PUBLIC VERSION

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals.	))))	Case No. 10-2376-EL-UNC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan.	))))))	Case No. 11-346-EL-SSO Case No. 11-348-EL-SSO
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority.	))))	Case No. 11-349-EL-AAM Case No. 11-350-EL-AAM
In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders.	))))	Case No. 10-343-EL-ATA
In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders.	)))	Case No. 10-344-EL-ATA
In the Matter of the Commission Review Of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company.	))))	Case No. 10-2929-EL-UNC
In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144.	)))))	Case No. 11-4920-EL-RDR
In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Ordered Under Ohio Revised Code 4928.144.	)))))	Case No. 11-4921-EL-RDR

DIRECT TESTIMONY OF KEVIN M. MURRAY
ON BEHALF OF INDUSTRIAL ENERGY USERS-OHIO

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September 27, 2011

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ON BEHALF OF INDUSTRIAL ENERGY USERS-OHIO

I. **INTRODUCTION**

Q1. Please state your name and business address.

A1. My name is Kevin M. Murray. My business address is 21 East State Street, 17th Floor, Columbus, Ohio 43215-4228.

Q2. By whom are you employed and in what position?

A2. I am a Technical Specialist for McNees Wallace & Nurick LLC ("McNees") and the Executive Director of the Industrial Energy Users-Ohio ("IEU-Ohio"). I am providing testimony on behalf of IEU-Ohio.

Q3. Please describe your educational background.

A3. I graduated from the University of Cincinnati in 1982 with a Bachelor of Science degree in Metallurgical Engineering.

Q4. Please describe your professional experience.

A4. I have been employed by McNees for 14 years where I focus on helping customers (including IEU-Ohio members) address issues that affect the price and availability of competitive and non-competitive utility services. I have also been actively involved, on behalf of commercial and industrial customers, in the formation of regional transmission operators ("RTOs") and the organization of regional electricity markets from both the supply-side and demand-side perspective. I serve as an end-user customer sector representative on the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO" or "MISO") Advisory Committee and I have been actively involved in MISO working groups that focus on various issues since 1999. Prior to joining McNees, I was employed by the law firm of Kegler, Brown, Hill & Ritter ("KBH&R") in a similar capacity. Prior to joining KBH&R, I spent 12 years with The Timken Company, a specialty steel and roller bearing manufacturer. While at The Timken Company, I worked within a group that focused on meeting the electricity and natural gas requirements for facilities in the United States. I also spent several years in supervisory positions within The Timken Company's steelmaking operations.

Q5. Have you previously testified before the Public Utilities Commission of Ohio ("Commission")?

A5. Yes. The proceedings before the Commission in which I have submitted expert testimony are identified in Exhibit KMM-1.

Q6. What is the purpose of your testimony?

A6. The purpose of this portion of my testimony is to evaluate whether the Stipulation and Recommendation ("Stipulation") submitted in this proceeding on September 7, 2011 contains a reasonable resolution of the contested issues based upon the criteria the Commission has used to evaluate settlements. For the reasons discussed in my testimony, I conclude the Stipulation is unreasonable.

II. Criteria To Evaluate Stipulations

Q7. What is your understanding of the test the Commission uses to evaluate settlements?

A7. I have been advised by counsel that the Commission uses a three prong test to evaluate stipulations. All three prongs of the test are required to be satisfied before a stipulation will be approved. More specifically, the Commission tests settlements using the following questions:

- Is the stipulation the product of serious bargaining among capable and knowledgeable parties?
- Does the stipulation violate any important regulatory principle or practice?
- Does the stipulation benefit ratepayers and the public interest?

Q8. Is the Stipulation the product of serious bargaining among capable and knowledgeable parties?

A8. It is not. But, I want to be clear about the meaning of my answer. I am not saying that knowledgeable and capable parties did not attend meetings where settlement was discussed. Rather, I believe the Stipulation fails the first prong of the Commission's test because the Stipulation itself is not the product of knowledgeable and capable parties that set about to produce a reasonable compromise of the contested issues based on the facts and the law. Among other things, some knowledgeable and capable parties were excluded from the meetings that produced this Stipulation and portions of the Stipulation like

Appendix C were not disclosed to all the parties prior to the Stipulation being filed so that all the parties might offer comments and suggestions. In more general terms, the Stipulation fails to disclose the specific compromise which is being recommended by the Signatory Parties and the Stipulation fosters confusion about how the Stipulation will actually manifest itself in rates and charges as well as terms and conditions of service.

Q9. Were you able to identify provisions in the Stipulation that were not understood by the Signatory Parties or were ignored by the Signatory Parties?

A9. Yes. I will explain my answer but first I think it may be helpful to provide some context for my answer.

First, I think it may be helpful to identify the revenue increase difference between Columbus Southern Power Company ("CSP") and Ohio Power Company ("OPCo") (collectively, the "Companies") Companies' proposed electric security plan ("ESP") and the Stipulation ESP. The Companies' original proposed ESP includes information indicating that the 2012 revenue produced by the ESP would be $1,717,109,247 if approved by the Commission. The testimony filed in support of the Stipulation ESP indicates that the 2012 revenue would be $1,707,494,974 if the Stipulation ESP is approved by the Commission.[1] In other words, there is very little difference in the amount of the revenue ($9,614,274)

[1] Exhibit DMR-1 to the testimony of David M. Roush in support of the initial application illustrates the Companies' overall average 2012 rate as 8.93 cents per kWh. Exhibit DMR-1 to the testimony of David M. Roush in support of the Stipulation illustrates the Companies' overall average 2012 rate pursuant to the Stipulation would be 8.88 cents per kWh.

produced by the Stipulation ESP as compared to the as-filed ESP application. The Stipulation ESP produces close to the same amount of revenue as proposed in the as-filed ESP and does so mostly by changing the buckets used to collect the revenue.

Many of the Signatory Parties filed testimony attacking the ESP in the Companies' application and, among other things, the Commission Staff's ("Staff") testimony concluded that the ESP contained in the Companies' ESP application did not pass the market rate offer ("MRO") test. The conflict identified by the opinions and positions taken by the Signatory Parties in their direct testimony and the results embodied in the Stipulation (where the results can be specifically identified) is quite large. Yet, the Stipulation and the supporting testimony ignore this sharp contrast and offer no insight regarding how or why the Signatory Parties now claim (at page 28 of the Stipulation) that the Stipulation "…reflects a bargained compromise involving a balancing of competing interests" or how the Stipulation provides a reasonable and lawful resolution of "…all issues arising from the proceedings referenced above…".

The Stipulation itself contains provisions that Signatory Parties define differently and responses to discovery demonstrate some of the Signatory Parties only focused on securing a provision in the Stipulation that was narrowly focused on a parochial objective. The responses to interrogatories from Signatory Parties to the Stipulation also demonstrate that they have divergent opinions about the meaning of a number of provisions in the Stipulation and how they should be interpreted.

For example (and this is not an exhaustive list), IEU-Ohio requested Signatory Parties identify what analysis they undertook before agreeing that the ESP, as modified by the Stipulation, would be more favorable than an MRO. The Retail Energy Supply Association ("RESA"); Paulding Wind Farm II LLC ("Paulding"); Ohio Environmental Council ("OEC"); Natural Resources Defense Council ("NRDC"); Exelon Generation Company, LLC ("Exelon"); EnerNOC; Environmental Law and Policy Center ("ELPC"); Duke Energy Retail Sales, LLC ("DERS"); The Association of Independent Colleges and Universities of Ohio ("AICUO") and AEP Retail Energy Partners LLC ("AEP Retail") all responded that they undertook no independent analysis of whether the ESP, as modified by the Stipulation, would be more favorable than an MRO or that they deferred to the judgment of the Staff or the Companies. The Ohio Manufacturers' Association ("OMA") Energy Group, Ohio Hospital Association ("OHA"), City of Hilliard ("Hilliard"), and City of Grove City ("Grove City") pointed to the testimony supporting the Stipulation of Staff witness Robert Fortney and Companies' witnesses Laura Thomas, Joseph Hamrock and William Allen. The Stipulation was submitted in this proceeding on September 7, 2011. The testimony supporting the Stipulation of Staff witness Fortney and Companies witnesses Thomas, Hamrock and Allen was not submitted until September 13, 2011. Thus, the testimony could not have been relied upon by Signatory Parties at the time they signed the Stipulation.

The Ohio Energy Group ("OEG") responded that the ESP versus MRO test cannot be performed with mathematical precision and that an ESP is inherently more favorable than an MRO, which I interpret as confirming that they performed no mathematical comparison of the expected Stipulation ESP versus MRO results. Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. ("Constellation") stated that they relied upon pre-filed testimony and discovery responses. Kroger refused to respond to this question.

Thus, these Signatory Parties did not perform any independent analysis of whether the ESP, as modified by the Stipulation, would be more favorable in the aggregate than an MRO, or relied upon an analysis performed by the Staff or the Companies which, as I explain below, are fundamentally defective and unreasonable. Thus, they lack direct knowledge of whether the ESP, as modified by the Stipulation, is capable of satisfying statutory requirements.

