

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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|---|---|-------------------------|
| In the Matter of the Application of |) | |
| Columbus Southern Power Company For |) | |
| Approval of its Electric Security Plan |) | Case No. 08- 917-EL-UNC |
| Including Related Accounting Authority; |) | (Remand) |
| an Amendment to its Corporate |) | |
| Separation Plan; and the Sale or Transfer |) | |
| Certain Generating Assets |) | |
| |) | |
| and |) | |
| |) | |
| In the Matter of the Application of |) | |
| Ohio Power Company for Approval of |) | |
| its Electric Security Plan Including |) | Case No. 08-918-EL-UNC |
| Related Accounting Authority; and an |) | (Remand) |
| Amendment to its Corporate Separation |) | |
| Plan |) | |

INITIAL BRIEF OF
CONSTELLATION NEWENERGY, INC. AND
CONSTELLATION ENERGY COMMODITIES GROUP, INC.

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I. INTRODUCTION

Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (collectively “Constellation”) submit this initial brief pursuant to the Attorney Examiners’ bench Entry at the close of hearing. On July 31, 2008, Columbus Southern Power Company and Ohio Power Company (collectively “AEP Ohio” or “the Companies”) submitted an application for approval of its first *Electric Security Plan* (“ESP”) in the above styled docket. On March 18, 2011, the Commission issued an Opinion and Order approving AEP Ohio’s ESP with modification, including a revised Provider Of Last Resort (“POLR”) charge. The Commission’s decision was subsequently appealed by the Ohio Consumers’ Counsel (“OCC”) and by the Industrial Energy Users-Ohio (“IEU”) to the Ohio Supreme Court. The appeal raised thirteen propositions of laws, including a claim that the Commission relied on a justification lacking any record support in approving AEP Ohio’s POLR charge¹.

On April 19, 2011, the Ohio Supreme Court issued its decision, reversing the provisions of the Opinion and Order authorizing the POLR charge². The Court stated that the Commission characterized the POLR charge as “based on cost” but that the record in this case contained “no evidence support[ing] the commission’s characterization³.” As a result, the Commission’s decision to approve the POLR was an abuse of discretion and reversible error⁴. The Court’s decision stated that the Commission “may” revisit the POLR charge and provide AEP Ohio an opportunity on remand to substantiate its costs in providing the POLR service. On May 4, 2011, the Commission directed AEP Ohio to file proposed revised tariffs that would remove the

¹ Supreme Court of Ohio Slip Opinion No. 2011-Ohio-1788 at 11.

² Id.

³ Id.

⁴ Id.

POLR charges from the Companies' tariffs⁵. On May 11, 2011 AEP Ohio filed revised tariffs with a motion requesting that the Commission allow AEP Ohio to continue to collect the current rates as filed, subject to refund. The Commission allowed AEP Ohio to continue to collect the current POLR charge, subject to refund as determined by the Commission in this remand proceeding⁶.

Constellation requests that the Commission order the POLR fees collected starting with first billing cycle of June 2011 be refunded to all customers as AEP Ohio has failed to meet its burden of proof established by the Ohio Supreme Court for this remand proceeding. Simply put, AEP Ohio has failed to provide any evidence of an actual cost created by its providing POLR service or, in the alternative, AEP Ohio has failed to present and demonstrate a reasonable and lawful POLR charge formula which reimburses it for its calculated expenses.

Constellation further requests that the Commission find AEP Ohio's POLR charge, as applied, is in violation of the Commission's March 18, 2009, Order in this case and is contrary to the State Energy Policy as it is a *de facto* non-bypassable rider. In the event that the Commission decides to permit AEP Ohio to continue to charge a POLR fee for the remainder of the ESP term, AEP Ohio's customers should be informed that they are entitled to waive the POLR charge and still obtain standard service rates if they return after the close of ESP I consistent with Commission's initial order in this case.

II. LEGAL STANDARD ON REMAND

The Ohio Supreme Court reversed the Commission's order authorizing the POLR charge because the "manifest weight of the evidence contradicts the Commission's conclusion that the

⁵ In Re Columbus Southern Case No. 08-917-EL-SSO Entry of May 4, 2011

⁶ In Re Columbus Southern Case No. 08-917-EL-SSO Entry, May 25, 2011

POLR charge is based on cost⁷.” AEP Ohio must show that the POLR charge is cost-based by presenting evidence of its actual costs incurred to meet its POLR obligation for the ESP Period. In the alternative, AEP Ohio may present and demonstrate a just and reasonable formula for the POLR charge that is not based on actual cost that is reasonably designed to recapture AEP Ohio’s expense in providing the POLR service⁸. AEP Ohio has failed to overcome the evidentiary deficiencies in the prior portion of this case, and has further failed to present credible evidence that a formula based POLR charge is just and reasonable. In accordance with the Ohio Supreme Court’s mandate on remand, AEP Ohio’s POLR charge should be refunded.

