

FILE

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)
an Electric Security Plan; an Amendment to) Case No. 08-917-EL-SSO
its Corporate Separation Plan; and the Sale or) (Remand)
Transfer of Certain Generating Assets.)

In the Matter of the Application of Ohio)
Power Company for Approval of its Electric) Case No. 08-918-EL-SSO
Security Plan; and an Amendment to its) (Remand)
Corporate Separation Plan.)

MOTION OF FIRSTENERGY SOLUTIONS CORP. FOR LEAVE TO FILE *AMICUS CURIAE* POST-HEARING BRIEF

FirstEnergy Solutions Corp. ("FES") respectfully requests leave to file the *amicus curiae* post-hearing brief attached hereto as Exhibit A. FES's *amicus curiae* post-hearing brief addresses only one issue in the AEP Ohio remand proceedings- the proposed POLR charge. FES has extensive experience with POLR risk as a supplier that has assumed POLR risk in competitive auctions and is very familiar with these issues. FES would like to share the benefit of this experience with the Commission.

FES moved to intervene in this case on May 26, 2011, pointing out the significant impact that the Commission's decision would have on both current customers and on the issues in the *ESP II* case currently pending before the Commission, Case Nos. 11-346-EL-SSO *et al.* FES's motion to intervene was denied on June 16, 2011. On June 17, 2011, FES filed an application for review through interlocutory appeal of the Commission's decision, which was denied by the Commission on June 29, 2011. Both the Attorney Examiner and the Commission denied FES intervention at the remand stage of the proceedings. The remand evidentiary hearing concluded

on July 28, 2011, and the Attorney Examiner requested that post-hearing briefs be filed by no later than August 5, 2011.

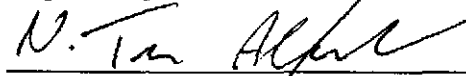
In instances where the Commission has declined to grant intervention to an entity, the Commission has permitted entities to share their views with the Commission through *amicus* filings. See In the Matter of XO Ohio v. Upper Arlington, Case No. 03-870 (May 14, 2003 at 25)(denying motion to intervene but stating that proposed intervenor was welcome to file an *amicus* brief); FirstEnergy et al., Case No. 99-1212 (March 23, 2000 at 3)(entry denying AEP Ohio's attempt to intervene, but stating that AEP Ohio was welcome to file an *amicus* brief if circumstances warranted). The Commission has also often permitted *amicus* briefs even when intervention was not first sought. See In the Matter of the Petition of Jane Marshall and Numerous Other Subscribers of the Gratis Exchange of Verizon North, Inc. v. Verizon North, Inc. and United Telephone Company of Ohio d.b.a. Sprint, Case No. 03-878, 2004 WL 1876408 (June 16, 2004 at 2)(granting OCC leave to file an *amicus* brief); In the Matter of The Petition Of Numerous Subscribers Of The Middletown Exchange Of Ameritech Ohio v. Ameritech, Case No. 98-357 (June 4, 2002 at 4)(granting OCC leave to file an *amicus* brief); In re Ohio Edison Company, Case No. 03-1966, 2004 WL 513726 (February 4, 2004 at 9) (accepting MISO's *amicus* brief).

An *amicus curiae* brief from FES in this case will not widen the issues before the Commission or delay these proceedings in any way. FES does not seek to introduce any new evidence at this time. Instead, allowing FES leave to file the post-hearing brief attached to this Motion as Exhibit A will simply provide the Commission with perspective from an experienced CRES provider. Given the significant impact that the Commission's decision will have on all of the CRES providers serving (or potentially serving) customers in AEP Ohio's territory, it is

reasonable for the Commission to grant FES leave to file the attached post-hearing *amicus* brief so the Commission will have as much information as possible as it decides these important issues.

For the reasons specified above, FES respectfully requests leave to file the attached post-hearing *amicus* brief.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion of FirstEnergy Solutions Corp. For Leave To File Amicus Curiae Post-Hearing Brief* was served this 5th day of August, 2011, via e-mail upon the parties below.



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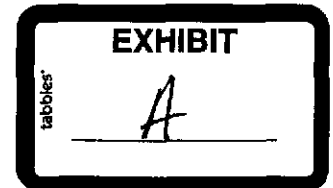
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FIRSTENERGY SOLUTIONS CORP.'S POST-HEARING AMICUS BRIEF

"The record shows that the model does not even purport to estimate costs, but instead tries to quantify 'the value of the optionality [to shop for power] that is provided to customers under Senate Bill 221.' Value to customers (what the model shows) and cost to AEP (the purported basis of the order) are simply not the same thing."

In re Application of Columbus S. Power Co., 128 Ohio St. 3d 512, 518 (2011).

I. Introduction

The Ohio Supreme Court remanded this case to determine two simple issues: (1) whether "a non-cost-based POLR charge is reasonable and lawful;" or, alternatively, (2) "whether it is appropriate to allow AEP to present evidence of its actual POLR costs." In re Application of Columbus S. Power Co., 128 Ohio St. 3d 512, 519 (2011). FirstEnergy Solutions Corp. ("FES") offers this amicus post-hearing brief to provide the benefit of its extensive experience regarding POLR risk to the Commission relating to the proposed POLR charge.

As discussed in Section II below, AEP has not attempted to establish that “a non-cost-based POLR charge is reasonable and lawful”. Since AEP has not presented any evidence contesting this point, the Commission need not consider this argument further.

As discussed in Section III below, AEP Ohio has chosen not to produce any evidence of its actual (or even potential) out-of-pocket costs, and instead has proposed the continued use of the unconstrained Black-Scholes model as an estimate of its costs. The Ohio Supreme Court has already determined that the Black-Scholes model does not measure AEP Ohio’s costs. As AEP Ohio has chosen not to present any evidence of its actual costs, the sole question before this Commission is whether the market value produced by the Black-Scholes model is an appropriate estimate of AEP Ohio’s costs to provide POLR service. AEP Ohio has presented a host of arguments that the market value of the optionality is somehow related to the cost of either “risk” (Thomas), foregone revenue (LaCasse), the value which would be bid in a competitive auction (LaCasse), the cost of AEP Ohio to provide the optionality (Makhija), or a decrease in equity value (Makhija). As discussed in detail below, there are fundamental flaws in each of these arguments, because the Black-Scholes model determines the estimated market value of the optionality given to customers, not AEP Ohio’s cost to provide those options. Accordingly, the Black-Scholes model fails to provide a reasonable approximation of the actual out-of-pocket costs which may be incurred by AEP Ohio.

Finally, in Section IV, this memorandum addresses the inherent problems with the calculation proposed by AEP Ohio. Even if the Black-Scholes model did measure costs, which it does not, AEP Ohio’s calculation is incorrect because the Black-Scholes model: (1) improperly includes the market value of the option to migrate to a CRES provider, which is not a proper element of POLR risk; (2) is overstated because key assumptions of the Black-Scholes

model are not met; and (3) is overstated because AEP has used an incorrect input value for volatility in the Black-Scholes model.

As discussed in detail below, AEP Ohio has not proposed a non-cost based model in this case but, instead, has attempted to estimate as of 2008 what its POLR costs could be during 2009-11. However, the model proposed by AEP Ohio does not measure its costs. The model is incorrectly based on the market value of the options provided and not on costs which would be incurred. Moreover, even if the model was capable of estimating AEP Ohio's costs, it improperly includes the risk of customer migration and is dramatically overstated, and so would not be an appropriate measure of POLR risk.

II. AEP Ohio Has Not Provided Any Evidence Supporting A Non-Cost Based Charge.

AEP Ohio has not argued that a non-cost based charge is appropriate in this case. As AEP Ohio has not presented any evidence suggesting that a non-cost-based charge is reasonable and lawful, the Commission need not consider this argument further.

III. AEP Ohio Has Failed To Present Any Evidence Of Its Actual Costs.

A. The Ohio Supreme Court Already Has Determined That The Black-Scholes Model Does Not Estimate AEP Ohio's Costs.

The Ohio Supreme Court has determined that the model relied upon by AEP Ohio is not evidence of AEP Ohio's cost to provide POLR service, and that finding is now the law of the case. The Court held that the Black-Scholes model is designed to calculate the market value of an option – not AEP Ohio's cost to provide that option:

The record shows that the model does not even purport to estimate costs, but instead tries to quantify 'the value of the optionality [to shop for power] that is provided to customers under Senate Bill 221.' Value to customers (what the model shows) and cost to AEP (the purported basis of the order) are simply not the same thing.

Columbus S. Power Co., 128 Ohio St. 3d at 518 (internal citations omitted). As the Ohio Supreme Court has already determined that the Black-Scholes model attempts to evaluate the market value of the option provided to customers, rather than AEP Ohio's cost to provide that optionality, this determination is now law of the case and cannot be challenged. See, e.g., State ex rel. Baker v. State Personnel Bd. of Review, 85 Ohio St. 3d 640, 642 (1999) (finding that the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels).

The Court's remand gave AEP Ohio the opportunity to present evidence of its actual costs of providing POLR service. Indeed, AEP, Inc.'s Chairman and CEO, Michael Morris, explained after the Court's decision remanding this case back to the Commission that AEP Ohio was ready to demonstrate what its actual costs of providing POLR service were:

You may remember also that the Supreme Court said that it's kind of difficult to understand this because American Electric Power hasn't incurred any lost load or customers switching. Well clearly, that's the case today. So we think there's plenty of room on remand for the Commission to satisfy that if they'd like. If they want to go the other side and have a detailed cost demonstration of what it takes to keep units always ready to run whenever people come back, we'll be happy to do that.

AEP earnings call, April 21, 2011 (attached hereto as Exhibit A). In this remand proceeding, however, AEP Ohio elected instead to stay faithful to the model that has been definitively rejected by the Ohio Supreme Court. Because the Court's decision is the law of the case, the Commission cannot approve AEP Ohio's POLR Charge Rider.