Additionally, IEU-Ohio requested each of the Signatory Parties to the Stipulation to admit or deny that Paragraph IV(8) of the Stipulation requires the Companies to file its next standard service offer ("SSO") application by no later than February 1, 2015, but in the event the Companies elect to seek approval of an ESP, the Stipulation does not require that ESP to contain a competitive bidding process ("CBP"). Given that a number of the Signatory Parties to the Stipulation have spoken publicly, touting the so-called transition to competition as one of the significant benefits of the Stipulation, one would expect there to be a meeting of the minds on the response to this request for admission. However, with the exception of the Companies and Exelon, all of the other Signatory Parties (except Staff which is not subject to discovery) denied or denied for lack of knowledge the request for admission. The Companies and Exelon admitted (and

I concur) that Paragraph IV(8) of the Stipulation does not require the Companies to include a CBP should it choose to propose a subsequent ESP.

The responses to discovery by several parties indicate that they had a narrow focus in the settlement discussions and did not examine the Stipulation as a package. For example, when asked to identify the assumptions it relied upon to analyze whether the Stipulation ESP was more favorable in the aggregate than an MRO, Exelon responded that it did not conduct a specific study or analysis to determine whether the Stipulation provides for an ESP that is more favorable than an MRO, nor was any study done on its behalf. Exelon also stated it did not make any specific assumption about electricity rates under the Stipulation ESP.

When questioned about their assumptions or analysis of virtually every provision in the Stipulation, AICUO, Grove City, Hilliard, NRDC, OEC, ELPC and EnerNOC all responded that they performed no independent investigation but relied upon the expertise of other parties including the Companies' staff and Commission Staff.

Paulding's responses to discovery indicated that it had a singular focus in the case limited to the treatment of the Timber Road REPA and therefore did not consider other elements of the Stipulation.

These examples indicate why it is my opinion that the Stipulation fails the first prong of the Commission's test because neither the Stipulation itself nor the testimony offered in support of the Stipulation demonstrates that the Stipulation is the product of knowledgeable and capable parties that set about to produce a reasonable compromise of the contested issues based on the facts and the law.

Q10. Does the Stipulation violate any important regulatory principle or practice?

A10. Yes. Based on advice of counsel and my experience, the Stipulation contains a number of provisions that are contrary to law, Commission precedent and prior Commission orders.

In basic terms, the Stipulation imposes significant rate increases on many customers at a time when the effects of the Great Recession still weigh heavily on the economy and competitive retail electric service ("CRES") price offers are lower than the prices in the Companies' current ESPs in many cases. The Stipulation's rate increases are not based upon cost or market – they are arbitrary with no basis other than the rate increases provided for in the Stipulation. The rate increases are accompanied by provisions that erect economic barriers to shopping so that shopping levels will not exceed the percentage caps contained in the Stipulation. The Companies have publically conceded that these economic barriers limit shopping to the percentage amounts contained in the Stipulation.

The Stipulation has been described as providing the Companies with a transition to a "competitive market" at a time when, as indicated above, price offers for competitive retail electric service are lower than current ESP prices so the negative effect of the shopping limitations falls on customers. The Stipulation then commands the use of a bidding process to price all or most of the default generation supply prices at a time when the Signatory Parties are claiming prices will rise significantly. I don't think it would be possible to come up with an ESP structure that is more contrary to Ohio's laws and policies or more tilted against the type of balance one should reasonably expect to see when a "reasonable balance" (Stipulation at 28) has been struck.

Q11. Why does the ESP structure that results from the Stipulation violate important regulatory principles or practices?

A11. Here again, I think it may be helpful to provide some context.

Ohio made the move to "customer choice" in 1999 with the passage of Amended Substitute Senate Bill 3 ("SB3"). At the time, there were parallel federal efforts to restructure the wholesale electric market and address the anticompetitive electric industry structure. These initiatives were rooted in the view that competitive markets could do a better job of advancing the public interest in reasonable prices, reliable service and innovation than traditional regulation.

SB3 contained policy objectives and established the process by which the evolution to reliance upon competitive markets would occur for competitive services such as generation supply. The process included the unbundling or separation of the three major functions (generation or production, transmission and distribution) associated with retail electric service into separate competitive and non-competitive service components with separate prices for such components.

The provisions of SB3 provide for coordination with other regulators to ultimately accomplish the policy objectives and complete the tasks set forth in the legislation.

SB3 established a “transition period” beginning on January 1, 2001 and ending on December 31, 2010. Within the transition period, SB3 created a five-year market development period (“MDP”) during which incumbent investor-owned utilities and customers had the opportunity to prepare for and transition to a competitive market. SB3 directed the Commission to structure transition plans with the objective of obtaining at least 20% customer switching by the mid-point of the MDP which could end no later than December 31, 2005.

The evolutionary approach to restructuring the retail investor-owned electric industry in Ohio, accompanied by the completion of the transitional tasks, served two important objectives. The first objective was to provide customers with certain price protections from the dysfunction that is often associated with new and immature markets until such time as the retail market was mature enough to produce “reasonable” prices. The General Assembly protected customers by specifying that the total price of electricity in effect in October 1999 would define the total price envelope within which the individual or unbundled generation, transmission and distribution prices would be established through the transition plan process.[2] SB3 also provided residential customers an immediate benefit in the form of a 5% discount.

The second consequence of the SB3 structure protected incumbent electric distribution utilities ("EDU") during the MDP (and the balance of the transition period) from potential revenue loss that might otherwise be caused by an abrupt exposure to a new and immature market. In 2001, price offers for competitive retail service were relatively low and the transition structure protected EDUs from revenue and earnings erosion. Each EDU was also provided an opportunity to protect itself in the event the EDU judged its unbundled generation rates to be in excess or above the generation service prices that would result from the forces of effective competition. The right to pursue this protection required an EDU to file a claim with the Commission for "transition costs" (i.e., the positive difference between existing unbundled generation prices and the unbundled prices attributed by the utility to effective competition—sometimes called "stranded costs") as part of the electric transition plan ("ETP") filings. All transition costs were required to be collected by December 31, 2010.

OPCo's and CSP's transition plan cases were ultimately resolved through stipulations approved by the Commission. In the stipulations, OPCo and CSP agreed to forego claims for recovery of above market generation costs

[2] The total bundled price for each electric rate schedule established the total rate cap, which is then divided between the functional components (generation, transmission, and distribution). Ohio provided in Revised Code 4928.34(A)(6) that such rate cap was subject to adjustment for changes in taxes, costs related to the establishment of a universal service fund, and a temporary rider established by Revised Code 4928.61. Thus, the rate cap was not an absolute cap on the total charges paid by customers during the MDP.

(generation transition costs or "GTC"). *In the Matter of the Applications of Columbus Southern Power Company and Ohio Power Company for Approval of Electric Transition Plans and for Receipt of Transition Revenues*, Case Nos. 99-1729-EL-ETP and 99-1730-EL-ETP, Opinion and Order at 16, (September 28, 2000).

My understanding of SB3 is nearly identical to the understanding expressed in pre-filed testimony of Staff's witness Jodi J. Bair:

> "S.B. 3's intent was to move electric companies to a competitive environment; however, the law recognized that there may be costs associated with transitioning to a competitive market, so electric companies were permitted to recover transition costs."[3]

Her testimony concluded, and I agree, that SB3 provided the Companies with the opportunity to receive transition revenues to assist them in making the transition to a fully competitive retail electric generation market citing the Companies' transition plan cases. As Ms. Bair's testimony states, in those transition plan cases, the Companies' witness Baker, when testifying in support of the settlement, said the Companies dropped their claims for stranded generation costs. Based on advice of counsel, it is my understanding that the positions taken in Ms. Bair's testimony (that SB3 only allowed recovery of transition costs through the end of 2010) are correct.[4]

Shortly after the Stipulation was filed on September 7, 2011, the Companies issued a press release that describes the effect of the settlement as follows:

[3] Pre-filed Direct Testimony of Jodi J. Bair at 4.

[4] *Id*. at 4-5.

> After a decade of legislative and regulatory changes to Ohio's market for electricity, this agreement allows an appropriate transition to a fully competitive electricity generation environment for AEP in the state.[5]

So, in addition to the transition provided by SB3, the Stipulation provides, according to the Companies, more time for the Companies to transition to a fully competitive retail electric generation market. And during this additional transition that I understand has no basis in law, the Stipulation restricts the opportunity of customers to obtain competitive retail electric services (such as generation supply) from CRES suppliers, thereby allowing the Companies to collect, largely on a non-bypassable basis, the transition costs that are embedded in the Companies' legacy rates and in the arbitrary and unreasonable $255 per MW-day capacity charge that I discuss below.

Q12. Are there differences between the transition in SB3 and the second transition provided by the Stipulation?

A12. Yes. Broadly speaking the SB3 transition provided customers with electric bill predictability and certainty while giving customers the opportunity to do better by shopping. Residential customers were given a 5% discount off of the unbundled generation price. The fuel adjustment clause ("FAC") was eliminated. SB3's transition did not shift revenue responsibility within or between rate groups.

In contrast, the transition contained in the Stipulation limits shopping to a maximum of 21% in 2012 compared to the at-least 20% objective in SB3. The

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[5] The press release is available *via* the Internet at http://www.aep.com/investors/newsreleases/?id=1712 (last accessed September 22, 2011).

transition in the Stipulation allows rates to go up without any justification and makes it harder to predict bills because it includes automatic adjustment clauses such as the FAC that was, as indicated above, eliminated by SB3. So, the transition provided by the Stipulation clearly protects the Companies but it does not contain the balanced transition that was created in SB3.