The POLR obligation is defined in Chapter 4928 of the Revised Code. Under Section 4928.141, AEP Ohio, as an Electric Distribution Utility, is required to “provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer of all competitive retail electric services necessary to maintain essential electric generation service.” Section 4928.14 states that in the event a competitive retail electric service (“CRES”) provider fails to provide service to customers within EDU’s service territory, the customers of that supplier will “default[] to the utility’s standard service offer***until the customer chooses an alternative supplier.” The Supreme Court of Ohio defined this as the “obligation to stand ready to accept returning customers⁹.”

AEP Ohio must present evidence in this remand proceeding that demonstrates that AEP Ohio’s cost-based POLR charge is related to actual costs it will or has incurred¹⁰. The Court noted two major deficiencies in the Commission’s prior decision that must be remedied on remand. First, AEP Ohio based its POLR charge on the premise that the value of a customer’s

⁷ Supreme Court of Ohio Slip Opinion No. 2011-Ohio-1788 at 11

⁸ Id.

⁹ Id at 8

¹⁰ Id at 9

option to shop is the equivalent of the cost of the companies' POLR obligation. According to the Supreme Court, AEP Ohio was required to present evidence showing the connection between the value to customers and the actual costs AEP Ohio incurred due to its POLR obligation¹¹. Based upon the record on remand, AEP Ohio has failed to make such a showing. Second, if AEP Ohio is able to demonstrate that its risks translate to actual cost to the Companies, AEP Ohio must also demonstrate that the Black Scholes model¹² is an appropriate and effective method to measure this cost.¹³ AEP Ohio has in this remand proceeding essentially just represented substantially the same evidence and arguments the Ohio Supreme Court rejected. Thus, AEP Ohio has failed to meet its burden that the POLR fee is based on its cost of providing the POLR service.

Alternatively, the Supreme Court said that AEP Ohio may demonstrate that a formula based POLR, not determined by actual cost, is reasonable and lawful¹⁴. AEP Ohio has failed to present evidence that the current POLR charge calculations meet this standard.

The above legal standards are based in the controlling statutes, the decision of the Supreme Court, and the Commission's prior rulings. AEP Ohio has failed to meet these standards in this case and has failed to meet its burden on remand. As such, the Commission should find the POLR charge unlawful, and remit all collected charges since the first billing cycle in June of 2011.

III. AEP OHIO HAS FAILED TO MEET ITS BURDEN ON REMAND

- a. AEP Ohio has failed to show that the current POLR charge is based on actual costs incurred by the Companies.

¹¹ Id.

¹² Companies' witness Thomas notes in her direct testimony that the "Black Scholes model" is a common application for the option pricing of stocks. When the model is applied to options on futures contracts it is more appropriate to call the model a "Black model." P. 12.

¹³ Supreme Court of Ohio Slip Opinion No. 2011-Ohio-1788 at 9

¹⁴ Id at 14

In the Remand Proceeding, AEP Ohio clearly indicated that it did not intend to justify the more than \$152 million it is thought to have collected to date in POLR fees based on out of pocket or other “actual” costs¹⁵. Thus, the record is completely void of any invoices, man hour records, option purchases or other evidence that AEP Ohio has had one dollar’s worth of actual expenses in order to carry out its POLR duties. AEP Expert witness Thomas notes that no witness on behalf of AEP Ohio has conducted an out-of-pocket cost calculation¹⁶. AEP Expert witness LaCasse agreed that from AEP Ohio’s prospective “actual cost is not relevant”¹⁷. Thus, while it is not articulated in any of the testimony that AEP Ohio has elected not to support their POLR fee based on actual cost, that is the state of the record.

- b. AEP Ohio did not offer any argument that a formula based POLR charge not based on actual costs is reasonable and lawful.

The Ohio Supreme Court decision provides that based on the original record it would not rule that a formula is *per se* required to use actual cost to support the POLR fee. A formula that did not use actual cost, however, would have to be “reasonable” and “lawful”¹⁸. (Decision, 11). In terms of being “reasonable” AEP Ohio will have to show that in this case, its obligation to stand ready to serve bundled generation, in addition to the what was subsequently collected for the bundled generation, has cost AEP Ohio over a hundred million dollars.

