through the natural demographics of the State, existing infrastructure and our "one-stop" power siting shop, my hope is that merchant generators will continue to feel that investment in Ohio is a profitable endeavor.

F. The Path Forward

Regulation is far from perfect. When one considers all of the moving parts, especially in the electric industry, it is extremely hard to fathom how it could be. Markets are dynamic. Industries evolve based upon technological innovation. Industry players change priorities based upon share prices, new Boards, and new CEOs. Social movements take shape and influence policy. Lawmakers and other regulators impact what you can and cannot do. The regulators themselves are swapped in and out, and they evolve during the course of their terms. How, then, can electric industry stakeholders in the State of Ohio have some semblance of certainty in regulation?

I feel, at least, that there are a few principles that I will always rely upon when making decisions and charting policy paths. I have quoted the mission of the PUCO extensively in my past decision-making. Outside of the law, it is all that exists to guide us. Now that I have been in this seat for close to three years, I am going to express some autonomy and add a few more principles to the mission that will help guide my second term.

Safe, reliable and cost-effective. These principles are articulated in the mission of the PUCO, and are the core principles to rely upon in safeguarding the industry. The Commission will continue to enforce and seek to make better its reliability and safety measures. The tremendous work that the staff of the Commission does to ensure safety and reliability, and the cooperation that our utilities provide should not be forgotten. It is a heavy, heavy responsibility. I have addressed cost-effectiveness earlier in this concurrence. Note that the principle is *cost-effective* and not *cheapest*. As in life, sometimes you have to pay for great service, and sometimes you have to invest on the front-end to save on the back-end. I am always concerned about costs. I am concerned about what our most indigent consumers can pay, and I am concerned if our job creators are paying too much. It is a very challenging balance, but a balance nonetheless that we must endeavor to create.

Innovative. I now view this as synonymous with "competitive" in the retail space. If a retailer is being innovative, then it is also being competitive. If a retailer's only offer to consumers is a small discount off of the price to compare, that retailer is not being innovative, and thus the retailer is not being competitive. I hope to see more and more

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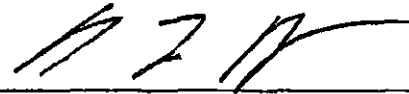
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retail innovation as I progress through my second term. I also hope to see innovation expressed in our grid modernization dockets. Again, these dockets have tremendous potential.

Clean. We must acknowledge the clean movement. Failing to do so runs afoul of what appears to be overwhelming consumer sentiment. Recall though that we have to balance this principle against the principles of reliability and cost-effectiveness. Again, environmental advocates have a seat at the table, but we have to work always towards immediately practical solutions. This is not to say, again, that I do not believe in our historical baseload generation either. We must support clean solutions for coal, and must also realize that trying to push the baseload fleets out of the market sooner than our grid can account for may be very harmful.

Safe - Reliable - Cost-Effective - Innovative - Clean

These are principles that can guide our path forward. These are big cases, but there is still, and there always will be, much work to be done.

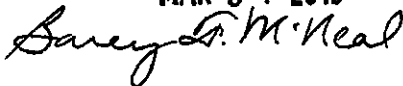


Asim Z. Haque, Commissioner

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Barcy F. McNeal
Secretary