B. AEP Ohio Has Not Presented Any Evidence Of Actual Out-Of-Pocket Costs Associated With Providing POLR Service.

AEP Ohio did not calculate any out-of-pocket expenses associated with its POLR responsibilities. See Tr. Vol. II pg. 244-24 through 245:2¹. No AEP Ohio witness presented any evidence of actual costs which were incurred during the period from the beginning of the ESP to the present. See IEU Remand Exhibit 2, Direct Testimony of IEU witness Kevin Murray (“Murray Direct”) at Exhibit KMM-2. No AEP Ohio witness presented any evidence of the projected out-of-pocket costs which were anticipated to be incurred during the ESP Period, either from the initial hearing in this matter or during the remand proceedings. In fact, AEP Ohio has failed to even identify the categories of actual cost which would be incurred as a result of the POLR obligation. See Tr. Vol. II pg. 246:16 to 247:2; see also IEU Remand Exhibit 1, Direct Testimony of IEU witness Dr. Jonathan Lesser (“Lesser Direct”) at 33:12-14. AEP Ohio’s own witnesses agreed that its model did not capture the out-of-pocket costs to AEP Ohio of providing POLR service. See Tr. Vol. II pg. 238:1-8². The record is clear. AEP Ohio has not presented any evidence of the estimated or actual out-of-pocket costs which are associated with POLR risk, and has failed to even categorize what these costs might be.

¹ “Q: Now, Ms. Thomas, you have not identified, have you, any out-of-pocket expenses associated with POLR? Correct?”

A: No, I have not.”

² “Q: Now, the risk of providing the standard service offer prices to customers is not equivalent to the out of pocket costs to POLR; would you agree to that?”

A: Yes, I would agree because what we’re capturing is the cost of the risk to the company that ties to the commitment made for the period of the SSO.”

C. AEP Ohio's Modeling Fails To Provide Even A Reasonable Approximation Of The Actual Costs Which AEP Ohio May Incur.

The inescapable fact in this case is that the Black-Scholes model attempts to determine the market value of an option. Since AEP Ohio has failed to identify the amounts (or even the categories) of actual costs it will incur to provide POLR optionality, AEP Ohio has attempted to equate the market value of the option with the purported "cost" of providing POLR optionality. As discussed below, each of these attempts fails because there is simply no correlation between the market value of an option and the cost to AEP Ohio of providing that option.

(1) The Market Value Of The POLR Option Received By Customers Does Not Equal The Cost To AEP Ohio Of Providing The POLR Option.

AEP Ohio witness Dr. Makhija argues that "the [POLR option] benefits provided to customers cannot appear out of thin air." See AEP Ohio Remand Exhibit 1, Direct Testimony Of Dr. Anil Makhija ("Makhija Direct") at 3:22-23. Dr. Makhija then states that "[t]he cost to the utility that provides the POLR optionality is no more or less than the value of the options received by the customers." Makhija Direct at 4:1-2. AEP Ohio witness Ms. Thomas agrees with this approach, stating that the option value calculated by AEP Ohio is equal to the cost to AEP Ohio. See Tr. Vol. II pg. 242:15.

The obvious logical fallacy in Dr. Makhija's testimony is his correlation between the market value of the option received by customers and AEP Ohio's cost to provide that option. In brief, Dr. Makhija argues that the market value of an asset (which the Black-Scholes model attempts to determine) must equal the cost of producing that asset. This is simply not true, as explained in detail by IEU witness Lesser:

[S]uppose you have been wandering in the desert and are extremely thirsty. In fact, you are so thirsty that you would pay \$100 for a bottle of water. Suddenly, you come to a grocery store.

You rush in and discover the store sells large bottles of cold water for one dollar. You reach into the cooler for a bottle and start drinking it before you reach the cash register.

Feeling refreshed, you pay the cashier a dollar for the bottle of water you have consumed. You would have been willing to pay up to \$100 for the bottle of water. So, you received \$99 worth of additional benefit, what economists call “consumer’s surplus.” Now, consider this transaction from the store’s point of view. If selling the bottle of water cost the store two dollars, based on the actual cost to stock and sell the bottle of water, presumably the store would not sell it for less than two dollars. Thus, it must be the case that the store’s cost was less than one dollar. In fact, suppose the store’s cost was 75 cents. In that case, the store benefited by 25 cents, what economists call “producer’s surplus.” Clearly, the value of the bottle of water to you was much different than the cost of the water to the store.

Lesser Direct at 14:3-18.

As Dr. Lesser makes clear, there is no necessary correlation between the cost of providing an item and the market value of that item. See Lesser Direct at 13:18 to 15:14. As there is no necessary correlation between the estimated market value of the option determined by the Black-Scholes model and the cost of AEP Ohio of providing that option, the key assumption of Dr. Makhija’s argument fails and therefore has no probative value.

Even if AEP Ohio has no out-of-pocket costs to provide the POLR option, Dr. Makhija argues that, because AEP Ohio’s customers have the ability to shop, AEP Ohio’s equity would have a lower value than utilities whose customers do not have the ability to shop. See Makhija Direct at 4:7-11. Based on this assumption, Dr. Makhija concludes that AEP Ohio faces reduction to its equity value if cost recovery is not provided. Id. There are significant problems with Dr. Makhija’s argument. First, as discussed above, there is no correlation between the market value of an asset and that asset’s cost of production. Second, Dr. Makhija assumes shopping creates a potential economic liability because the “benefits of the optionality provided to its customers come at a cost to Utility A.” See Makhija Direct at 3:18. However, Dr. Makhija

fails to examine the actual cost of providing the optionality at issue, whether through hedges, forward contracts, capacity payments, off system sales, or otherwise. Thus, his example fails to capture the true cost to AEP Ohio to provide the POLR option, which is the cost which would be examined by the market when it evaluates AEP Ohio's equity value. Dr. Makhija also failed to examine the out-of-pocket costs which would be related to the POLR obligation. Tr. Vol. I at 23:14. Finally, Dr. Makhija failed to conduct any empirical studies of any sort which would support his theory. Tr. Vol. I at 20:14-16. In light of these obvious deficiencies, Dr. Makhija's argument lacks merit.

(2) The Market Value Of An Option Is Not The Same As The "Cost Of The Risk" Of Providing That Option.

AEP witness Thomas argues that the AEP Ohio POLR charges "cover the cost of the Companies' POLR obligation, i.e., the cost of the risk of providing customers the option to switch suppliers and return to the Company at SSO generation rates when customers choose to do so." AEP Remand Exhibit 4, Direct Testimony of AEP witness Laura J. Thomas ("Thomas Direct") at 11:16. At hearing Ms. Thomas was unable to define what "cost of the risk" meant. See Tr. Vol. II pg. 238-241. At various times, Ms. Thomas testifies that AEP's "cost of risk" includes opportunity costs (240:22), decrease in equity value (238:18), and foregone revenue (241:9), and this list is not exclusive. AEP Ohio's "cost of risk" argument lacks merit for the same reasons discussed above in relation to Dr. Makhija's testimony. There is simply no connection between the Black-Scholes generated market value of the shopping option received by customers and the cost to AEP Ohio of providing that shopping option. As such, AEP Ohio's argument fails.

Even if the Commission accepted Ms. Thomas' undefined "cost of risk" concept, there is no way to determine whether AEP Ohio's "cost of risk" is correlated in any way to the value

produced by the Black-Scholes model. In fact, Ms. Thomas testifies that it is not appropriate to ever examine actual results, whether on a forward or backward basis, to determine what the POLR cost to AEP Ohio actually was. See Tr. Vol. II pg. 246:16 to 247:2³. This is roughly equivalent to AEP Ohio asking the Commission to approve recovery of hundreds of millions of dollars in projected storm damage costs regardless of whether those costs actually occur in the future. If the costs do not occur, AEP Ohio's position simply is that they were entitled to full cost recovery because there was a risk of storms. It is simply not credible for AEP Ohio to refuse to even categorize its potential costs, refuse to quantify those costs, and then state that it would be inappropriate to ever question whether the costs produced by its Black-Scholes model actually reflect reality.

(3) The Competitive Procurements From Other States Cited By Dr. LaCasse Are Irrelevant.

AEP Ohio witness Dr. LaCasse relies on two studies which attempted to quantify the difference between the price that is obtained in a competitive procurement and the sum of the visible costs of the bidder providing that service. AEP Remand Exhibit 3, Direct Testimony of AEP witness Dr. Chantale LaCasse ("LaCasse Direct") at 18-20; Tr. Vol. II pg. 168:20-25; 169:9. Dr. LaCasse relies on these studies in an apparent attempt to show that AEP Ohio's proposed charge is reasonable. However, as expressly acknowledged by Dr. LaCasse, the

³ "Q: And, Ms. Thomas, you cannot identify or categorize any out of pocket costs that are associated with POLR on a backward or forward basis, correct?

A: We have not done such a calculation.

Q: You cannot do such a calculation.

A: I don't believe it would make sense to do such a calculation.

Q: Can you do such a calculation?

A: Like I just explained, there are so many assumptions and everything that it would not be an appropriate calculation to make."

premiums identified in these studies include more risks than just shopping related risk. See Tr. Vol. II pg. 171:14; 177:12. In fact, these premiums would also include no less than eight different types of risks, only one of which would be the shopping risk at issue here. See Tr. Vol. II pg. 170:25. As these studies did not attempt to capture the specific premium attributable to shopping risk, they are irrelevant and should be ignored.

(4) Even If AEP Ohio's Costs Should Be Examined On An "A Priori" Basis, AEP Ohio Has Failed To Present A Model Estimating Those Costs.

AEP Ohio argues that the appropriate time to measure its costs is before the fact, on an *a priori* basis, and therefore the use of the Black-Scholes model is appropriate. See LaCasse Direct at 12:20. AEP Ohio's position is that prices should be set before the fact so the POLR charge can be included in the SSO price. See Tr. Vol. II pg. 153:1-5. However, even assuming that the *a priori* cost is the appropriate cost measure even though it is not then known and measurable, the relevant question which AEP Ohio never answers is – the *a priori* cost of what?