In terms of being lawful, AEP Ohio must show that its formula for the POLR fee is authorized by a specific statutory provision. There is no dispute that providing the POLR service is a non-competitive service under Section 4928.03, Revised Code and as such, can be provided

¹⁵ Direct Prepared Testimony of OCC witness Duann p. 22-23

¹⁶ TR. Vol. II, 245)

¹⁷ TR., Vol. II, 153).

¹⁸ Supreme Court of Ohio Slip Opinion No. 2011-Ohio-1788 at 11

only by the electric utility¹⁹. As a noncompetitive utility service, any costs associated with the obligation must be set using the cost of service paradigm in Chapter 4909²⁰. Thus, the POLR charge must instead be determined pursuant to a just and reasonable rate standard under the Commission's general ratemaking principles. *See* R.C. §§ 4909.15 and also 4928.143(A)(2)(d). This is true even if AEP Ohio uses a formula-based model that is not based on actual cost. Based upon the testimony of AEP Ohio witness Thomas, it is clear that AEP Ohio is supporting the POLR fee based upon the original Black Scholes model run by Mr. Baker in 2009²¹. This is somewhat surprising as that is the same formula that the Ohio Supreme Court specifically rejected in its April 19, 2011 decision.

On reexamination, in light of the Court's decision, the Commission should reject the Black Scholes model in the matter at bar for three reasons. First, the Black Scholes model is based upon the premise that the benefit to the retail customer equals the cost to AEP Ohio. There was no support for this contention in the original case and nothing has been added in the Remand Case to support the premise. Second, there was no proof in the original hearing, nor has evidence been added in the Remand Proceeding, that verifies that the Black model or the Black Scholes model is a generally accepted method for determining POLR expenses. Finally, even if the Black Scholes model was shown to be an appropriate formula for determining POLR costs, the inputs AEP Ohio used in the 2009 ("the Baker model run") and those same inputs reused in the 2011 ("Thomas run") are inappropriate.

¹⁹ The noncompetitive nature of the POLR obligation was confirmed by Company witnesses Makhija and Thomas, who both noted that the utility has a "monopoly" on the POLR obligation in that only the utility may offer default service to customers. (See Tr. Vol. I, 60 and Vol. II, 283).

²⁰ Section 4928.05(A)(2), Revised Code.

²¹ Tr. Vol. II p. 255-256

i. The Value of a Customer's Option to Shop is not the Equivalent of Cost to the Companies for its POLR Obligation.

AEP Ohio has failed to meet its burden of proving that the value of a customer's option to shop results in a corresponding cost to the Companies. AEP Ohio based its POLR charges on its quantification of the value of a customer's option to shop, and equated this value with its costs to provide the POLR obligation. The Ohio Supreme Court found that AEP Ohio did not sufficiently prove this connection, stating that "we fail to see how the amount a customer would be willing to pay for the right to shop necessarily establishes AEP's costs to bear the attendant risks."²² On remand, AEP Ohio has merely dressed up its prior argument by stating that the value of shopping is a benefit to customers, which corresponds to the liability and cost to the Companies.²³ This contention is not supported in law or in economics as AEP Ohio inaccurately defines the POLR risk, then improperly correlates the benefit to customers with costs to the Companies.

In determining its POLR risk, AEP Ohio assumes that it is entitled to be compensated for lost opportunity costs, including costs associated with customers migrating to or from AEP Ohio's Standard Service Offer ("SSO")²⁴. AEP Ohio has characterized the "risk" associated with the POLR obligation as a "lost opportunity cost." AEP Ohio witness Dr. Makhija agreed that, in his view, the POLR obligation constitutes a cost to the utility in the form of a lost opportunity for AEP Ohio measured by the difference between the price the Companies would have sold the power for under the SSO and what the Companies will get for the power in the market.²⁵ Thus, attributing the value of a customer's option to shop to a liability.

²² Decision, 10

²³ Direct Testimony of AEP witness Dr. Makhija, p. 3

²⁴ Tr. Vol. II, 244

²⁵ Tr. Vol I, 49

The use of “lost opportunity” profits as the cost of the POLR fails the Ohio Supreme Court’s requirement that a formula-based POLR charge is lawful for two reasons. First, it assumes that AEP Ohio is entitled to a guaranteed sale. Under Section 4909.18, Revised Code cost of service rate making the utility is not entitled to revenue from a set amount of sales. Rates are set and if customers buy less than the set rate provides for, the utility is at risk. AEP Ohio has not provided a legal basis to claim that they are entitled to a set level of sales, yet in order to gauge the lost opportunity revenue, mathematically you must begin with the assumption that AEP Ohio is entitled to a sale of generation for all of its load.