Q13. Are there additional reasons why the Stipulation violates important regulatory principles or practices?

A13. Yes. An important regulatory principle is that rates be just and reasonable. The Commission, in approving an ESP, must determine that the ESP is more favorable in the aggregate than an MRO as well as satisfy other statutory criteria such as Ohio's policy objectives. Therefore, the Commission is required to examine the entire Stipulation ESP, including all other terms and conditions. There are a number of aspects of the Stipulation ESP that will, if the Stipulation ESP is approved, result in rates that are not just and reasonable:

- The Stipulation establishes rates for AEP-Ohio rather than rates for OPCo and CSP. AEP-Ohio is not an EDU.
- The Stipulation blocks shopping at a time when offers for CRES are lower than current ESP rates and then subjects customers to default generation supply prices based 100% on a CBP at a time when market prices are expected to significantly rise.
- The rate design and various riders that would result from the Stipulation produce dramatic and disparate rate impacts between and within customer classes.
- The Stipulation shifts cost responsibility for the Phase-in Recovery Rider ("PIRR") from OPCo customers to CSP customers when CSP customers have received no benefit from the phase-in that was established for OPCo. Based upon the advice of counsel, I understand that this shift is illegal relative to community aggregation groups in CSP's service territory.

- The Stipulation allows the Companies to increase rates by $336 million through the Distribution Investment Rider ("DIR"). The Staff Report recently issued in OPCo's pending base distribution rate case would support a maximum increase of $31,909,000. The Staff Report recently issued in CSP's pending distribution rate increase case recommends a decrease in CSP's authorized distribution revenues. On a combined company basis, the maximum annual increase recommended by the Staff would be $29.6 million.

- The caps on shopping thwart community aggregation efforts when the Commission is, as I understand it, statutorily required to affirmatively encourage and promote large-scale community aggregation programs. This negative effect on community aggregation programs will arrive just as many communities in the Companies' service areas are moving forward with such programs. Beyond the negative effects of the Stipulation on community aggregation, the percentage limits on shopping will mean little or no incremental shopping in 2012 based on the shopping levels reported by the Companies as of September 7, 2011.

- The Stipulation obligates the Commission to embrace pool termination proposals in ways that may preempt the Commission's ability to protect retail customers. It also provides a foundation for the Companies to pass the cost of pool termination onto Ohio customers.

- The Stipulation calls for approval of corporate separation without the details required to appreciate its implications.

- The Stipulation provides for a one-time up-front prudence review of the Timber Road REPA with costs to be recovered through the FAC mechanism. The Stipulation also suggests a one-time up-front prudence review of shale gas contracts (with no mention of how such prudence review will take place) with costs to be recovered through the FAC. I have been advised that the Commission's rules require costs to be recovered through the FAC mechanism to be subject to an annual management performance audit.

- The Stipulation works to retroactively impair current shopping opportunities by imposing shopping limitations on customers prior to the effective date of the Stipulation ESP.

- The Stipulation conditions shopping opportunities and rate increases on the enactment of securitization legislation without the details required to appreciate the need for or purpose and effect of such legislation.

- The ESP that would result from the Stipulation is not more favorable in the aggregate than an MRO.

Q14. How does the Stipulation block shopping?

A14. The Stipulation places caps on the amount of capacity that CRES providers may obtain from the Companies at market-based rates established through the CBP utilized by PJM Interconnect LLC ("PJM") to establish such market-based rates. Paragraph IV(2)(b)(3) of the Stipulation caps market-priced capacity at no more than 21% of customer load in 2012, 29%-31% in 2013, and 41% in 2014. Any customer with usage above these limits can shop but its CRES provider must pay the Companies $255 per MW-day for capacity. This structure will effectively block shopping at the amounts that have access to market-based capacity price.

Q15. If the Stipulation is adopted, how will retail prices be established for June 2015 through May 2016 and thereafter?

A15. A competitive bid for 100% of the SSO load will be conducted. The Stipulation states that the results of the competitive bid are to be flowed through to SSO customers.

The Stipulation also contains a provision that specifies if the Commission modifies the Companies' next SSO application to govern pricing after May 2016 and the Companies reject the modifications prices will be established through quarterly bids to be conducted until such time as there is a new ESP or MRO approved. This scenario would subject SSO customers to a high degree of rate uncertainty and runs contrary to the objective of providing customers with stable and predictable rates.

Q16. Are prices for competitive retail electric services expected to increase in the June 2015 through May 2016 period from current levels?

A16. Yes. The base residual auction conducted by PJM for the June 2014 through May 2015 delivery year indicates increases in capacity prices for the PJM zone (which includes the Companies) over the prior two delivery years. Pending regulations by the U.S. Environmental Protection Agency are expected to reduce supply on and after 2015 keeping upward pressure on capacity prices. The forecasts I have reviewed also predict energy price increases by 2015 over current levels due to economic recovery as well as the impact from pending regulations by the U.S. Environmental Protection Agency.

The expected increase in prices is illustrated in the testimony of Companies' witness Laura J. Thomas (Exhibit LJT-1, page 2 of 3) which contains future competitive benchmark prices assuming capacity is priced based upon PJM's CBP. Exhibit LJT-1 shows average benchmark prices of $57.16 per MWH in 2012, $58.68 per MWH in January 2013 through May 2014, rising to $72.32 per MWH in June 2014 through May 2015.

Q17. How will these circumstances impact customers if the Stipulation is accepted?

A17. Most customers will be blocked from shopping at a time when ESP rates are above competitive retail price offers. Then, once market rates are forecasted to rise above the Stipulation ESP's rates, the Stipulation will set default generation supply prices 100% on a CBP. For customers, the Stipulation provides a lose-

lose proposition; customers pay SSO prices based upon the Stipulation or the CBP, whichever is higher.

Q18. Will this structure result in just and reasonable rates?

A18. No. Therefore the Stipulation violates an important regulatory principle or practice.

Q19. Does the Stipulation alter current rate design?

A19. The Stipulation recommends that the Commission approve the Companies' proposed redesign of generation rates, in which demand-based generation charges would be eliminated for larger customers. It would maintain the Market Transition Rider ("MTR") but modify the levels from the Companies' original application. The Stipulation also introduces a Load Factor Provision ("LFP") for GS2, GS3 and GS4 customers to try and fix some of the problems created by the elimination of demand-based charges for larger customers, as a result of the Stipulation starting with the Companies' proposal.

Q20. Do you believe the resulting rates would be reasonable?

A20. No. As a starting point, the rate redesign justification initially offered by the Companies was that it would produce generation rates that are more market-based. While I don't believe that to be the case, as discussed below, it makes no sense to say we are radically redesigning rates so they are more market-based, and then block customers from going to the market.

The rate design recommendation in the Stipulation is going to produce dramatic interclass and intraclass shifts in revenue responsibility. It also introduces non-bypassable charges through the MTR and LFP that will reduce shopping "headroom" in many cases and make it more difficult to achieve savings by switching to a CRES provider even if shopping is not blocked by the economic barriers discussed above. As illustrated in Exhibit DMR-5 to the testimony of Companies' witness David M. Roush, in some instances GS2 customers may see first year increases ranging between 9% to 25% for OPCo and 6% to 20% for CSP. Conversely, for GS4 customers, the first year increase will range from a 2% to 7% decrease for OPCo and an 11% increase to a 16% decrease for CSP. The rate design also appears to create a residential all electric rate increase issue for CSP, similar to what the Commission had to ultimately address in the Ohio service areas of FirstEnergy Corporation's operating companies.

Q21. Will the resulting rates track market-based rates as the Companies claimed regarding their proposed rate design?

A21. No. As illustrated on Exhibit KMM-9, market prices in PJM trend seasonally and by time of day. Prices are highest in the summer on-peak when demand is highest. Prices in winter on-peak periods tend to be higher than shoulder month peak periods. Off-peak periods and shoulder months tend to have lower prices.

The generation rates that will result under the Stipulation will not track or trend with market prices. The Stipulation rates are not seasonally differentiated. The Stipulation rates are not differentiated by time of day. The largest component of the Stipulation's generation rates is the FAC charge and this disconnect between the Stipulation's FAC and market-based prices is particularly true for higher load factor customers.

As I explained earlier, the transition period established by SB3 eliminated the FAC and capped total rates in effect in October 1999, thereby providing price stability and predictability for customers. The Stipulation recommends a continuation of the current FAC mechanism which produces an average price per kWh that each customer pays irrespective of the customer's time of use. Because higher load factor customers tend to have relatively more consumption during off-peak periods or lower load times, the average price per kWh structure of the FAC shifts (relative to a market-based structure) revenue responsibility to higher load factor customers thereby conflicting with both a cost of service result and a market-based result. The combined effect of arbitrary rate increases, shopping limits and the structure of the FAC will make Ohio less competitive in the global economy. So, if the objective is to produce retail rates that more closely track market rates, the Stipulation misses the mark by quite a bit.

Q22. Does the Stipulation shift cost responsibility for the PIRR?