As explained by IEU witness Dr. Lesser, even if all of the assumptions and inputs were correct, AEP Ohio's proposal provides only the *a priori* estimate of the market value of the option received by customers. See Lesser Direct 33:1-2. This estimate is irrelevant because even if *a priori* values were the appropriate method to determine POLR risk, the relevant *a priori* value is the *a priori* cost to provide customers with the POLR option, which is simply not shown by the model.

If AEP Ohio had wanted to quantify its potential costs, it could have done it in a variety of ways. As an experienced supplier that has assumed POLR risk as part of competitive auctions and that has experience evaluating such risk, FES is aware of several ways in which AEP could have attempted to calculate POLR cost on an *a priori* basis:

(1) AEP Ohio could have calculated the cost of hedging its POLR risk. AEP Ohio did not do so, and in fact Ms. Thomas testified that AEP Ohio has not purchased any hedges for the so-called POLR Risk. See Tr. Vol. II pg. 272:15.

(2) AEP Ohio could have competitively bid out to third parties the SSO service obligation, as the FirstEnergy utilities did and as was recognized by Dr. LaCasse, and thereby avoided any costs altogether. See LaCasse Direct at 8:1-12. If AEP Ohio had done so, the premium for POLR risk included by bidders would have been an *a priori* cost of the bidders. AEP chose not to bid out its default service. See Tr. Vol. II pg. 272:23. AEP also chose not to propose a model which would tend to replicate the results of a competitive auction, as is evidenced by its failure to take into accounts AEP Ohio's own recent bids (including POLR risk) into the Illinois auction at \$63/MWh. See Tr. Vol. II pg. 231:14 (admitting AEP Ohio's \$63 bid included compensation for POLR risk).

(3) AEP Ohio could have proposed an insurance-type model, which evaluates the probability of loss adjusted for the projected amount of loss in a variety of scenarios. AEP Ohio chose not to propose this model, or even to define with specificity what it would consider to be a "loss," since energy and capacity are not reflected in AEP Ohio's definition of its POLR charge. See Thomas Direct 9:19-21 ("As discussed previously, the POLR charge reflects the cost of providing a customer with switching options, not the cost of capacity and energy to serve the customer").

(4) AEP Ohio could have proposed tracking its POLR costs and recovering those costs less marginal revenues received as a result of shopping, which would include payments for purchased power under the FAC, off-system sales, and capacity payments from the CRES

provider as a result of AEP Ohio's FRR election. See Lesser Direct at 32:20-21 (relating to capacity payments). AEP has chosen not to pursue this option.

Even if *a priori* projected costs are examined, the appropriate way to measure these costs is by using a method which is reasonably calculated to determine what AEP Ohio's actual costs would be. As AEP Ohio's proposed formula does not even attempt to calculate expected costs, AEP Ohio's POLR Charge must be rejected.

IV. Even If The Black-Scholes Model Did Measure Costs, Which It Does Not, AEP Ohio's Calculation Of The Model's Value Is Incorrect.

A. AEP Ohio Has Improperly Included The Market Value Of The Customer's Option To Migrate In Its Black-Scholes Model.

The Ohio Supreme Court has defined POLR risk as the obligation "to stand ready to accept **returning customers**." In re Application of Columbus S. Power Co., 128 Ohio St. 3d 512, 517 (2011) (emphasis added). This admonition is a continuation of well-established Ohio authority, as the Ohio Supreme Court has consistently described POLR charges as compensating utilities for standing ready to serve "customers who shop **and then return**." In re Application of Ormet Primary Aluminum Corp., 129 Ohio St. 3d 9, 2011-Ohio-2377, ¶15 (emphasis added), quoting Constellation NewEnergy, Inc. v. Pub. Util. Comm., 104 Ohio St. 3d 530, 2004-Ohio-6767, ¶39 fn.5. AEP Ohio has relied on this same authority when describing POLR risk. See Thomas Direct at 11:20 to 12:5.

One risk identified by AEP Ohio is the risk that customers may migrate to CRES providers when market prices drop below SSO prices. See, e.g., LaCasse Direct at 5:18-19; see also Lesser Direct at 12:16 to 13:3. This is separate and distinct from the risk that customers will return to SSO service if market prices subsequently rise above the SSO price. AEP Ohio has included both the risk that customers may leave and the risk that customers may return in its calculation of the proposed POLR charge. According to AEP Ohio, the component related to

customers leaving to take service from CRES providers accounts for 90% of the Company's POLR option value.⁴

AEP Ohio's proposed POLR charge improperly includes the option value attributed to customers leaving SSO service to take service from CRES providers. As shown by AEP Ohio's own calculations, 90% of AEP Ohio's proposed calculation relates to the competitive risk that customers will migrate to another provider. The Ohio Supreme Court has repeatedly ruled that this is not a component of POLR risk, since it is unrelated to the obligation "to stand ready to accept returning customers." *In re Application of Columbus S. Power Co.*, 128 Ohio St. 3d 512, 517 (2011)(emphasis added). Migration risk is a competitive cost – a risk of competitive markets – not a risk of being a POLR provider. Lesser Direct at 13:12-13. Accordingly, even if the Black-Scholes model was an appropriate method to value POLR risk, the value provided by AEP Ohio's proposal is, by AEP's own admission, overstated by 90%, and should be reduced accordingly.

(B) AEP Ohio's Proposed POLR Charge Is Overstated Because Key Assumptions Of The Black-Scholes Model Are Not Met In This Case.

Even if the Black Scholes model was an appropriate method to value the POLR cost to AEP, which it is not, several key assumptions of the Black Scholes model are not met in this case. Specifically, the Black Scholes model makes the following assumptions which are not met in this case:

⁴ See Lesser Direct at 12:22; see also *ESP I*, Testimony of AEP Witness Baker, Transcript Volume XIV, page 409 of 544. In the ESP II proceeding, AEP Ohio estimates that this migration risk accounts for 88% of the Company's POLR option value as calculated by its new constrained option pricing model. See *In the Matter of the Application of Columbus Southern Power Co. and Ohio Power Co. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Ohio Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, et al., AEP Ohio response to OCC INT-037 ("*ESP II*").

(1) Markets are not perfect and there are transaction costs.

The Black-Scholes model assumes that markets are perfect and there are no transaction costs. See Lesser Direct at 18:12. As discussed in detail by Dr. Lesser, this assumption fails for a variety of reasons. See Lesser Direct at 19:17 to 20:22. Customers do not follow wholesale electric prices in PJM closely, and may not act when it is in their best interest to do so through ignorance or apathy. Lesser Direct 19:23. AEP Ohio witness Dr. LaCasse agrees with this critique, as does IEU witness Murray. See LaCasse Direct at 14:15-17; Murray Direct at 13:15 to 14:8. Moreover, customers cannot execute their options instantly in the perfect market, but rather must comply with Commission switching rules and AEP Ohio's switching limitations. See Lesser Direct at 20:4-9. Finally, there are transaction costs associated with switching. As again recognized by AEP Ohio witness Dr. LaCasse, these transfer costs will limit the number of customers who will shop. See LaCasse Direct at 14:20-21. Finally, as illustrated by IEU witness Murray, there is a timing difference between a drop in wholesale market prices and the actual prices which are offered from CRES providers. See Murray Direct at 13:8-12. As the shopping market includes significant transaction costs and is not "perfect" in any sense, AEP Ohio's proposed charge dramatically overstates the value of the POLR option received by its customers.

(2) Price Volatility Is Not Constant.

The Black-Scholes model assumes that price volatility is constant. See Lesser Direct at 18:13. This requirement is not met in this case because AEP Ohio has proposed the use of historic, as opposed to implied volatility, and has presented no evidence that the historic PJM wholesale market volatility has remained constant. See Lesser Direct at 21:9-11. Dr. Lesser concluded that as volatility is not constant in this case, the second assumption of the Black model has not been met. See Lesser Direct at 21:16.

(3) The Strike Price Is Not Constant.

The Black-Scholes model assumes that the strike price is constant. See Lesser Direct at 18:15. The strike price in AEP Ohio's model is the ESP price. See Lesser Direct at 22:2. However, the ESP price varies over the term of the ESP period, violating yet another assumption of the Black-Scholes model which includes an assumption that the strike price is constant. See Lesser Direct at 22:3-5. This error is compounded because the ESP price is correlated with the PJM market price, violating another assumption of the Black-Scholes model. See Lesser Direct at 22:6-7.

(4) The Returns On The Underlying Asset Are Not Distributed Lognormally.

The Black-Scholes model assumes a lognormal return. See Lesser Direct at 18:16. However, there is no evidence that the PJM wholesale market is lognormal. See Lesser Direct at 23:18 to 24:2. More importantly, the distribution of retail prices paid by customers is definitely not lognormal. See Lesser Direct at 24:3-4. As the returns on the underlying asset are not distributed lognormally, another key assumption of the Black-Scholes model is not met.

(5) The Option Being Valued Is Not A European Option.

The Black-Scholes model assumes that the option being valued is a European option, as opposed to an American option. See Lesser Direct at 18:17. A European option has a fixed exercise date, while an American option can be exercised at any time. See Lesser Direct at 24:14-17. AEP Ohio has created a series of European options in an effort to recreate the effect of an American option, but this is unlikely to be a reasonable approximation of an American option. See Lesser Direct at 25:1-2.

As shown by the foregoing, the Black-Scholes model relies upon several assumptions which are not satisfied in this case. Therefore, the use of the Black-Scholes model is wholly

inappropriate and inapplicable to the situation presented to the Commission in this case, and any market value purportedly reflected through the application of the Black-Scholes model is wholly inaccurate.

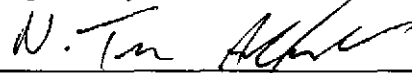
(C) AEP Ohio's Proposed POLR Charge Is Overstated Because AEP Ohio Has Used An Incorrect Input Value For Volatility In The Black Model.