The second legal flaw is that a lost opportunity calculation includes the lost sales from both the migration from and as well as the returning to the SSO. This mischaracterization of the value of the shopping option and of AEP Ohio’s risk, seriously undermines AEP Ohio’s basis for its POLR charge. The risk that AEP Ohio will not be able to sell generation at a price that is at or above the SSO price is a competitive generation risk,²⁶ and is not related to the noncompetitive POLR obligation. This is also made clear in the statutory definition of the POLR obligation, which the Ohio Supreme Court notes is the utility’s “obligation to stand ready to accept *returning* customers.”²⁷ (emphasis added). As such, this is a business risk that AEP Ohio is not entitled to collect from consumers.²⁸ The risk of lost opportunity costs, or customer migration, is not unique to the utility and allowing AEP Ohio to receive compensation for this risk disadvantages other market participants in favor of the utility.²⁹

In FirstEnergy Ohio’s SSO, the Companies do not charge a POLR fee, but instead the migration risk is incorporated into the bid price and the risk of customers returning is bid out to

²⁶ Direct Prepared Testimony of IEU Witness Lesser, p. 13

²⁷ Supreme Court of Ohio Slip Opinion No. 2011-Ohio-1788 at 8

²⁸ TR. Vol V, 881

²⁹ Direct Prepared Testimony of OCC witness Thompson, pp. 11-12

wholesale providers.³⁰ Similarly, in Duke Energy Ohio's SSO, there is no POLR fee charged customers, only an added fee for the generation used by a retail customer who returned to SSO before the end of the ESP.³¹ Constellation's witness David Fein also noted that in other jurisdictions, utilities do not recover these lost opportunity costs, but instead recover "their actual costs to serve a *returning* customer" through switching rules, enrollment windows or notice provisions, and default service rates.³² (emphasis added). As admitted by AEP Ohio, the migration aspect of the Companies' POLR charge accounts for approximately 90% of the purported value of shopping.³³ Therefore, only approximately 10% of the value of shopping may legally be attributed to the risk of the POLR obligation. Thus, a large portion of AEP Ohio's POLR charge includes compensation for migration risk and lost opportunity costs that constitute *an anticompetitive subsidy and is not legally supported. Further, Thomas admits that she has conducted no studies to determine what the cost of the POLR charge would be after removing this portion of the purported risk.*³⁴

In sum, the burden in this proceeding is on AEP Ohio to substantiate its formula based on the premise that value to the customer of the option to shop equals the cost to AEP Ohio. AEP Ohio again has conducted no studies to show that the purported benefit to customers equates with the actual cost to the company.³⁵ Finally, Dr. Lesser testifies that it is a false assumption that a benefit to a customer is exactly equal to the cost to the company and AEP Ohio.³⁶

ii. *The Black Scholes model is an inappropriate formula to measure the value of a customer's option to shop.*

³⁰ Direct Prepared Testimony of Constellation witness David Fein, p. 13

³¹ Id.

³² Id at 12

³³ Opinion and Order, March 17, 2009, p. 39 referencing testimony of Companies' Witness Baker

³⁴ Tr. Vol V, . 885

³⁵ Tr. Vol II, 221

³⁶ Direct Prepared Testimony of IEU Witness Lesser, pp. 13-15

Even assuming that AEP Ohio had demonstrated that the value of the shopping option to customers relates to a cost to AEP Ohio, the Black Scholes model is an inappropriate method to measure this cost. The Black Scholes model was designed to value stock options. It assumes and calculated the options of a trader in the business every day, making transactions as the option price and the strike price for stock change.³⁷ The value of the option AEP Ohio is measuring, though, is the likelihood of a retail customer who has to find a competitive retail electric supplier, enter into a contract with the supplier, and then return to the utility. On its face there seems to be little to no similarity between what the Black Scholes was designed to model, and the customer's option of competitive retail generation. What the model is missing from AEP Ohio's direct case is what is most telling. AEP Ohio has not claimed that Black Scholes or the Black Model has ever been used for determining the option value for retail energy purposes. Further, AEP Ohio knows of no other utility or state regulatory body that has used a Black or Black Scholes model to set a POLR fee³⁸. Finally, AEP Ohio did not even do a comparison of how effective the 2009 Black Scholes model was in predicting migration to and from the SSO.³⁹ In fact, there has been no verification at any time that supports the use of the Black Scholes model for its intended purpose of determining the value of an option to purchase retail power.