A22. Yes. The PIRR as proposed is designed to amortize the phase-in deferral established by OPCo's current ESP that established separate deferral amounts for each EDU. CSP customers have paid off their phase-in amount. OPCo claims it will have an accumulated phase-in deferral of $628 million as of December 31, 2011. The proposed PIRR spreads recovery of the OPCo deferral to both OPCo and CSP customers, even though CSP customers received no benefit from the deferral. Because the proposed PIRR requires CSP customers to pay charges to amortize the phase-in deferral that benefitted OPCo customers, the proposed PIRR misaligns cost responsibility with benefits, which is inconsistent with well-known regulatory principles.

I have been advised by counsel that Section 4928.20(I), Revised Code, limits the responsibilities of customers served by governmental aggregation groups for phase-in charges. The customers cannot be responsible for any portion of the phase-in that is not proportional to the benefits the group receives. Thus, the shift in responsibility for the PIRR to CSP customers served by governmental aggregation is at odds with the law and thus violates an important regulatory principle.

Q23. Does the DIR violate regulatory principles?

A23. Yes. The DIR will provide the Companies with significant rate increases that are dramatically in excess of increases warranted based upon a cost-based analysis. The DIR contained in the Stipulation also is being proposed without the showing that I have been advised is required by Section 4928.143(B)(2)(h), Revised Code. There has been no examination of the reliability of each EDU's distribution system and there is nothing in the Stipulation that ensures alignment of expectation of customers and the EDU.

CSP and OPCo presently have applications to increase their base distribution rates pending before the Commission (Case Nos. 11-351-EL-AIR and 11-352-EL-AIR, respectively). The date certain in both cases is August 31, 2010. The test year in both cases begins June 1, 2010, and ends May 31, 2011.

On September 15, 2011, Staff Reports were issued in both proceedings. For CSP, the Staff Report recommends a decrease in CSP's authorized annual distribution revenue between $9,541,000 and $2,302,000. For OPCo, the Staff Report recommends an increase in OPCo's authorized annual distribution revenue between $23,220,000 and $31,909,000. Thus, on a combined basis, the Staff's recommended maximum distribution rate increase would be $29,607,000. The Staff Reports also recommend that the Commission not use the net plant levels in 2000 as the DIR baseline until a decision is rendered in the rate increase cases.

It is an important regulatory principle that a regulated utility be permitted an opportunity to earn a reasonable rate of return on its plant-in-service associated with distribution service. It is an equally important principle that a utility not be given an opportunity to charge customers rates that are demonstrably excessive. The Staff Reports suggest that on a combined EDU basis, a rate increase less than $30,000,000 annually may be warranted. The DIR, which would allow a distribution rate increase of $366 million over the term of the ESP, appears to impose excessive and unreasonable rate increases on the Companies' customers, thereby conflicting with the regulatory principle of ensuring customers pay reasonable rates. IEU-Ohio witness Joseph G. Bowser also discusses other ways in which the DIR is contrary to important regulatory principles and practices.

Q24. Is the Commission required to encourage large-scale governmental aggregation?

A24. Yes. I have been advised by counsel that Section 4920.20(K), Revised Code, requires the Commission to adopt rules to facilitate large-scale governmental aggregation in the State.

Q25. Will the Stipulation frustrate or block large-scale governmental aggregation?

A25. Yes. The economic barriers to shopping that result from the Stipulation's bifurcated capacity charges will negatively affect large-scale governmental aggregation opportunities just as they will negatively affect individual customer opportunities. The very confusing queuing process reflected in Appendix C of the Stipulation may particularly hamstring governmental aggregation groups in the formative stages. As a practical matter, units of local governments with aggregation issues on the ballot to facilitate opt-out aggregation may be blindsided by the economic barriers in the Stipulation if they successfully complete the ballot process during November's general election.

Because of the negative effect on large-scale governmental aggregation programs, the Stipulation works against specific requirements in Ohio law and policies that are supposed to encourage large-scale governmental aggregation programs.

Q26. Would the Stipulation circumvent the Commission's rules?

A26. Yes. The Stipulation provides for a one-time up-front prudence review for the Timber Road REPA with automatic cost recovery through the FAC or alternative energy rider. The Stipulation also suggests a one-time up-front prudence review of shale gas contracts (with no mention of how such prudence review will take place) with costs to also be recovered through the FAC.

I have been advised by counsel that Rule 4901:1-35-09, Ohio Administrative Code, requires costs subject to collection through automatic recovery mechanisms such as the FAC must be reviewed through an annual management performance audit. Thus, the special treatment the Stipulation would afford to the Timber Road REPA and future shale gas contracts is at odds with the Commission's rules.

Q27. What finding must the Commission make before it can approve an ESP?

A27. It is my understanding that the Ohio General Assembly delegates authority to the Commission and that neither the Commission nor the parties to a stipulation and recommendation have the ability to change a law that the Ohio General Assembly has enacted. It is also my understanding that before the Commission can approve an ESP it is statutorily required to find that the ESP is more favorable in the aggregate than an MRO. Thus, satisfying this test is an important regulatory principle. Because the ESP, as modified by the Stipulation, is not more favorable than an MRO, it violates an important regulatory principle.

Q28. Did the Companies evaluate whether the ESP is more favorable in the aggregate for OPCo and CSP?

A28. No. In her testimony in support of the Stipulation, Companies' witness Thomas performs a comparison of the results under an MRO, using benchmark prices developed by the Companies to an ESP for the Companies as though they were combined. The results of this comparison are summarized on Exhibit LJT-2. The Companies did not perform a comparison of rates under an MRO versus an ESP individually for OPCo and CSP, the EDUs. I am advised by counsel that the MRO versus ESP comparison must be performed on an EDU specific basis. Based upon this, and because the comparison offered by Ms. Thomas is not focused on the EDUs, it cannot be relied upon to test the Stipulation's ESP against the MRO alternative.

Q29. Have you identified any other flaws in the analysis performed by Ms. Thomas?

A29. Yes. Even assuming Ms. Thomas' analysis focused on the EDUs, I have identified a number of flaws in the analysis performed by Ms. Thomas. The methodology utilized by Ms. Thomas for her analysis relies upon an administratively-determined market price estimate rather than the actual results from recent auctions in Ohio to establish SSO generation prices for other EDUs. Under these circumstances, I view her complete reliance on an administratively-determined price to be unreasonable given the availability of actual auction results.

Additionally, the methodology used by Ms. Thomas to develop the administratively-determined competitive benchmark price is unreasonable and unreliable in many aspects. The assumed capacity costs reflected in the competitive benchmark price in her analysis are based upon a mathematical weighting of capacity prices under PJM's Reliability Pricing Model ("RPM") and the arbitrary capacity cost of $255 per MW-day in Paragraph IV(2)(b)(1) of the

Stipulation. The resulting capacity price that Ms. Thomas applies to calculate the results of a CBP significantly overstates the capacity price that would apply to the CBP associated with the MRO option. As a result, the competitive benchmark prices in Ms. Thomas' analysis are too high by a very large margin. Ms. Thomas' comparison (as does the Staff's) also fails to identify or consider what the expected results of the ESP versus MRO comparison will be during the final year of the Stipulation's ESP. As I discuss later in my testimony, correcting this one error alone (omitting the last year) in Ms. Thomas' analysis results in the ESP failing the MRO comparison.

Further, Ms. Thomas also fails to recognize that OPCo's and CSP's current ESP includes distribution rate riders (gridSMART for CSP and the Enhanced Service Reliability Rider for OPCo and CSP) that I understand were approved pursuant to the single issue ratemaking provision of Section 4928.143(B)(2)(h), Revised Code. In projecting the cost of the Stipulation's ESP, she also ignores the DIR provided for pursuant to Paragraph IV(1)(n) of the Stipulation. I have been advised by counsel that an MRO does not permit the inclusion of these riders or charges. Therefore, the ESP versus MRO comparison must recognize the economic benefits that customers would receive under the MRO option from elimination of these riders or charges.

Additionally, adoption of the Stipulation would result in approval of the Generation Resource Rider ("GRR") as a non-bypassable placeholder rider to be used to potentially collect costs associated with the Turning Point Solar Project and a hypothetical Muskingum River 6 ("MR6") generating unit. Ms. Thomas assumes zero cost for this rider in her ESP versus MRO analysis. I have been advised by counsel that OPCo and CSP could not include this placeholder rider under an MRO. It is unreasonable to omit the potential effect of the GRR for the purpose of comparing the Stipulation's ESP to the MRO.

Finally, Paragraph IV(2)(c) of the Stipulation obligates the Companies or the successor EDU to pursue development of up to 350 MW of customer-sited combined heat and power, waste energy recovery and distributed energy resources, with costs to be recovered under an "appropriate rider." The Stipulation does not identify any statutory basis for collection of the costs of these customer-sited generation facilities. Ms. Thomas assumes zero cost for the 350 MW of customer-sited generation facilities in her ESP versus MRO analysis. I have been advised by counsel that OPCo and CSP could not include this placeholder rider under an MRO. It is unreasonable to omit the potential effect of the cost to customers of the 350 MW of customer-sited generation facilities for the purpose of comparing the Stipulation's ESP to the MRO.

Q30. Are there other reasons the Commission should not rely upon Ms. Thomas' competitive benchmark analysis?