Even if the Black-Scholes model was an appropriate method to value the POLR cost to AEP, which it is not, and even if all of the assumptions of the Black-Scholes model were met, which they are not, AEP has used an incorrect input for volatility in the Black-Scholes model. Specifically, AEP Ohio has used an estimate of the volatility of the PJM wholesale market in the Black-Scholes model. See Lesser Direct at 26:23-24. This volatility estimate is inappropriate, because the volatility of the PJM wholesale market price is significantly higher than the retail market price paid by shopping customers (as determined by Staff witness Johnson.) See Lesser Direct at 27:1 to 30:23. As Dr. Lesser explains in detail, the proper volatility is lower than AEP Ohio's projection because the competitive benchmark price includes several fixed price factors, which dampens the effect of the PJM market price. See Lesser Direct at 28:4-5. AEP incorrectly used the PJM wholesale values for its volatility estimate, while still using the competitive benchmark price as the market price. See Lesser Direct at 28:11-18. AEP Ohio should have used the competitive benchmark price in both equations, which would have led to a dramatically lower POLR charge. Dr. Lesser, simply by correcting for the fixed price aspects of the competitive benchmark price included by Staff witness Johnson, recalculated AEP Ohio's volatility estimate from 33.3% to 19.5%, which would have a significant impact on the POLR charge.

V. Conclusion

As AEP Ohio has failed to establish an appropriate cost-based POLR charge, and made no arguments whatsoever to support a non-cost-based charge, FES respectfully submits that AEP Ohio's request for a POLR charge must be denied.

Respectfully submitted,



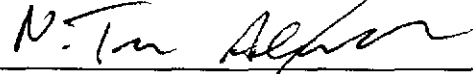
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *FirstEnergy Solutions Corp.'s Post Hearing Amicus Brief* was served this 5th day of August, 2011, via e-mail upon the parties below.



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FINAL TRANSCRIPT

Thomson StreetEventsSM

AEP - Q1 2011 American Electric Power Co Inc Earnings Conference Call

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Apr. 21, 2011 / 1:00PM, AEP - Q1 2011 American Electric Power Co Inc Earnings Conference Call

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PRESENTATION

Operator

Ladies and gentlemen, thank you for standing by. Welcome to the American Electric Power first-quarter 2011 earnings conference call. At this time all participants lines are in a listen-only mode. Later there will be an opportunity for your questions. Instructions will be given at that time. (Operator Instructions) As a reminder, today's conference call is being recorded.

I would now like to turn the conference over to the Treasurer, Chuck Zebula. Please go ahead.

Chuck Zebula - *American Electric Power Co Inc - Treasurer*

Thank you, Leah. Good morning, and welcome to the first-quarter 2011 earnings webcast of American Electric Power. Our Earnings Release and related financial information are available on our website, www.AEP.com. The presentation slides are also available on our website.



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Today we will be making forward-looking statements during the call. There are many factors that cause future results to differ materially from these statements. Please refer to our SEC filings for a discussion of the factors that may cause results to differ from management's forecast.

Joining me this morning are Mike Morris, our Chairman and Chief Executive Officer, and Brian Tierney, our Chief Financial Officer. We will take your questions following their remarks.

I will now turn the call over to Mike.

Mike Morris - American Electric Power - Chairman, CEO

Thanks, Chuck, and welcome to everyone on the phone. It's kind of nice to be the first regulated utility reporting earnings for the first quarter of 2011, particularly with the strong performance we had with our \$0.82 a share of ongoing earnings. \$0.02 above what appeared to be consensus going in, and a full \$0.06 above first quarter of 2010, when in our service territory the economy had not recovered at all. Based on what we see today, when we look at cost control of the Company, the recovering economy in our jurisdictions, and most of our states, particularly in the West, we feel very comfortable about reaffirming our earnings midpoint for 2011, and every bit as comfortable about reaffirming our midpoint earnings for 2012.

Brian will give us some granularity on the 2012 number because I know many of you aren't totally convinced that we'll be able to get the work done that we think we can get done. And I would simply remind you that over each of the last 7 years we have reported at or above our midpoint year-over-year, and we see no reason not to believe that to be the case for 2012 as well.

When we look at slide 3 -- let me talk a moment about the regulatory plans. Rate proceedings so far have been quite successful. As you know, about \$200 million of the stack of \$235 million that we need to secure for our performance in 2011 has already been approved, or will adjust automatically according to rate adjusters throughout our many jurisdictions. The \$35 million that remain are fully covered by a number of adjustments that will happen during the year, and other rate cases that will be processed during the year. So we feel very comfortable. Now, just as we've done year over year over year, we'll actually do a little bit better in the rate making process than we came in with our needs forecasted.

Ohio is a very interesting jurisdiction, I know, and many of you are quite concerned about Ohio and we join you in those concerns. However, we have historically been treated well in Ohio and we continue to feel that that will be the case going forward. As you know this week the Supreme Court of Ohio addressed the 2009 ESP plan and decided that 10 of the 13 issues that were raised were insufficiently supported and were rejected.

Three of them, interestingly enough, were found to be of some concern to the Supreme Court. One, the retroactive rate making that they decided was inappropriate based on the rates not being approved until March 18 of 2009 rather than the requirement of January 1. I would simply remind you that that had everything to do with the Commission's decision to take each of the cases of and by themselves. Obviously, because of the way Senate Bill 221 was written, there is no need for a refund of those monies. But it does tell us quite clearly that our 2012 case will need to be finished this calendar year and in place by the first of the year.

The two other issues were sent back to the Commission for remand with an interesting direction. One had to do, as you know, with polar, and it was a question as to whether or not it was a formula-based rate or a cost-based rate, and the Supreme Court simply suggested to the Commission that they needed to give more data because they couldn't find the cost support that they predicated their decision on. That obviously will have some effect on what polar looks like in the 2012 case, but it also sends a crystal-clear message that the Supreme Court will spend a great deal of time making sure the decisions are in the letter of the law that was passed in Senate Bill 221.

The other issue that there was other concern over was the recovery of an environmental recovery system that was pre-dated the 2009 date. That, too, was sent back to the Commission for reconsideration. And we believe that inside of the 9 enumerated



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items, even though it has the introductory phrase of without limitation, the Commission should be able to find plenty of comfort in allowing for the continued recovery of that through the rest of 2011. I don't mean to say for a moment that these aren't issues of concern, but they are issues we think can easily be handled by the Commission on remand. And, of course, we'll make those points as we go forward in the remand proceedings at the Commission, will undertake.

When we think about the 2012 ESP, I know there's a great deal of concern over that, and we have filed a number of options and approaches that the Commission can take to find what we think is a very reasonable approach in the 2012 ESP. It really directs itself toward what we think is a balance between very small increases for our customers for '12, '13, and '14, while investing the issue of very important required returns for capital to be invested.

There's been a great deal of confusion over the issue of environmental spend and new generation in Ohio as we go forward. And I think if anything, the Supreme Court's decision of this week tells us crystal-clear that they will absolutely look to the letter of the law in Senate Bill 221. And to that purpose, let me share with you what we think is a very important language in Senate Bill 221 -- an electric security plan can have construction work in progress recoveries for costs that are associated if the electric utility demonstrates a need for the new generation and/or a need for the environmental spend. If that has been done under a competitive bid process, an allowance approved under Section 4928 143 B2B, shall be non-bypassable for the life of the facility. We find great comfort in that language, and I think the Commission should find equal comfort in that language as we go forward because, again, the Supreme Court made it clear that the letter of the law will be followed.

So, I know there's been a debate about whether or not those kinds of capital investments can be made and with that reading and our duty which will be to demonstrate the need for the new facilities if they are there and/or the retrofit of facilities will allow that to be considered to be non-bypassable for the entire life of the facility that's built or retrofitted. So we do find some comfort in that decision, and we hope that the Commission does that as well.

Let me move to the last point on slide 3, the environmental update. I won't be specific about the 4 rules. Three of them are now in hand. We continue to have an evaluation of that, and I'll talk more deeply about them as we get to slide 4. We have yet to see the coal ash rule, but we continue to work with our colleagues on the whole notion that we hope it doesn't come out with the absolute hazardous waste designation and we will wait for that to happen whenever the EPA decides to come to that conclusion.

You know, when we look at the environmental activities, our goal will be to constantly strive for compliance at the end of the day. But the end of the day can't be on the current timeline that the EPA's orders have issued. That's an issue for us, it's an issue for our states, it's an issue for most of the generation fleet throughout the United States. So we, along with our allies of the other coal-based utilities, our state Commissions, our elected officials, as well as our friends in the Union and (inaudible) much broader sense, will continue to argue for a more realistic timeline.

We don't think that the 1 year that the EPA could assign to this, as well as the 1 year that the President could assign to this, is even an adequate extension of time to get this done in an orderly fashion. And that will continue to be our advocacy in front of the EPA when we make our comments, but also working with Democrats and Republicans in the House and the Senate to try to bring some rational approach to that.

I think the most important point to be made here is that there is no desire on the behalf of American Electric Power to undo the Clean Air Act or the accomplishments that have been realized over the past years and will be realized in the future. And we think that's an important point. We feel very comfortable that we'll have an opportunity to make those points, and we think that rational approach will ultimately allow for us to have a very achievable approach to that endeavor.

You've often asked us for more granularity about the undertaking of what the Bills would mean to our fleet. If you'll move to slide 4, I think it's evident that you can see with 24,685 megawatts of coal-based generation, these rules are incredibly important to our customers, to our employees, to our shareholders, and to the states wherein those plants are located. We've tried to break these down into 3 principal categories so that you can get a pretty good idea of how we see the potential impact of all



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of these rules as they pertain to our coal-based fleet. I will note for you that this does not, particularly in a 316(b) issue, address the issues of how that might affect gas-fired facilities going forward, but this is really to be specific about our coal fleet.

Fully 42%, 10,317 megawatts, have already been retrofitted and are in the performance category that we think makes some sense for us going forward. We've tried to show you that there are, however, capital investments that will need to be made on some of those facilities going forward. And we think that those capital investments are well within a reasonable approach for us to take. On a low case, meaning that some of the comments we'll make about considering retirements of some units at some sites to be considered in an overall evaluation of the emissions of that site in general, would show us the low case of some \$766 million needed to be spent on the overall air rules. Or on the high side, \$1.046 billion. That will allow to have us have very cost effective production from those plants as we go forward.