iii. *Even if the Black Scholes model was an appropriate formula to measure the value of a customer's option to shop the inputs used to run the formula were inappropriate.*

Not only is the model itself inappropriate for this calculation, but the inputs used by Mr. Baker and Ms. Thomas are inappropriate and inaccurate. For example, the model contains a

³⁷ Direct Prepared Testimony of IEU Witness Lesser, pp. 8-10, 20

³⁸ Vol. II, 286-287

³⁹ Thomas agreed that she has conducted "no studies at this point to compare the results from either the constrained or the unconstrained model with any of the actual [data] to date." (Vol. II, 221).

volatility factor that is estimated at 33.3%, which Staff Witness Benedict states is 20% higher than it should be.⁴⁰ Thomas bases the volatility factor on forward energy contract prices and applies this factor to the entire market price although the market price includes certain components that have lower volatility rates⁴¹. AEP Ohio is not at risk for capacity, as AEP Ohio receives capacity payments pursuant to its FRR obligation, and as a result, the capacity component of the market price should have a lower volatility factor.⁴² Staff Witness Benedict estimates that AEP Ohio's failure to make this adjustment will reduce the volatility by approximately 20%. Thomas admits that the Companies have not considered how a reduction by 20 percent from the current 33.3 percent would affect the POLR charge.⁴³

AEP Ohio admits that it does not have enough information to consider all the factors that should be included in the model to determine the value of a customer's option to shop. Thomas admits that there are many non-cost factors relating to the value of the option that have not been quantified, and cannot be quantified, but affect the outcome of the model.⁴⁴ Thomas states "the Companies quantified those factors which it knows and did not quantify other factors which it does not and will not know."⁴⁵ Thomas notes that non-price factors exist on both sides of the equation that would likely offset each other. However, in stating this, Thomas admits that she has "not quantified the [offset impact] of the factors on either side." There are numerous factors that "are not known and therefore were not modeled" by AEP Ohio, but that AEP Ohio admits have an effect on the value of the option to shop.⁴⁶

⁴⁰ Direct Prepared Testimony of Staff Witness Benedict, p. 3;

⁴¹ Id.

⁴² TR. Vol II, 221-22

⁴³ TR. Vol V, 885-86

⁴⁴ TR. Vol V, 837-838

⁴⁵ Rebuttal Testimony of AEP witness Thomas, p. 6

⁴⁶ Id.

AEP Ohio has failed to empirically verify the Black Scholes model's use in this context. The AEP Ohio witnesses are not Black Scholes model experts, and thus their opinions do not provide proper verification of the model. Dr. LaCasse and Ms. Thomas, while they may be experts in the field of energy auctions and sales, are not qualified statisticians with experience to determine appropriate and inappropriate inputs. Dr. LaCasse in particular has not worked with the Black Scholes model before this case and has never worked with an option model that was used to price shopping risks.⁴⁷ Further, AEP Ohio has made no attempt to validate the model with actual data. AEP Ohio has conducted no studies to compare the models with actual costs to the company.⁴⁸ AEP Ohio claims that the liability arises ex ante, or at the beginning of the ESP period, and thus an after-the-fact analysis of out-of-pocket expenses or actual costs is not relevant.⁴⁹ Further, witness Thomas states that AEP Ohio has not presented or considered the number of switching customers and does not find this number relevant.⁵⁰ Thomas admits that she is "not aware that anybody else is using the same model as the company for determining the cost of their POLR."⁵¹ The model remains a black box calculation that in no way connects the value of customers shopping, to liability, to cost. The accuracy and appropriateness of the Black Scholes model to measure the value of the customer's option to shop has not been verified by AEP Ohio in this proceeding and not been verified by any other utility in Ohio or other jurisdictions in the United States. AEP Ohio should be prevented from using a model that is unverified as a basis for costs charged to consumers.