A30. Yes. It is unreasonable to resort to administratively-determined estimates of competitive power prices when real results are readily available and more reliable. Both Ms. Thomas and Mr. Fortney use administratively-determined estimates of market prices. On August 25, 2010, the Commission approved an ESP for Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively "FirstEnergy") in Case No. 10-388-

EL-SSO. The FirstEnergy ESP is for a three-year term beginning June 1, 2011 and continuing through May 31, 2014. A key feature of the ESP is that all of the generation supply required to provide the SSO to FirstEnergy's retail customers is obtained through a CBP. The auction schedule, including the number of tranches secured in each auction and the associated delivery periods, is shown on Exhibit KMM-2. Two of the scheduled auctions have been completed to date, securing tranches associated with all three years of FirstEnergy's ESP. In the present circumstances, it is unreasonable to use administratively-determined estimated prices in view of the actual CBP information that is readily available for at least a portion of the period covered by the Stipulation's ESP. For periods after June 1, 2014, it will either be necessary to utilize administratively-determined estimated prices since comparable bid prices do not yet exist, or as the Commission has done In other circumstances, subject the Stipulation's ESP to a CBP test.

Q31. Have the ESP versus MRO comparisons provided by Staff and the Companies recognized the implications of the remand phase of the current ESP?

A31. No. As IEU-Ohio witness Bowser explains in his testimony, the Companies' current ESP revenue includes revenue from charges that I understand the Ohio Supreme Court has ruled are illegal. Since the MRO price is based upon the current ESP price, it is my opinion that the MRO option must be calculated without including the illegal portion of the current charges. The analysis performed by Ms. Thomas and Mr. Fortney used the current ESP revenue

unadjusted for the removal of the illegal charges to calculate the MRO. The use of the current ESP revenue with no adjustment to remove the illegal charges unreasonably and arbitrarily overstates the MRO alternative price.

Q32. Are there other reasons to conclude the actual results of the CBPs are the best evidence of competitive market prices and that the use of administratively-determined estimates is unreasonable?

A32. Yes. American Electric Power Service Corporation ("AEPSC") actively participated in both auctions summarized on Exhibit KMM-2 and was a winning bidder in each. As detailed in the post auction reports that have been docketed in Case No. 10-1284-EL-UNC, AEPSC was a winning bidder for 12 tranches in the October 2010 auction, consisting of 4 tranches in the June 2011 to May 2012 delivery period, 6 tranches in the June 2011 to May 2013 delivery period, and 2 tranches in the June 2011 to May 2014 delivery period. In the auction conducted in January 2011, AEPSC was a winning bidder for 12 tranches, consisting of 7 tranches in the June 2011 to May 2012 delivery period, 3 tranches in the June 2011 to May 2013 delivery period, and 2 tranches in the June 2011 to May 2014 delivery period. Thus, the auction results not only represent real world transactions, but market prices that are based upon bidding activity by the Companies' affiliates.

Q33. Are there other reasons why the administratively-determined market price estimates relied upon by Ms. Thomas and Mr. Fortney are unreasonable?

A33. Yes. The administratively-determined prices used by Ms. Thomas and Mr. Fortney are higher than actual generation supply offers from CRES providers for similar delivery periods. The competitive benchmark prices relied upon by Ms. Thomas and Mr. Fortney are also higher than publicly-available generation supply price offers from AEP Retail Energy, a CRES provider and affiliate of OPCo and CSP. For example, soon after the Companies submitted their application in this proceeding, my employer, a commercial customer served under CSP Rate GS2, received an unsolicited offer from AEP Retail Energy for a 36-month term at prices significantly lower than the competitive benchmark prices relied upon by Ms. Thomas and Mr. Fortney. A copy of the solicitation is attached as Exhibit KMM-3 to my testimony. Further, AEP Retail Energy has had an open offer for several months soliciting residential customers served by Duke Energy Ohio. Details of the offer are posted on AEP Retail Energy's website at: https://aepretailenergy.com/residential/get-started/duke-energy (last accessed September 22, 2011). As shown on Exhibit KMM-4, AEP Retail Energy is offering a price of 5.89 cents per kWh through the end of 2011. More recently, as also shown on Exhibit KMM-4, AEP Retail Energy began offering CSP residential customers a price of 7.15 cents per kWh through the end of 2011, which then increases to a price of 7.35 cents per kWh through May 2013. Border Energy is also soliciting CSP residential customers with an offer price of 7.26 cents per kWh through December 2012. On September 23, 2011, FirstEnergy Solutions announced it would offer residential customers of CSP a price of 6.69 cents per kWh on electric generation through September 2013[6]. All of these

[6] A copy of FirstEnergy Solutions news release announcing the offer is available at: http://finance.yahoo.com/news/FirstEnergy-Solutions-prnews-1023326791.html?x=0&.v=1 (last accessed September 27, 2011).

readily available public price offers are significantly lower than the residential competitive benchmark prices relied upon by Ms. Thomas and Mr. Fortney.

Q34. What are the results of the competitive bids conducted to obtain SSO generation supply for FirstEnergy?

A34. In the October 2010 auction, 17 tranches for the June 2011 to May 2012 delivery period were cleared at a price of $54.55 per megawatt hour ("MWh"), 17 tranches for the June 2011 to May 2013 delivery period were cleared at a price of $54.10 per MWh, and 16 tranches for the June 2011 to May 2014 delivery period were cleared at a price of $56.58 per MWh. A report detailing the results of the October 2010 auction was docketed on November 15, 2010 in Case No. 10-1284-EL-UNC**.**

In the January 2011 auction, 17 tranches for the June 2011 to May 2012 delivery period were cleared at a price of $56.13 per MWh, 17 tranches for the June 2011 to May 2013 delivery period were cleared at a price of $54.92 per MWh, and 16 tranches for the June 2011 to May 2014 delivery period were cleared at a price of $57.47 per MWh. A report detailing the results of the January 2011 auction was docketed on February 17, 2011 in Case No. 10-1284-EL-UNC.

Q35. Are there any other aspects of the auction results that the Commission should take into consideration?

A35. Yes. PJM requires load-serving entities ("LSE"), other than those electing a fixed resource requirement ("FRR"), to obtain capacity through periodic auctions under PJM's RPM. The initial auction, called the base residual auction, is conducted three years in advance of the delivery year. It is followed by up to three incremental auctions conducted closer to the delivery year.

When FirstEnergy made the commitment to join PJM, the base residual auctions for the 2011-2012 and 2012-2013 delivery years had already occurred. Thus, it was necessary to establish a transition mechanism for FirstEnergy. The FRR option allows LSEs to submit a plan to PJM that identifies their load and the capacity resources dedicated to serve the load and provide adequate capacity reserves. An approved FRR plan allows an LSE to forego PJM's base residual auction.

The transition plan developed for FirstEnergy established a two-year FRR to allow FirstEnergy to synchronize with PJM's normal RPM cycle. FirstEnergy's transition plan to enter PJM required it to obtain the necessary capacity resources for the 2011-2012 and 2012-2013 delivery years and include those capacity resources in an FRR plan submitted to PJM prior to each delivery year. The transition plan provided that FirstEnergy would participate in the base residual auction for the 2013-2014 delivery year. The base residual auction for the 2013-2014 delivery year ("RTO locational deliverability area" or "RTO LDA") cleared at a price of $27.73 per MW-day.

Because FirstEnergy's Ohio EDUs do not own generating assets, two integration auctions were conducted to obtain capacity resources for the 2011-2012 and 2012-2013 delivery years. The 2011-2012 FRR integration auction cleared 12,583.2 MW of unforced capacity in the RTO at a resource clearing price of

$108.89 per MW-day. The 2012-2013 FRR integration auction cleared 13,038.7 MW of unforced capacity in the RTO at a resource clearing price of $20.46 per MW-day. Bidders in the auctions to obtain SSO generation supply for FirstEnergy were required to rely upon capacity secured in the two integration auctions and reflect this in their offer prices for the 2011-2012 and 2012-2013 delivery periods. Bidders in the auctions to obtain SSO generation supply for FirstEnergy will rely upon capacity secured through PJM's base residual auction for the 2013-2014 delivery period.

These capacity clearing prices from the FirstEnergy auctions are very similar to the prevailing capacity prices in the base residual auction for the unconstrained region of PJM for the same delivery year, which were $110.00 per MW-day for the 2011-2012 delivery year and $16.46 per MW-day for the 2012-2013 delivery year. The Companies provide service within this unconstrained PJM region. Thus, the transitional FRR integration auctions conducted for FirstEnergy are representative of market conditions and pricing outcomes in the unconstrained region of PJM, which includes the Companies. [BEGIN CONFIDENTIAL TESTIMONY]

[END CONFIDENTIAL TESTIMONY]

The capacity prices resulting from these actual auctions [BEGIN CONFIDENTIAL TESTIMONY] [END CONFIDENTIAL TESTIMONY] are significantly below the assumed capacity prices reflected in Ms. Thomas' analysis. Accordingly, it is my opinion that Ms. Thomas' analysis significantly overstates the capacity component of prices in addition to the other defects that I have identified.

Q36. Has Ms. Thomas made additional errors that result in the capacity component of her benchmark prices being overstated?

A36. Yes. To derive the competitive benchmark price used in her analysis, rather than assuming all capacity was priced at prevailing market prices, Ms. Thomas mathematically weighed capacity costs to reflect the percentage limitations on access to RPM-priced capacity afforded to CRES providers pursuant to Paragraph IV(2)(b)(3) of the Stipulation. In other words, as shown in Table 5 on page 13 of her testimony, in 2012, the capacity component of her benchmark price reflects 79% of the load served with capacity priced at $255 per MW-day, with the remaining 21% of load served with capacity priced at the prevailing RPM-based price. The blending percentages adjust in subsequent periods to track the percentage limitations in Paragraph IV(2)(b)(3) of the Stipulation.