The partially exposed plants, or 36% of the overall fleet, also have some very interesting numbers going forward. And as you'll look at the top of the slide, you'll see these are capital investments that we need to be done through the year 2020. Here we're looking at a total expenditure, could range from a couple of billion dollars to as much as \$6 billion. That's about what we have done on most of the 42% of the facilities that were done over the last handful of years.

And lastly, the fully exposed plants -- we've been quite clear that we fully intend to retire 2 of 5,480 megawatts of our overall coal fleet because they are less efficient and have not been retrofitted in any particular way. That leaves us with what we think are very reasonable approaches. What we're showing you on the bottom of slide 4 are additional cost that would be incurred to replace those 5,500 megawatts of new, probably combined-cycle gas facilities going forward.

All of this will be done in a timeline that syncs up with the things that our states feel are important, as well as our Commissions, and having an eye always on the impact that will have on the customers in our jurisdictions. Hopefully, looking at the front cover of the Wall Street Journal today, we'll continue to see economic recovery throughout the United States, as we're seeing throughout the world, and we'll be able to continue to make these capital investments without having too negative of an effect on our overall customer class.

At the end of the day, however, I think it's of an important point to see that our fleet is no different than everyone else's fleet, and that our plants will continue to stack up at the end of the day in the dispatch order that they really do before going into these capital investments, because everyone will be required to make the same kinds of capital investments. Many stations will be shut down. We think that'll work to the benefit of our capacity fees going forward, as well as our off-system sales going forward.

So, we know this is an issue. It does have an appropriate name called The Train Wreck, although out of respect for my colleagues in the train business it really is an [affront] of coal-powered production in the United States. But if done right, with an appropriate timeline, it's very handleable for our Company, and we would think everyone else.

When we look at our rate stack in the jurisdictions where we do business, we'll be within 80% of the average rate in a state like Indiana, to 100% of the average rate in a state like Kentucky, even after having made these investments. We think that that's a clear message that says difficult but accomplishable. We'll continue to advocate for reasonable approaches as we deal with our friends at the EPA and in Washington and the various states where we do business.

With that, I'll turn the call over to Brian to give us much more specificity about the earnings and the impact of some of the load profiles and other things that we've seen, and then we'll look forward to your questions and answers. Brian?



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Brian Tierney - American Electric Power - EVP and CFO

Thank you, Mike, and good morning, everyone. This morning we'll review a year-on-year reconciliation of first-quarter results, we'll look at load trends, we'll review drivers for the balance of the year and 2012 earnings guidance, and get to your questions as quickly as possible.

Turning to slide 5, you'll see that ongoing earnings for the first quarter of 2011 were \$392 million, or \$0.82 per share. This is \$27 million higher than the same period last year, in which AEP earned \$365 million, or \$0.76 per share.

Here are some highlights for the quarter-on-quarter comparison. Weather was unfavorable by \$20 million, or \$0.03 when compared to last year. However, weather was actually favorable by \$20 million when compared to normal. Retail margins were down \$0.02 per share, or \$17 million, and were primarily associated with lower residential usage and realization, which were somewhat offset by increased industrial usage. We will provide some more detail on this on the next two slides.

Non-utility operations net was lower by \$0.01, primarily due to lower earnings from Generation and Marketing. This was the result of a forced plant outage at the Oakley Union plant during the cold snap in Texas in the month of February, and reduced marketing deal flow. Off-system sales net of sharing improved \$0.02, or \$12 million, quarter-on-quarter. This result was driven by physical sales, which were up 14% in volume, and a 45% increase in physical margins. Capacity sales contributed to the positive comparison. In addition, although AEP date and hub pricing was down 3% over the same quarter of last year, natural gas prices were down 19%, allowing AEP to dispatch its Eastern combined cycle plants into the PJM market.

Operations and Maintenance expense accounted for a positive \$0.04 per share, or \$30 million net of revenue offsets, primarily due to our cost savings initiatives instituted in 2010 and lower storm restoration expenses. In the detail on slide 15, you'll see that line 9, O&M Expense, shows a \$1 million increase for the quarterly comparison. This however, was more than offset by a \$31 million increase in revenue from trackers and riders. Rate changes accounted for positive \$0.06 per share, or \$44 million, across several jurisdictions.

Turning to slide 6, you'll see on the bottom right-hand panel that overall weather-normalized sales were up 2.5% for the quarter. This increase was driven by an increase in industrial load of 7.1%, and a commercial load of 1.2% for the quarter. In residential-normalized sales, last year's increase was 0.6% and our estimate for this year is 1.9%. Given the first-quarter's results, we may fall somewhat short of that estimate, but as Mike indicated, economic indicators are a positive in much of our service territory.

Before we turn to the next slide, let's discuss -- to discuss industrial sales trends, let me give you some color on the economy in our service territories as compared to national trends. Overall, our Western service territories in the state of Arkansas, Louisiana, Oklahoma and Texas are experiencing a reasonable economic recovery, while our 7 Eastern states are experiencing a recovery in fits and spurts. Estimated unemployment rates for the country as a whole are 8.9% for the first quarter of the year, compared to 9.4% in our Eastern service territories and 8% in our Western service territories, for an overall AEP unemployment rate of 8.8%.

GDP growth for the country is estimated to be in the 2% range for the first quarter of this year, compared to an estimate of 4% in our Eastern and Western service territories. We believe that our unemployment rates and GDP growth will meet or exceed US numbers through the balance of the year.

On slide 7, you will see that the top 5 sectors that account for approximately 60% of AEP's total industrial sales. You'll notice that all 5 of our top sectors are up for the quarter, led by primary metals, which notched a 12.8% increase quarter-over-quarter. This sector was led by our largest customer, Ormet, which returned to full production from two-thirds production during the quarter. In fact, all 10 of our industrial sectors showed improvements for the quarter. With these sales, we have now returned to 90% of our pre-industrial sales.



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Let's turn to slide 8 and look at the left-hand side of the slide, where we talk about our 2011 earnings. As Mike said, we are reaffirming our guidance range of \$3 to \$3.20 per share. First, let's continue to talk about the economy. As we discussed on slide 6, our quarterly load growth was greater than our estimated annual rate in our earnings guidance, but was heavily weighted towards the industrial class. This means that businesses in our service territories are putting people back to work. The Bureau of Labor Statistics economic news release for the month of March confirms this by indicating decreasing unemployment rates in 9 of our 11 states. This is an encouraging sign for the underlying economy in our states and for overall electricity sales.

In terms of rate increases, as Mike said, we've obtained 85% of what was in the estimated guidance. This includes base rate orders and formula rates throughout our service territories. We have additional rate filings in play that will get us close to the \$235 million target that was included in guidance.

We are continuing our stringent Operations and Maintenance expense controls. Our guidance for the year included an O&M expense decrease of \$34 million, net of tracker and rider revenue increases. As discussed earlier, we obtained \$30 million due to cost savings initiatives and lower storm costs in the first quarter. With these results, we are on track to exceed the annual savings identified in guidance.

Our guidance anticipated that customers switching, primarily in the commercial class at Columbus Southern Power, would result in an incremental loss of load of 14%, or \$53 million for the year. Although the timing of this load switching is occurring faster than what we had forecasted, capacity and energy sales have partially offset the financial impact. So, we remain comfortable with our year-end financial estimate.

Off-system sales are ahead of last year due to some strength in physical and capacity sales. With a look at the first-quarter performance, forward pricing, and trading and marketing opportunities, we would anticipate off-system sales to come in somewhat higher than the guidance estimate of \$262 million. With our first-quarter results within expectations, and with the insights that I just provided, we remain confident in our 2011 earnings guidance.

Now moving onto the right-hand side of the panel, looking at 2012, our point estimate of \$3.25 per share. You'll remember we put this estimate in front of you last fall, and we did so intentionally to demonstrate our confidence in management's ability to grow the earnings of the Company. Later this year we will give you a range around the \$3.25 per share and more detailed information, as we always do, but let me give you some further insights into why we have confidence in our estimate.

First, let's talk about a number of components of the recovering economy. So far this year we are seeing load recovering greater than 2%, as we said, mostly in industrial. Remember, just a 1% increase in load spread proportionally across our customer classes results in an \$0.08 to \$0.10 per share increase. The recovering economy also impacts off-system sales, and we've seen positive results in the first quarter this year and see signs that this trend will continue.

Further, our River Operations Group benefits from a recovering economy as well, and this year is expecting a 2% share increase over 2010 earnings due to increasing grain and coal exports. We also believe this trend will continue. Second, we still have rate cases that will positively impact our results in 2012. These include the Ohio distribution rate case and the Virginia biennial case, as well as additional cases yet to be filed.

Third, our Transmission business is actively constructing projects, predominately in Texas and Ohio. These projects will provide meaningful earnings contributions in 2012. We have also demonstrated our ability to control O&M spending, and will remain vigilant in this regard next year as well.

Mike has addressed many of the issues in regard to the Ohio ESP filing for 2012, and our belief that the law provides for our ability to invest and recover that investment in the state. And the Ohio Supreme Court order from earlier this week supports a strict interpretation of the law and the code that will enable that investment.



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In conclusion, the investment opportunity at American Electric Power remains strong. A solid affordable dividend, coupled with achievable earnings growth prospects. We look forward to delivering these results to you in 2011, 2012, and beyond. Thank you for your time and investment in American Electric Power.

I will now turn the call over to Leah to begin taking your questions.

QUESTIONS AND ANSWERS

Operator

Thank you. (Operator Instructions) Dan Eggers with Credit Suisse. Please go ahead.