IV. AEP OHIO HAS MISAPPLIED THE POLR CHARGE CONTRARY TO THE COMMISSION'S MARCH 18, 2009 ORDER IN THIS CASE.

⁴⁷ TR. Vol II, 148-149

⁴⁸ TR. Vol II, 221

⁴⁹ TR. Vol V, 720; also Vol II, 153

⁵⁰ TR Vol V, 875

⁵¹ TR Vol. II, 287

AEP Ohio has applied the POLR charge as a nonbypassable charge contrary to the Commission's March 18, 2009 order in this case. AEP Ohio's POLR charge is set up so that customers that choose to shop can avoid paying the POLR charge only if the customer agrees to pay market rates upon return to AEP Ohio.⁵² AEP Ohio has falsely led shopping customers to believe that by waiving the POLR charge, the customers cannot return to SSO rates upon return to the company, but must continue to pay market rates indefinitely⁵³. This application is inconsistent with the Commission's March 18, 2009 order in this case clearly stating that the customer may waive the POLR charge if they agree to return at market rates *for the term of the ESP*.⁵⁴

Company witness Thomas states in her testimony that she classifies the POLR charge as essentially nonbypassable due to the Companies' application of the charge. Thomas states "even though [the POLR charge is] nonbypassable, the customer has the right to waive paying the POLR charge, but it's an affirmative commitment." Customers are not told of their option to waive the POLR charge should they wish to do so. As noted by Witness Thomas, customers are only given information regarding waiver of the POLR charge upon request.⁵⁵

The chilling effect of AEP Ohio's approach and communications with consumers is clear. Approximately 98% of customers have decided not to waive the POLR charge. Thomas states that this 98% is a reflection of the fact that customers have "recognized the benefit of retaining the option to return to service from the Companies at SSO prices."⁵⁶ However, this is a clear mischaracterization of the effects of AEP Ohio's efforts to discourage customers from agreeing

⁵² Tariff, CSP, 1st Revised Sheet No. 69-1 ("Provider of Last Resort Charge Rider")

⁵³ TR. Vol. II, 296

⁵⁴ Opinion and Order, March 18, 2009 p. 40

⁵⁵ TR Vol III., 247-248

⁵⁶ Direct Prepared Testimony of AEP witness Thomas, pp. 7-8

to waive the POLR charge. Constellation Witness David Fein notes this chilling effect is shown in that “[f]ew customers would be willing to trade the avoidance of the POLR fee for 12 to 36 months in exchange for never being able to return to the standard service offer price, should it ever be below market again.”⁵⁷

No other utility in Ohio charges a POLR charge on a de facto nonbypassable basis. FirstEnergy Ohio does bids out its load requirements through an auction, and thus does not institute a POLR charge. Duke Energy Ohio provides a shopping credit to customers that agree to remain off the ESP-SSO service upon return to the company.⁵⁸ However, unlike AEP Ohio, Duke specifies that the customer will only remain off the SSO price for the remainder of the ESP term. Further, if the customer upon return is not required to remain at market prices, but returns at Duke’s SSO service rate at 115% of the ESP SSO price including all riders except for distribution riders.⁵⁹

A POLR charge is a generation-related charge, and thus should be bypassable. As noted by Witness David Fein, “[i]f a shopping customers is forced to continue to pay the utility for generation-related supply charges plus pay their CRES provider for generations service, they are effectively paying twice for the same service.”⁶⁰ As a result, the Commission properly ordered the POLR charge to be a bypassable rider, and the Commission should ensure the POLR charge remains bypassable by requiring AEP Ohio’s customers to be informed that they are entitled to waive the POLR charge and still obtain standard service rates if they return after the close of ESP I consistent with Commission’s initial order in this case.

⁵⁷ Direct Prepared Testimony of Constellation witness David Fein, p. 8

⁵⁸ Id at 13

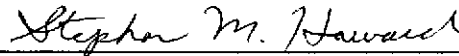
⁵⁹ Tariff of Duke Energy Ohio PUCO Electric No. 19, Sheet No. 85.5

⁶⁰ Direct Prepared Testimony of Constellation witness David Fein, p. 10

V. CONCLUSION

Constellation requests that the Commission order the POLR fees collected starting with first billing cycle of June 2011 be refunded to all customers as AEP Ohio has failed to meet its burden of proof established by the Ohio Supreme Court in this remand proceeding. SAEP Ohio has failed to provide any evidence of an actual cost created by its providing POLR service or, in the alternative, AEP Ohio has failed to present and demonstrate a reasonable and lawful POLR charge formula which reimburses it for its calculated expenses. If the Commission is to allow AEP Ohio to continue with a POLR charge, the Commission should require AEP Ohio to apply the POLR charge on a bypassable basis consistent with the Commission's initial order.

Respectfully Submitted,



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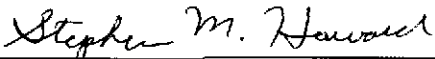
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document was served upon the following persons via email this 5th day of August, 2011.



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