Q37. Why is Ms. Thomas' use of the arbitrary $255 per MW-day capacity cost incorrect?

A37. Ms. Thomas is relying upon the so-called State Compensation Mechanism referenced in Paragraph IV(2)(b)(1) of the Stipulation to derive the capacity prices reflected in her competitive benchmark price. The State Compensation Mechanism results from Schedule 8.1, Section D.8 of PJM's Reliability Assurance Agreement, which provides (emphasis added):

> In a state regulatory jurisdiction that has implemented retail choice, the FRR Entity must include in its FRR Capacity Plan all load, including expected load growth, in the FRR Service Area, notwithstanding the loss of any such load to or among alternative retail LSEs. In the case of load reflected in the FRR Capacity Plan **<u>that switches to an alternative retail LSE</u>**, where the state regulatory jurisdiction requires switching customers or the LSE to compensate the FRR Entity for its FRR capacity obligations, such state compensation mechanism will prevail. In the absence of a state compensation mechanism, the applicable **<u>alternative retail LSE</u>** shall compensate the FRR Entity at the capacity price in the unconstrained portions of the PJM Region, as determined in accordance with Attachment DD to the PJM Tariff, provided that the FRR Entity may, at any time, make a filing with FERC under Sections 205 of the Federal Power Act proposing to change the basis for compensation to a method based on the FRR Entity's cost or such other basis shown to be just and reasonable, and **<u>a retail LSE</u>** may at any time exercise its rights under Section 206 of the FPA.

Ms. Thomas fails to recognize that under an MRO, which provides for generation prices to be established in part pursuant to a CBP, the CBP supply component of the SSO involves a wholesale transaction. In other words, the MRO option requires the EDU to purchase generation supply for resale. The EDU's CBP supply in the MRO option is not a retail transaction involving a CRES or "load serving entity" or "LSE" in PJM language. Thus, the State Compensation Mechanism reflected in PJM's tariff is not applicable to the CBP supply component of the MRO option. The CBP supply component is priced in accordance with provisions applicable to wholesale transactions which are, as I understand it, subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC"). Thus, Ms. Thomas' premise for her estimated capacity prices (the State Compensation Mechanism) is incorrect.

Q38. What information did you rely upon to conclude that capacity prices under an MRO would be wholesale transactions not subject to the State Compensation Mechanism?

A38. I reviewed the relevant sections of PJM's tariff and discussed this matter with counsel. The plain language of PJM's tariff regarding the State Compensation Mechanism refers to retail transactions.

Q39. Has AEP opined on this subject?

A39. Yes. On April 4, 2011, AEPSC filed a complaint at FERC in Docket No. EL11-32-000 regarding Schedule 8.1, Section D.8 of PJM's Reliability Assurance Agreement. In the complaint, AEPSC argued that when CRES providers purchase capacity from the companies it is a wholesale transaction and thus FERC jurisdictional. The Companies also took this position in testimony filed on August 31, 2011 in Case No. 10-2929-EL-UNC.

Q40. How would capacity be priced if a competitive bid was conducted while the Companies are an FRR entity?

A40. The Companies could negotiate a price at which they would sell capacity resources they have designated under their FRR plan to potential suppliers in the CBP and bidders would reflect these prices in their bids. Alternatively, prospective bidders could obtain other capacity resources through ownership or bilateral contracts that they would substitute for currently designated capacity resources in the Companies' current FRR plan and reflect the prices of this capacity in their bids.

Q41. Would potential bidders in a CBP process associated with an MRO be willing to pay $255 per MW-day for capacity?

A41. No. While potential bidders may be willing to obtain capacity to support their bids, there is no good or rational reason why they would be willing to pay more than the prevailing market prices for capacity. As previously discussed, prevailing market prices are readily discernable from the base residual auctions that have been conducted by PJM as well as the FRR integration auctions conducted for FirstEnergy. These prevailing known and measurable capacity prices are substantially below $255 per MW-day.

Q42. Have you derived market price estimates for the term of the Companies' ESP based upon the results of the competitive bids conducted to obtain SSO generation supply for FirstEnergy?

A42. Yes. Based upon the results of the recent auctions to solicit SSO generation supply for FirstEnergy, I selected a price of $57.47 per MWh as an appropriate market price estimate, which is the clearing price for 16 tranches for the June 2011 to May 2014 delivery period. I elected to use only the results of the January auction since the prices were slightly higher than prices for tranches secured in the October 2010 auction. These tranches secured during the auction are for the delivery of power during a term that covers the first 29 months of the Stipulation's proposed ESP. To be conservative, I took the highest clearing price from the January auction, although the other lower-priced tranches secured during this auction also are for the delivery of power during a time period that coincides with the Companies' proposed ESP. For the period of June 2014 through May 2015, I adopted the market price estimate of $72.32 contained within the testimony of Ms. Thomas. For the period of June 2015 through May 2016, I kept the market price equal to the June 2014 through May 2015 market price estimate of $72.32 to be conservative.

Q43. Did the CBP used to secure generation supply for FirstEnergy's SSO load require winning bidders to supply alternative energy resources or credits?

A43. No. FirstEnergy plans to conduct a separate request for proposals to obtain renewable energy credits to satisfy its statutory obligations.

Q44. Did you make any adjustments to your market price estimate?

A44. Yes. Because the auction to obtain generation supply for FirstEnergy's SSO load did not include the requirement for winning bidders to supply alternative energy resources or credits, I adjusted the market price upwards to reflect the cost of the alternative energy requirement in the competitive benchmark price reflected in the testimony of Ms. Thomas. It is my understanding these values represent the Companies' estimated cost of compliance with Ohio's alternative energy requirement. This requires an upward adjustment of $.54 per MWh in 2012, $.79 per MWh in the January 2013 through May 2014 period, and $1.03 per MWh in the June 2014 through May 2015 period. Ms. Thomas did not provide an estimate of competitive benchmark prices for June 2015 through May 2016. I escalated the price upward by $1.28 per MWh in the June 2015 through

May 2016 period to reflect alternative energy requirements. I selected $1.28 per MWh since the Companies' estimated cost of compliance with Ohio's alternative energy requirements is escalated at approximately $0.25 per MWh.

Q45. Are there any other factors that are necessary to consider in the comparison of the expected results of an MRO versus the Companies' proposed ESP?

A45. Yes. OPCo and CSP have two distribution riders that were approved as part of their current ESPs. These riders are the gridSMART Rider (specific to CSP) and the Enhanced Service Reliability Rider (applicable to CSP and OPCo). Based upon discussions with counsel, it is my understanding that these riders were approved pursuant to Section 4928.143(B)(2)(h), Revised Code. I have been advised by counsel that the single issue distribution ratemaking provision of Section 4928.143(B)(2)(h), Revised Code, is not available under an MRO and that, under an MRO, the SSO price is a proportional blend of the bid price and <u>the generation service price</u> for the remaining SSO load. Therefore, the ESP versus MRO comparison must recognize the elimination of the gridSMART Rider and the Enhanced Service Reliability Rider under an MRO. The Stipulation, if approved, would also allow the Companies to implement the DIR and the Storm Damage Recovery Mechanism. The ESP versus MRO comparison must recognize the elimination of these riders for the purpose of specifying the cost of the MRO alternative.

Q46. Does the ESP versus MRO comparison performed by Ms. Thomas recognize the costs associated with the proposed GRR?

A46. No. The Stipulation would establish the non-bypassable GRR as a placeholder rider with an initial cost of zero. The Stipulation would allow the Companies to seek recovery through subsequent proceedings of the cost of the Turning Point Solar Project and a new MR6 unit. On July 1, 2011, the Companies filed supplemental testimony indicating they had reached definitive agreements with the Turning Point Solar Project developer. Companies' witness Phillip J. Nelson provided supplemental testimony that includes the projected revenue requirement for the project. Companies' witness David M. Roush provided supplemental testimony that includes the estimated rate in 2013 for the GRR based upon the expected cost of the Turning Point Solar Project. However, Ms. Thomas does not address or recognize the costs associated with the GRR in her ESP versus MRO analysis and her omission of the effects of the GRR is unreasonable.

A47. Is it necessary to recognize the costs associated with the GRR in the ESP versus MRO comparison?

A47. Yes. I have been advised by counsel that an ESP permits, under certain circumstances and provided statutory criteria are met, a non-bypassable charge to recover the costs associated with new generating facilities to be approved by the Commission as an element of an ESP. However, there is no similar provision that allows such a non-bypassable charge under an MRO.

A48. Did you perform a comparison of the expected results of an MRO versus the Companies' proposed ESP using these estimated market prices and the adjustments you have described in your testimony?