Dan Eggers - Credit Suisse - Analyst

Hi. Good morning. Mike, if I could go to slide 4, which was very helpful. Can you -- and we look at the CapEx numbers, just one clarification question, then I'll ask a question that's more concrete. The numbers of CapEx, would -- if you wanted to think about the least-exposed plants, would you add all those numbers together in the high and low columns to get to full compliance? Or is there some redundancy in those numbers? We should just take the high number of each one of those categories, is what your exposure would be?

Mike Morris - American Electric Power - Chairman, CEO

Yes, they surely wouldn't add them together, and I would direct you toward the low side rather than the high side, as we believe we'll continue to do this in a very cost-effective way. Obviously, somewhere in between is the answer. But, no, you should not add them together, Dan.

Dan Eggers - Credit Suisse - Analyst

Okay, and then, of this CapEx, how much is being spent, or how much of the program is currently in process right now, or over the next 3- to 5-year spending horizon versus the second half of the decade?

Mike Morris - American Electric Power - Chairman, CEO

I guess we'll have to have Bette Jo get back with a little more specificity to that question. Some of it is being done, but I want to make sure we give you a pretty concrete number. Clearly on the least-exposed plant, we continue to make capital investments as required. We're making some progress with some design activity on the partially exposed, and on the fully exposed making no capital expenditures on an environmental side, for sure.

Dan Eggers - Credit Suisse - Analyst

And Mike, could you share why the design activity is just happening now, given the fact that the rules have been in varying forms out in the market for a decade or so?



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Mike Morris - American Electric Power - Chairman, CEO

Well, Dan, I think you know, we had done a lot of work on the CAMR and CAIR rules as they existed, and they were vacated in 2009. There's been no real design for the rules as they might come out of the EPA in 2011, or how they might be finalized by the end of year. And you can see, by the way, that they did 316(b), and the way that they looked at some of the issues on the Mercury and HAPs rules, they've given us some flexibility. We're going to argue for a little bit more.

A company like American Electric Power, with its in-house engineering skills, what I don't want my team to do, to be cost effective and cost controlled, is to design something that then needs to be redesigned and then redesigned and redesigned. My engineers have plenty of talent, and plenty of desire to do that. So, let me tell you it takes a lot to stop them from doing all that.

But this has been kind of the mantra of some of the utilities that don't have the same endeavors. They keep saying -- everyone's known for 10 years this is out there. That's just not true. We have done and in fact made capital investment to comply with CAMR and CAIR, and many of those have already been approved and are in rates and being recovered. But they are also going to satisfy some of the requirements going forward for these 4 new rules.

So, again, I think you're very well aware of the skill sets of the engineering team here at AEP. We are ready to go whenever these rules come out final, and we have 9 of these units done. It takes 48 months to bid them, to design them, to build them, to sync them to the system. To think you can do that in 24 or 36 months is folly. To think that you can do that with the magnitude of what will need to be done across the country is simply unachievable.

So at the end of the day, one way or another, the federal government will come to the realization that we can't shut the US economy off and we have to address a timeline that makes sense. We can get everybody to where they want to go environmentally by 2020. That's 2 or 3 years beyond what they could do to plan at 2016 or 2017, and have done it in a reasonable way. That's our advocacy, that'll continue to be our advocacy. But this whole notion that these things have been out there for a long time is poppycock.

Dan Eggers - Credit Suisse - Analyst

Okay, and one last question, Mike. If I look at the spending on the replacement generation, and you assume that CCGTs are going to cost you, ballpark \$1,000 a kw. It looks like you only need 1,000 to 1,500 megawatts, 2,000 megawatts of capacity to replace the 5,500 megawatts of exposed coal plants. Is that -- ?

Mike Morris - American Electric Power - Chairman, CEO

Yes, that's pretty accurate, Dan.

Dan Eggers - Credit Suisse - Analyst

Okay. Thank you.

Operator

Paul Patterson with Glenrock Associates. Please go ahead.

Paul Patterson - Glenrock Associates - Analyst

Good morning.



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Mike Morris - American Electric Power - Chairman, CEO

Good morning, Paul.

Paul Patterson - Glenrock Associates - Analyst

Just on the -- to follow up on that last part, why is it that you only need so many [gas] to replace so many coal? Could you elaborate on that?

Mike Morris - American Electric Power - Chairman, CEO

When you look at a number of our smaller plants and the place that they stack up in the overall dispatch stack, they run not very frequently, particularly with gas prices the way that they are. And I think it would be very difficult for us to go to the state Commissions and say -- let's replace 5,500 megawatts with 5,500 megawatts when the capacity factors are in the 20% and 30% range.

Some of it we may have to do more, depending on how much renewables we have to do because, as you know, the intermittency of renewables need to be augmented by combined-cycle gas. But when you get to these units and you look at the overall busbar cost of the power, particularly because of the efficiencies and what we believe to be reasonable gas prices, we think can handle all of our retail load needs going forward with fewer megawatts than the 5,500 we'll take off line.

Paul Patterson - Glenrock Associates - Analyst

And I guess there's no reliability, or you don't see the capacity need for that, it's just pretty much a capacity factor situation. Is that how we should think about it?

Mike Morris - American Electric Power - Chairman, CEO

Well that, as well as, as you know, we continue to advocate very strongly for an augmentation of the transmission grid. And if some of that were to be done, you'd just simply have to build fewer megawatts, which is a real cost savings for everyone. And again, we hope that's something that the federal government can finally get their arms around.

Paul Patterson - Glenrock Associates - Analyst

Great. And finally, I wanted to go over the Ohio Supreme Court ruling. If I understand what you're saying, it sounds like you feel there might be some changes in terms of how the ESP filing might be made, but you don't expect any quantitative difference. Is that how we should think about this polar formula versus cost, or what have you? It sounds like it's more of a question of supporting your case, as opposed to perhaps augmenting it in terms of significant numbers? Is my understanding accurate from what your statements are?

Mike Morris - American Electric Power - Chairman, CEO

Well, Paul, there are two ways to look at that. So the whole issue in front of the Supreme Court was that the Commission had really looked at the overall value proposition for the customers of us being their provider of last resort, but in the Order they said that polar was cost based. The argument was that there wasn't any identifiable cost other than this formula that we put in there. And because they said it was cost based and there wasn't enough support for that, the Supreme Court came to the only decision they could.



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However, as you read the Order, the Supreme Court also said that formula is fine if that's what you use, just tell us that that's what you used going forward. You may remember also that the Supreme Court said it's kind of difficult to understand this because American Electric Power hasn't incurred any lost load or customers switching. Well, clearly that's the case today. So we think there's plenty of room on remand for the Commission to satisfy that, if they'd like.

If they want to go to the other side and have a detailed cost demonstration of what it takes to keep units always ready to run whenever people come back, we'll be happy to do that. The only thing we're trying to say is that there's plenty of room on remand for the Commission to handle this in any way that they would like, and we will be fully prepared to respond to whatever their data needs are.

Paul Patterson - Glenrock Associates - Analyst

Okay. And then, the residential usage -- for the last 2 quarters it seems like it's really come in here. This is the weather-normalized number that you see on slide 6 --.

Mike Morris - American Electric Power - Chairman, CEO

Yes.

Paul Patterson - Glenrock Associates - Analyst

Is there a trend here we should be thinking about? I noticed that you haven't changed your expectations for 2011, but this is weather-normalized, and if you could elaborate a little bit more about what trends you're seeing and what you think the future might hold for it?

Mike Morris - American Electric Power - Chairman, CEO

I think what you're seeing here is a pretty reasonable family response to the overall escalation of a number of prices in the marketplace that they deal with everyday. Food is more expensive, gasoline is more expensive, many other things are continuing to go forward in an almost uncontrolled basis. So I think customers are at long last doing some of the energy conservation that we felt would come our way eventually.

As I've always said, Americans know how to conserve, and they are always driven by their pocketbook, and that's what I think we're seeing. Long-term trend -- no. We aren't seeing less meters, we're seeing more meters. You look at the sales of electric appliances during the fourth quarter of 2010 and the first quarter of 2011, it remains high. So I wouldn't worry about it to a great degree, but there is an effect over both of those quarters. We will watch it very closely, but it doesn't cause us to make any change.

One of the nice things you see on that slide is that, different from our 2010 experience, commercial sales are coming back in a very strong way. We're encouraged by that. That has a lot to do with the unemployment rates going down, people getting jobs, and since they're working all day they're eating out instead of staying home and cooking. We're seeing some differences, but nothing to be alarmed.

Paul Patterson - Glenrock Associates - Analyst

Okay, great. Thanks a lot.



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Mike Morris - American Electric Power - Chairman, CEO

You bet.

Operator

Angie Storozynski of Macquarie Capital. Please go ahead.

Angie Storozynski - Macquarie Capital - Analyst

I wanted to talk again about the environmental CapEx. Could you provide some breakdown of the coal CapEx for Ohio? What percentage, or portion of this grand total would you have to spend for Ohio?

Mike Morris - American Electric Power - Chairman, CEO

Sure. All you need to do is look at those numbers and take the Ohio Power and the Columbus Southern Power Company numbers and break those out. So, it would be probably a pretty direct proportional basis. Look at megawatts in total, divided into the dollars in total, and you'll get your own answer.

Angie Storozynski - Macquarie Capital - Analyst

Okay. And when do you think that we will find out if the Commission is comfortable with the number possible surcharges for the environmental CapEx and the re-powering of your plants in Ohio?

Mike Morris - American Electric Power - Chairman, CEO

Well, whenever they issue the Order on the 2012 ESP, which we now know will clearly be in calendar-year 2011. The schedule calls for all of that to happen toward the latter half of the year. We think something with the overall hearing concluding in July, Order could be issued sometime near that point in time.

We continue to talk to all of the folks about the potential to address some kind of a settlement in the ESP case. I don't know if that's achievable. If it is, it would be good for all of us because they have a pretty clear message of what that means. But again, and I don't want to downplay the Supreme Court decision, but what it does say is read the letter of the law, and the letter of the law says these kinds of expenses, if demonstrated to be required, are absolutely non-bypassable.