A48. Yes. I analyzed two scenarios for both OPCo and CSP. I elected to analyze two scenarios due to events that have occurred subsequent to the submission of the Companies' application in this proceeding. On April 19, 2011, the Ohio Supreme Court issued a decision on two appeals of the Companies' current ESP. The Court reversed the Commission's decision allowing inclusion of 2001-2008 environmental carrying costs and declared that the Commission illegally authorized recovery of a provider of last resort ("POLR") charge. In response, on May 4, 2011, the Commission issued an entry directing the Companies to file proposed tariffs by May 11, 2011 removing 2001-2008 environmental carrying costs and POLR charges from the current ESP rates. On May 25, 2011, the Commission issued an entry reversing its May 4 entry and directed the Companies to maintain its existing rates with the unlawful POLR and environmental carrying costs to be collected subject to refund. The remand phase of the case has been fully briefed but a decision has not been issued. Because the outcome of the remand case is not known prior to the submission of my testimony, I considered two scenarios to provide a range of possible outcomes.

In the first scenario, I made no adjustment to the current or proposed ESP prices to remove the environmental carrying cost charges and the POLR charges. I added estimated alternative energy costs to the assumed competitive bid results of the MRO. The results of that comparison are shown on Exhibit KMM-5 on line 33. In this scenario, over the proposed 53-month term, OPCo's proposed ESP is less favorable than an MRO by $3.35 per MWh or $385 million over the term of the proposed ESP, and CSP's proposed ESP is less favorable than an MRO option by $5.21 per MWh or $402 million over the term of the proposed ESP.

In the second scenario, I adjusted the current and proposed ESP prices down to remove 2001-2008 environmental carrying costs embedded in current base generation rates as a result of the Commission's May 4, 2011 entry in Case Nos. 08-917-EL-SSO *et al.,* and also removed 2011 environmental compliance costs. I eliminated the effects of the current and proposed POLR charges. I made the additional adjustments discussed previously in my testimony. The results of that comparison are shown on Exhibit KMM-6 on line 34. After making appropriate adjustments, over the proposed 53-month term, OPCo's proposed ESP is less favorable than an MRO by $7.87 per MWh or $905 million over the term of the proposed ESP, and CSP's proposed ESP is less favorable than an MRO option by $10.30 per MWh or $796 million over the term of the proposed ESP.

Q49. Earlier in your testimony, you identified that Ms. Thomas omits the final year of the ESP in her analysis. How does correcting this error alone impact the results of her analysis?

A49. Exhibit KMM-7 replicates Exhibit LJT-2 that appears in Ms. Thomas' testimony. The ESP and MRO value shown on Exhibit KMM-7 are identical to the ESP and MRO values shown on Exhibit LJT-2 for the periods of 2012, January 2013 through May 2014, and June 2014 through May 2015. Exhibit KMM-7 differs from Exhibit LJT-2 in that it includes a column showing the ESP versus MRO comparison for June 2015 through May 2016, the last year of the Stipulation ESP. To be conservative, for the period of June 2015 through May 2016, I kept the market price equal to the market price Ms. Thomas estimates for June 2014 through May 2015 ($72.32 per MWh) when she estimates market prices with capacity prices based upon PJM's bidding process as shown on Exhibit LJT-1, page 2 of 3. As shown on Exhibit KMM-7, when the final year is included in her ESP versus MRO analysis, the ESP is less favorable than the MRO by $.48 per MWh or $92 million over the term of the ESP. Thus, correcting this error alone (omitting the final year) and ignoring the other errors in Ms. Thomas' analysis that I have identified in my testimony shows the Stipulation ESP does not pass the ESP versus MRO test.

Q50. Did the Staff perform an analysis of the results of the ESP versus an MRO?

A50. Yes. Robert B. Fortney testified on behalf of the Staff in support of the Stipulation. Attachment A to his testimony shows the results of the ESP versus MRO analysis he performed. Mr. Fortney presented results assuming combined EDUs. He did not present results individually for OPCo or CSP.

Q51. Do you agree with the analysis and conclusions of Mr. Fortney?

A51. No. Mr. Fortney's analysis also omits the final seventeen months of the Stipulation's ESP. Exhibit KMM-7 replicates Attachment A to Mr. Fortney's testimony but includes two additional columns in the ESP versus MRO comparison to illustrate the final seventeen months under the Stipulation's ESP. As shown on Exhibit KMM-8, correcting for the omission of the final seventeen months and maintaining all other assumptions relied upon by Mr. Fortney demonstrates the ESP is not more favorable in the aggregate than the MRO. When the last seventeen months are considered in the analysis, using the same values relied upon by Mr. Fortney the ESP is less favorable than the MRO by $1.01 per MWh, or $194 million over the term of the ESP.

Q52. Are there additional errors in the analysis performed by Ms. Thomas and Mr. Fortney?

A52**.** Yes. Both Ms. Thomas and Mr. Fortney ignore the costs over the term of the ESP associated with the DIR ($366 million), the gridSMART Rider ($28 million specific to CSP) and the Enhanced Service Reliability Rider ($130 million). As previously discussed in my testimony, the costs collected through these distribution riders would not be permitted under an MRO. Thus, these additional costs, which total $524 million, need to be scored in the ESP versus MRO comparison.

Q53. Are there any other factors that the Commission should consider regarding the ESP versus MRO comparison?

A53. Yes. There are additional costs that the Stipulation would impose on customers that are not reflected in the ESP versus MRO analysis reflected in Exhibit KMM-5 and Exhibit KMM-6. These include:

- Lost opportunity costs incurred by customers that cannot switch to CRES providers due to the economic cap on shopping that exists through the capacity pricing mechanism reflected in the Stipulation.
- Any transmission or distribution related corporate separation costs that the Companies may seek to recover from customers.

- Any costs that the Companies may seek to recover through the Pool Modification Rider.

- Any costs associated with MR6 or other generating plants that the Companies may seek to recover through the GRR.

- The costs associated with development of up to 350 MW of customer-sited combined heat and power, waste energy recovery and distributed energy resources to be recovered under an "appropriate rider."

Q54. Have you quantified the additional costs?

A54. It is possible to estimate the lost opportunity costs incurred by customers that cannot switch to CRES providers due to the economic cap on shopping that exists through the capacity pricing mechanism reflected in the Stipulation. The Companies have stated they do not expect shopping levels to occur beyond the capped levels that have access to RPM-priced capacity (21% in 2012, 29% or 31% in 2013 and 41% in 2014). This means that in those years in which market prices are expected to be below the ESP price, customers incur a lost opportunity cost from their inability to switch to a CRES provider and pay a market-based and lower price for electricity. For example, using the value shown on Exhibit KMM-5 for CSP, in 2012 the average ESP price is expected to be $64.63 per MWh, while the average market price (including alternative energy requirements) is projected to be $58.01 per MWh. If 79% of the total load is economically captive due to capacity pricing provisions in the Stipulation for 2012, customers lose the ability to switch to a CRES provider and save $6.62 per

MWh. The ESP versus MRO comparison shown on Exhibit KMM-5 captures $3.69 per MWh of the lost opportunity cost. Because the projected market prices are less than the projected MRO prices, there is incremental lost opportunity costs of $2.69 per MWh not captured in the ESP versus MRO comparison for 2012. I performed similar computations in the balance of the Stipulation ESP for each year after 2012 where the Stipulation ESP price is above market.

I don't believe that all customers would immediately switch to a CRES provider when market rates are below ESP prices due to factors such as customer inertia and the time required to make and execute a decision. Other customers, such as universal service fund ("USF") customers, are prohibited by the Commission's rules from obtaining service from CRES providers. Nonetheless, and to illustrate the effect of the lost opportunity cost that the Stipulation ESP imposes on customers, I assumed that 50% of the customers economically captive due to capacity pricing provisions would actually switch to a CRES provider if provided the opportunity. Based upon this assumption and the computation described above, the Stipulation results in approximately $110 million in lost opportunity costs over the term of the ESP that are not captured in my ESP versus MRO analysis.

There are additional costs of the Stipulation ESP that I have not quantified. These include the costs of the Companies' alternative energy compliance, costs to be recovered under the storm damage recovery mechanism, costs associated with pool termination or modification, costs of 350 MW of customer-sited combined heat and power, waste energy recovery and distributed generation.

Additionally, under the Stipulation ESP, the Companies may seek recovery of costs associated with MR6. I have not attempted to quantify those costs as well. I am not aware of any information in this proceeding that would allow anyone to quantify these costs. However, these are additional costs under the ESP that would not exist under an MRO. Therefore, the costs cannot be ignored when making a comparison and some weight must be given to these unquantified costs.

Q55. Do you agree with the testimony of Companies' witness William A. Allen that the bifurcated capacity pricing mechanism reflected in the Stipulation is a benefit to customers?

A55. No. The status quo is that customers that switch to CRES providers have access to capacity that is priced at the prevailing RPM price for capacity. The Stipulation proposes to take this away from customers by limiting access to RPM-priced capacity to a portion of the Companies' retail load. It is illogical and unreasonable to characterize the removal of beneficial rights away from consumers as providing consumers with a benefit.

Q56. Does the Stipulation provide any benefits to customers?

A56. There are a few items that provide limited benefits that might not exist under an MRO. The Companies have agreed to provide $3 million in annual funding for the Partnership for Ohio and $5 million in annual funding for the Ohio Growth Fund if minimum return on equity thresholds are satisfied.[7]

Q57. What are your conclusions regarding the ESP versus MRO comparison?

A57. Because the ESP, as modified by the Stipulation, is not more favorable than an MRO under any set of reasonable assumptions validated based upon actual market observations, it violates an important regulatory principle. Therefore, the Commission should reject the Stipulation.

Q58. As a package, does the Stipulation benefit ratepayers and the public interest?