Angie Storozynski - Macquarie Capital - Analyst

Do you think that we should draw some conclusions on the decision from the (inaudible) on Duke's MRO? Do you think that there's going to be any take-away for your ESP from the decision?

Mike Morris - American Electric Power - Chairman, CEO

No, I don't think so. I think they're totally different approaches.



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Angie Storozyński - *Macquarie Capital - Analyst*

Thank you.

Mike Morris - *American Electric Power - Chairman, CEO*

You bet.

Operator

Michael Lapidès from Goldman Sachs. Please go ahead.

Mike Morris - *American Electric Power - Chairman, CEO*

Morning, Michael.

Michael Lapidès - *Goldman Sachs - Analyst*

Good morning, Mike. Question for you. Just thinking long-term, not 1 year, 2 year, not 2012, but maybe 5 year, 10 year -- when I try to think out what's normal, normal for AEP, just like any other utility should be, to keep it simplistic, rate-based math. And then the question of whether you can actually earn or not earn your authorized rate of return. You have 1 or 2 non-regulated assets, but the bulk of it is rate-based math. And yet when you talk about the environmental impact and the environmental regulations, you talk about how it should create upward pressure on your capacity fees and on your off-system sales. That doesn't necessarily seem to go in tandem with thinking about the normal for AEP in terms of, like most other regulated utilities, rate-based math. Help me understand this.

Mike Morris - *American Electric Power - Chairman, CEO*

Well, what I meant by that particular point was that what you'll see inside of the PJM, both for the overall bid price for capacity, as well as off-system sales and the energy prices -- if you take our 5,500 megawatts of retired stations and you multiply that across the region by others who will have the same challenge, those fees will go up. And that's good for our shareholders. And obviously good for the energy send-out that we'll have from American Electric Power.

But to your point, when I look out 5 or 10 years, I think this will be a very rate-based oriented Company without question. The transmission activities that we're doing are either rate-based at the state level or the federal level. As you know, with FERC rates that we feel are very appropriate going forward. And I think you'll see, I would hope, based on comments that have been made by the Governor here in Ohio, particularly about the need for jobs created in Ohio and electricity to be produced in Ohio, I think you'll see a much different view 5 or 10 years down the road as to how we'll handle these activities here in this state.

The Governor made a very interesting speech as he swore in the newest member of the Commission, Andre Porter, when he said Ohio has a choice to either be an energy buyer like California and at the expense of all other neighboring states, or to be self-sufficient in energy as he thinks Ohio ought to be. We took great comfort in those statements.

Michael Lapidès - *Goldman Sachs - Analyst*

Okay, and just one quick follow-up. When you think about, not next 2 to 3 years, but 5 to 10 years, which of your subsidiaries actually economically benefit at the bottom line from higher capacity prices? Could you walk us through where that would actually not get taken back or taken away from a regulator as part of a fuel cost?



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Mike Morris - American Electric Power - Chairman, CEO

Well, that would go into -- if they're off-system sales, that would go into the sharing formulas that we have throughout all of the jurisdictions, and I don't know that they would change a great deal. One of the things that the Supreme Court said about sharing in Ohio is that system has no requirement for that going forward. So, we think that the capacity numbers will be affected by the approach we take in the next round in PJM, whether we're FFR or whether we're not, so all of those will come to the benefit of all of our Eastern jurisdictions as we go forward.

Michael Lapedes - Goldman Sachs - Analyst

Okay. Thank you, Mike. Much appreciated.

Mike Morris - American Electric Power - Chairman, CEO

You bet, Michael.

Operator

Jonathan Arnold from Deutsche Bank. Please go ahead.

Jonathan Arnold - Deutsche Bank - Analyst

Good morning.

Mike Morris - American Electric Power - Chairman, CEO

Morning, Jonathan.

Jonathan Arnold - Deutsche Bank - Analyst

Back on the environmental CapEx, I'm afraid. I'm wondering if you could give a little more color on what it is that pushes you from the low to the high end, particularly on the -- some of these bigger numbers? Is it -- how much of that is timing and assumption around timing, and how much of it is technology? And just a little more, because it's obviously a really big range here?

Mike Morris - American Electric Power - Chairman, CEO

The bulk of it would be on the final determination of the EPA that the flexibility that they talked about isn't necessarily real. And the timeline debate that we are making is also unachievable. Because what you'll see on the high side is a sellers market for the welders and facilitators of the design of the facilities as well as the build of the facilities. So we think that, when you think of the overall economic impact, that clearly is going to be debated in the House and the Senate, it already is on both the Democratic and Republican side of the aisles. We think will be closer to the low side going forward.

So if everyone is outbidding for the same stuff at the same time, it's going to get more expensive. If we have a lot longer timeline and we can be an early mover, because we've already done a lot of environmental study of our stations and their emissions,



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and to the earlier question, we've already done a great deal of preliminary design that we know won't change much, we think we'll be an early mover in that space. And that will allow us to continue to be on the lower side.

Jonathan Arnold - Deutsche Bank - Analyst

So you've basically taken the proposed rules as they are today and some tolerance around whether the flexibility will actually play out the way the EPA's positioned it, and then thinking about timing and competition for getting things done.

Mike Morris - American Electric Power - Chairman, CEO

That's exactly the way we tried to build the numbers.

Jonathan Arnold - Deutsche Bank - Analyst

Okay, thank you very much.

Mike Morris - American Electric Power - Chairman, CEO

You bet.

Operator

Paul Ridzon from KeyBanc. Please go ahead.

Paul Ridzon - KeyBanc Capital Markets - Analyst

Can you just tell us what the latest numbers are for shopping at Ohio Power and CSP?

Brian Tierney - American Electric Power - EVP and CFO

Yes, Paul. This is Brian Tierney. We're at about 12%, 12.7% of total CSP load right now. And as you know, we expected to see that rateably over the year, and guidance go to about 17%. One of the reasons we're not overly concerned about that is we think that there is more switching up front, as some of that lower hanging fruit is taken off by some of the competitive retail suppliers. And we think that of the people who will stay, they're becoming a larger percentage of the remaining pool.

We're also seeing, as I mentioned earlier, some capacity and energy offsets in terms of sales that we're able to make to help financially offset the customers who are leaving our system. So while the percentage is higher than what we'd forecasted at this time of the year, the financial impact is not commensurate with that higher percentage.

Paul Ridzon - KeyBanc Capital Markets - Analyst

And these capacity and energy offsets, are they better than you were anticipating when you first thought about this?

Brian Tierney - American Electric Power - EVP and CFO

They are better than what we thought about.



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Paul Ridzon - *KeyBanc Capital Markets - Analyst*

What's driving that?

Brian Tierney - *American Electric Power - EVP and CFO*

Some of the things we talked about in off-system sales, in terms of the heat rates being higher than what we thought in the market. So as we're able to dispatch our units that aren't being dispatched for use of our own load, and are able to take those in the market. That's higher than what we thought. And as — just in terms of volume, as some of those customers leave us and they're paying capacity payments, they're exceeding where we thought we'd be at this time year-to-date, associated with the volume that's being served by competitive suppliers.

Paul Ridzon - *KeyBanc Capital Markets - Analyst*

And when you look at megawatts that you've won in other territories versus what you've lost, how should we think about that?

Mike Morris - *American Electric Power - Chairman, CEO*

Well, we're doing reasonably well in that activity also, Paul. It looks like 1.5 million megawatt hours, so we continue to have some success and we'll continue to work there. So, it's almost like the old telephone game of customers call and say they're leaving and we offer them an equally attractive rate, or something even a bit higher than the competitor. Because over the years we've treated these customers pretty well and they know that, so we're seeing some success in our retail operation and we continue to be aggressive in other jurisdictions other than our own.

Paul Ridzon - *KeyBanc Capital Markets - Analyst*

And then, what's the latest thinking on PATH?

Mike Morris - *American Electric Power - Chairman, CEO*

The latest thinking on PATH?

Paul Ridzon - *KeyBanc Capital Markets - Analyst*

Yes.

Mike Morris - *American Electric Power - Chairman, CEO*

We're ready, willing and able to go forward whenever the PJM wakes up and makes a decision that makes sense.

Paul Ridzon - *KeyBanc Capital Markets - Analyst*

What's your outlook as to when PJM could do that? Or what their timeline -- ?



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Mike Morris - American Electric Power - Chairman, CEO

Well, let's go back to one of the earlier questions, why do you need to replace 5,500 megawatts with about 1,000 megawatts combined-cycle gas? The PATH project would allow for a rationalization of facilities being built throughout the PJM to handle the impact of the potential premature off-line reality that will come from the EPA rules. So, clearly, things are lining up to that project being done. It has always made sense, and we believe it will always make sense. We aren't spending a penny on it right now, however, because it's crystal clear that the way PJM sees it, they don't think they need it until 2020. We think time will demonstrate that it needs to be a little bit earlier than that. We stand ready to move forward on that project, with or without our current partners.

Paul Ridzon - KeyBanc Capital Markets - Analyst

Do you think PJM has thought hard enough about upcoming retirements?

Mike Morris - American Electric Power - Chairman, CEO

Well, I tell you, we had a very interesting meeting with them a week or so ago with their leadership team, and I think they got an eye-opener. And there's no question that there will be retirements from these activities. And you also see the arguments in front of the FERC that, please don't make the demand response players actually respond to demand reductions. I mean, how silly can that possibly be? If you're going to manage your demand by people saying we'll drop off line when peaks are tough, and then they argue that they don't want to be dropped off line, you can't run a farm like that. That's PJM's shortcoming.

Paul Ridzon - KeyBanc Capital Markets - Analyst

Can't make that up in volume?

Mike Morris - American Electric Power - Chairman, CEO

Not a chance. (laughter)

Paul Ridzon - KeyBanc Capital Markets - Analyst

Okay, thanks.

Mike Morris - American Electric Power - Chairman, CEO

You bet.

Operator

Andrew Levi from Caris & Co. Please go ahead.

Andrew Levi - Caris & Co. - Analyst

Good morning.



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Mike Morris - American Electric Power - Chairman, CEO

Good morning, Andrew.

Andrew Levi - Caris & Co. - Analyst

Just going back to Ohio and the non-bypassable charge. Two questions relating to that. Number one, you mentioned you're talking to some of the parties, some of the interveners. Has the Ohio Supreme Court decision -- has that changed anyone's positions? I know it's only been a few days, but have you seen the other parties more willing to talk now, relating to that?

Mike Morris - American Electric Power - Chairman, CEO

I wouldn't -- it really is too early. I think a lot of folks are still reading it to see what it does to their hold card. But what I quoted to you is verbatim from Senate Bill 221. That's exactly what it says. And we find great comfort in that. We've always found comfort in that. The Commission has not had to address the issue. We put it in front of them in this ESP particularly as it pertains to environmental investments. We are, as I mentioned, quite heartened by the words that we heard from Governor Kasich, simply saying that he has no desire for the state of Ohio to become a net importer of electricity at the whims of the neighboring states who are competing for the same economic development investments and jobs that Ohio will compete for. We feel pretty comfortable about what we're seeing. When you look at the elected officials, as well as phraseology we heard from some interviews with some of the Commissioners as they were being -- taking over the Chairmanship as well as joining the Commission staff.

Andrew Levi - Caris & Co. - Analyst

And clearly this is a big key component of your entire filing, as far as being able to grow earnings going forward and not absorb costs just for the shareholders. How do you -- I hear what you're saying and I hear obviously what the Governor's saying, and you can read between the lines, which is a good thing to do. But what is the strategy between now and the end of the year as you go through this filing? The Commission at times has had a mind of its own lately, and obviously you have a new Chairman. What's the strategy to try to convince the Commission, beyond obviously trying to work out a settlement, to see it your way? Because as you know, there's a neighboring utility who doesn't see it your way, and also has influence within the state. So what's the political/regulatory strategy between now and the end of the year regarding this?

Mike Morris - American Electric Power - Chairman, CEO

Well, I think that the 3 utilities that want to make capital investments in Ohio see this thing pretty clearly and collectively that capital investment in Ohio is important. We've also all made it very clear that if we don't receive the appropriate message, that capital investment in Ohio and the generation fleet will simply not go forward. Stations will be unfortunately shut down. Property taxes will go down. Job unemployment numbers will go up. And so the cheer to the ESP is, let's create jobs in Ohio, let's be self-sufficient in electricity, so we can bring other jobs into Ohio, and let's put capital to work so that the property tax base and the jurisdictions where those stations are located go up. That's a pretty good cheer against the other one, which is let's not build anything, let's have electric rates go higher so that we force jobs out of Ohio, and let's have the cost of electricity go up. Let's cheer for Ohio shrinking. That's not much of a cheer. So we feel comfortable about where we are.

Operator

[Brandon Maise] from Levin Capital. Please go ahead.



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Neil Stein - *Levin Capital - Analyst*

Hi. It's actually Neil Stein from Levin Capital.

Mike Morris - *American Electric Power - Chairman, CEO*

Hi, Neil. How are you?

Neil Stein - *Levin Capital - Analyst*

I had a question on the Ohio Supreme Court opinion. I guess, specifically, the Court took issue with this cost justification for the bullet charge?

Mike Morris - *American Electric Power - Chairman, CEO*

Yes.

Neil Stein - *Levin Capital - Analyst*

But even if that justification was inadequate, how specifically does that violate Ohio law?

Mike Morris - *American Electric Power - Chairman, CEO*

Well, it really doesn't. All it says is that the Commission would have to have another view of how to go about determining what the exact polar charge ought to be. I'm sure you know, Neil, that there are different charges for residential, commercial, industrial customers. They would have to go back through those numbers and simply find some comfort that those are reasonable charges to have.

Take a look at Michigan. I know a lot of you follow other states, we do business in Michigan, so we're pretty familiar with that. You can't just have a fleet sitting around and putting no capital to work on it and then when all of a sudden 22% of your commercial load decides to come home all on the same day because other suppliers have failed to perform; you just can't turn it around like that. So, provider of last resort is something that we take very seriously, as do all the other utilities here in Ohio. And doing it on a standing basis, as we're required to do, has costs associated with it, we can demonstrate those. We tried to demonstrate the value proposition in the overall formula that we presented, and the Supreme Court said pretty clearly that if that's the way you'd like to go, Commission, just tell us that on remand. The Commission has this in their hands, we think that they'll be reasonable about how they go about doing it, and we'll be required to justified those charges. Or they'll get adjusted, and if they do, they do.

Neil Stein - *Levin Capital - Analyst*

But back to the Court's specific objection. When you actually read SB 221, it seems like PUCO has very broad discretion to allow all sorts of charges, and doesn't even necessarily need to provide justification, at least for SB 221.

Mike Morris - *American Electric Power - Chairman, CEO*

Well, remember, when you read the case, what they said to the Commission in earlier cases about polar was that they needed to be somewhat specific about how they came to the determinations. And what the Court is saying to the Commission here,



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not that what you've done is wrong or violative of 221, it's just that you're telling us you're basing it on cost yet when we look at the record we do not see an adequate support for the cost that you say that you're basing it on. However, we see this formula, and if the formula is what you determine to be the base of it, that's fine with us, just tell us that. So, it isn't illegal. That's why they remanded it rather than fixed it themselves. They simply said -- you need to give us more information so we can see a clearer path on the logic for the decision that you made.

Neil Stein - *Levin Capital - Analyst*

The issue is not that what PUCO did violates SB 221, it more violates some earlier Supreme Court opinion on polar charges?

Mike Morris - *American Electric Power - Chairman, CEO*

No, again, the phraseology in the Order itself for the 2009 ESP says -- we are basing the polar charge on costs, as well as the protection that it yields to the customers. But the cost base of polar will be the XYZ for the 3 classes of customers. And the record just simply doesn't have a full portrayal of what those costs are.

So, there have been a number of appeals already determined on the [2009] ESP by the Supreme Court. And in those they simply have continued to send messages to the Commission. 221 gives you a great deal of latitude without question, but you need to demonstrate to us where your decision falls within the latitudes granted. So, if you look at the environmental spend in the 9 subsets, we would argue, and may well yet argue in front of the Supreme Court, that the introductory term without limitation means that those 9 are enumerated but that there could be 10, 11, and 12. That was the view that the Commission took.

What the Supreme Court said in their Order was, without limitation means these 9 are very, very broad and you can stuff a lot of things in them if you'd like, but make sure you tell us which of the 9 they qualify for and tell us why you believe they fit into that place. So nothing illegal, nothing out of bounds, nothing really wrong, just give us more data and more rationale for why you made the decisions that you made in the '09 case. And that will spill over, we think, in a potentially constructive way in the '12 case, because the appeals in '12, I would argue, should be less because the specificity by the Commission will be more.

Neil Stein - *Levin Capital - Analyst*

Okay. Yes, that was pretty much all my questions. Thank you so much.

Mike Morris - *American Electric Power - Chairman, CEO*

So we're ready for one final question, operator, if someone's on the line.

Operator

Steve Fleishman with Bank of America. Please go ahead.

Mike Morris - *American Electric Power - Chairman, CEO*

Morning, Steve.

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Steve Fleishman - BofA Merrill Lynch - Analyst

Morning. Mike, just on the issue of the non-bypassables. The other part of the law says that the ESP needs to be better in the aggregate than an MRO. Could you give some sense with the exact non-bypassables you're proposing, how you show that it's better in the aggregate than an MRO?

Mike Morris - American Electric Power - Chairman, CEO

Well, we think that we've made those portrayals in the filing that we have in front of the Commission. And that will surely be part of the record as it continues to unfold. When you look at the overall market price over a 3-year cycle, and you look at the rates that we've included for generation in the ESP and the investments that we might need to make to keep some of those very cost-effective power plants online, we think that we'll be able to demonstrate that. But it will be detailed cross-examination testimony and the actual hearings that will go on. So it would take us until about 10.30 to share all of that data with you. And that really isn't accomplishable on a phone call. But that's our challenge. And that's what we're fully convinced we'll be able to do as we've done many times before.

Steve Fleishman - BofA Merrill Lynch - Analyst

Did you file the exact environmental investments that you think you'd need to make over this period?

Mike Morris - American Electric Power - Chairman, CEO

No. What we included was a rider that would adjust for environmental investments that are made on a going-forward basis. So, the way that that would happen is we would make a demonstration to the Commission that these needed to be done in compliance with whether it's the transport rule or the Mercury HAPs rule, or 316(b), or CCS. And you would demonstrate that you bid out the concept of who's going to actually implement the construction of the policy. And those would be the touchstones, and once demonstrated, you'd make the rider adjustment.

Steve Fleishman - BofA Merrill Lynch - Analyst

How do we know then whether it's better than an MRO, if we don't know what the numbers are?

Mike Morris - American Electric Power - Chairman, CEO

Well, we'll continue to try to demonstrate that as we go forward with doing it. So it really would be up to the Commission to look at that activity as they go. These are the same decisions that they had to make last time. You could have easily looked at the ESPs that we all did, and looked at market rates and forecasted them as they've actually unfolded. We probably would have all been on an MRO for the last couple of years instead of ESP. So these are difficult decisions for the Commission to make, but we think decisions that they in fact will make.

Steve Fleishman - BofA Merrill Lynch - Analyst

Okay. Thank you.

Mike Morris - American Electric Power - Chairman, CEO

You bet.



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Chuck Zebula - American Electric Power Co Inc - Treasurer

Thank you for joining us on today's call. As always, our IR team will be available to answer any additional questions you may have. Leah, can you please give the replay information?

Operator

Ladies and gentlemen, if you would like to access the replay, you can do so 24 hours a day, 7 days a week by dialing 1-800-475-6701, and enter the access code of 196375. International participants may dial 320-365-3844, again, using the same access code, 196375. And it is available after 12:00 PM Eastern time today through May 1 at Midnight. And that does conclude your conference for today. Thank you for using AT&T Executive Teleconference Service. You may now disconnect.

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