A58. No. As an initial matter, the Stipulation does not appear to be a complete package capable of evaluation because it defers many important details to be developed in the future:

- Paragraph IV(1)(r) of the Stipulation requires details of the CBP to be developed by the CBP manager in conjunction with Signatory Parties. It is not clear from the Stipulation whether the Commission is required to approve the selection of the CBP manager or if that is a matter left to the discretion of the Companies. It is not clear from the Stipulation whether the details of the CBP, once developed by the bid manager in conjunction with Signatory Parties, are to be approved by the Commission. The Stipulation provides that the recovery of the costs of the competitive bid

[7] Based upon Exhibit WAA-5 to the testimony of Companies' witness William A. Allen, page 6 of 8, the Companies are projecting they will not meet these earnings thresholds in 2012.

through retail rates is a matter to be developed by the Signatory Parties. It is not clear whether the Stipulation requires the retail rates to be developed by the Signatory Parties is subject to approval by the Commission, or whether approval of the Stipulation defers recovery of the costs of the competitive bid through retail rates as a matter simply for the Signatory Parties to address.

- Paragraph IV(1)(n) of the Stipulation requires an advisory group of Signatory Parties to develop a rate decoupling proposal for non-demand metered customers. This paragraph includes a sentence that states "Approval of the Stipulation by the Commission indicates acceptance of the Signatory Parties' recommendation." Thus, it is not clear whether the rate decoupling proposal to be developed by the Signatory Parties is subject to further Commission approval.

- Paragraph IV(2)(c) of the Stipulation requires the Companies to consult with OEC, ELPC, OEG and the OMA Energy Group to develop a filing to recover the costs associated with the development of up to 350 MW of customer-sited combined heat and power, waste energy recovery and distributed energy resources. If the Stipulation is accepted by the Commission, it is not clear whether this paragraph of the Stipulation requires the Commission to accept the future filing and its cost recovery mechanism regardless of the terms and conditions of the future filing.

- The Companies are to collaborate with the Staff on the use of funds by the Partnership for Ohio.

- An advisory group of interested Signatory Parties is to develop the framework and criteria for the Companies' funding of the Ohio Growth Fund. The Stipulation does not appear to provide the Commission with discretion to direct how funds are to be used or any oversight opportunity.

- The Companies will participate with the OHA in an advisory group to address emergency preparedness coordination, circuit reliability and redundancy.

- The Companies will work with Signatory Parties to develop programs and opportunities for the commitment of customer-sited resources in exchange for incentive payments or exemptions from applicable cost recovery mechanisms.

- The Stipulation provides for full Commission approval of a corporate separation plan when no corporate separation plan to reflect the provisions of the Stipulation is before the Commission.[8]

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[8] The Companies appear to have recognized this defect in the Stipulation when they filed a motion on September 21, 2011 for leave to file revised testimony for Companies' witness Richard E. Munczinski. Mr. Munczinski's revised testimony adds Exhibit REM-1 to Mr. Munczinski's testimony. Exhibit REM-1 is not a revised corporate separation plan, but a description of what a revised corporate separation plan might look like at some point in the future. Mr. Munczinski's revised testimony does not change the fact that the Stipulation requests that the Commission approve a corporate separation plan that does not currently exist.

- The Stipulation links shopping opportunities and rates to the enactment of securitization legislation without specification of the details that need to be in the legislation.

Therefore, I don't believe the Stipulation, in its present form, is a complete package that is capable of evaluation by the Commission under its three-part test.

Q59. Does the Stipulation contain provisions that are contrary to the public interest?

A59. Yes. For example, it is my understanding that Section 4928.141(A), Revised Code, requires electric distribution companies to provide a comparable and non-discriminatory SSO:

> Beginning January 1, 2009, an electric distribution utility shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service.

It is my understanding that the State's policy, as reflected in Section 4928.02, Revised Code, also requires non-discriminatory electric services:

> It is the policy of this state to do the following throughout this state:
>
> (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;

The Stipulation provisions restricting access to RPM-priced capacity are both arbitrary and unduly discriminatory. Therefore, the Stipulation violates an important regulatory principle, and is also contrary to the public interest.

The Stipulation provisions restricting access to RPM-priced capacity are also at odds with the State's policies supporting competitive electricity markets. This is a further basis for the Commission to find the Stipulation is contrary to the public interest.

III. CONCLUSION

Q60. What are your conclusions regarding the Stipulation?

A60. The Stipulation is not the product of serious bargaining among capable and knowledgeable parties. The Stipulation violates important regulatory principles and practices. The Stipulation is an incomplete package and does not benefit ratepayers and the public interest. Therefore, the Commission should reject the Stipulation.

Q61. Mr. Murray, you have provided information and reasons why the Stipulation and the ESP proposed therein should be rejected. If the Commission wanted to address the more fundamental problems with the ESP proposed in the Stipulation for purposes of modifying and approving such proposed ESP, are there elements of the Stipulation ESP that the Commission should modify?

A61. As my testimony explains, I believe that the ESP outlined (not detailed) in the Stipulation is not salvageable for a variety of reasons that I regard as important reasons. So, any effort to modify the Stipulation ESP would be an effort to mitigate the damage that is done by the Stipulation and I would strongly encourage the Commission to not approach this important work as though the regulatory mission was to advance the public interest through damage control. Rather than modifying the Stipulation ESP, I would encourage the Commission to reject it. Based on advice of counsel, it is my understanding that rejecting the Stipulation ESP would cause the current ESP for each EDU to remain in place until such time as the Commission lawfully approves a new SSO under the ESP or the MRO option and I regard this outcome to be highly superior to any form of damage control that might be accomplished by modifying the Stipulation ESP. I would also note that during a recent earnings call, Mike Morris, AEP's Chief Executive Officer, indicated that maintaining the current ESP would be an acceptable outcome.

Despite my significant reservations about suggesting damage control modifications to the Stipulation ESP and in response to your question, I offer the following list of modifications for the Commission's consideration. The list is offered in the aggregate and not as a menu from which the Commission might pick to make incremental modifications to the Stipulation ESP. It is my opinion that all of the modifications on the list are essential to do the most effective job of damage control.

- Initially, the revenue foundation for the Stipulation ESP must be reconciled with the results required by the Ohio Supreme Court decision described above and to reflect the results of at least the pending FAC audit proceedings which are awaiting a Commission decision. This reconciliation should be done separately for OPCo and CSP.

- The Stipulation ESP should be modified to retain separate generation, transmission and distribution rates for OPCo and CSP and also maintain the current rate schedules, rate design and revenue distribution. Reconciliation between the revenue produced by rates currently in effect and revenues authorized by the modified Stipulation ESP should be accomplished by applying a uniform percentage to all current rates and charges (customer, demand, energy) to maintain the current rate relationships except in the case of the interruptible credit after the rates are adjusted, should any adjustment be required, for the reconciliation described above. The interruptible credit should be no less than the current level or it should be increased to the amount in the Stipulation ESP so as to encourage customer-sited demand response initiatives that should then be counted towards OPCo's and CSP's compliance with the portfolio requirements. Adopting this recommended modification eliminates the need for the LFP and MTR provisions in the Stipulation ESP.

- The commencement of any amortization of the phase-in deferral for OPCo should await final orders in at least the pending remand proceeding and the FAC audits so that the deferral amount that is subject to amortization reflects, as close as possible, the amount that OPCo should be given an opportunity to collect from customers. Interest charges on the amortization should be reduced to a current reasonable debt interest rate (not an arbitrary interest rate such as the one in the Stipulation). Any linkage in the Stipulation ESP between the timing and amount of any amortization and securitization legislation should be eliminated. By using a current debt interest rate and in view of the relatively low rate of interest on commercial loans, I believe substantially all of the consumer value that might be claimed to result from securitization (if done properly) can be and should be provided to consumers without need for additional legislation.

- The provisions in the Stipulation ESP that arbitrarily increase generation-related charges should be eliminated.

- The provisions in the Stipulation ESP that provide the Companies with hundreds of millions of dollars of distribution rate increases predicated on plant additions after 2000 and thereafter should be eliminated and the level and structure of distribution rates should be addressed in the pending distribution rate increase proceedings for OPCo and CSP.

- The provisions in the Stipulation ESP that directly or indirectly limit shopping, such as the arbitrary $255 per MW-day capacity charge, should be eliminated and shopping should be allowed to proceed based on market-based capacity prices in accordance with the current rules and decisions of the Commission. Any linkage in the Stipulation ESP between shopping and the passage or implementation of securitization legislation should be eliminated. Any change in the current market-based capacity price should be taken up in Case No. 10-2929-EL-UNC and be limited to accounts that shop after any change is approved by the Commission.

- The provisions in the Stipulation that create "placeholder riders" like the GRR should be eliminated or made bypassable for shopping customers.

- The provisions in the Stipulation that express support for termination of the various AEP system pool agreements or support for corporate separation should be eliminated. Judgment should be reserved until such time as the Commission has received detailed proposals on such subjects.

- The provisions in the Stipulation that may lock the Commission into a particular approach for establishing a successor SSO should be eliminated.

Q62. **Does this conclude your testimony?**

A62. Yes.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Direct Testimony of Kevin M. Murray on Behalf of Industrial Energy Users-Ohio* was served upon the following parties of record this 27th day of September 2011, *via* electronic transmission, hand-delivery or first class mail, postage prepaid.

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