

**BEFORE THE
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 Revs. 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

POST-HEARING BRIEF OF FIRSTENERGY SOLUTIONS CORP.

PUBLIC VERSION

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I. INTRODUCTION

The Commission should reject the Stipulation & Recommendation filed on September 7, 2011 (the “Partial Stipulation”) by Columbus Southern Power Company (“CSP”) and Ohio Power Company (“OPCo”) (collectively, “AEP Ohio”) and other Intervenor¹ (collectively, the “Signatory Parties”). The Partial Stipulation is not supported by FirstEnergy Solutions Corp. (“FES”), the Office of Ohio Consumers’ Counsel (“OCC”), Ohio Partners for Affordable Energy (“OPAE”), the Appalachian Peace and Justice Network (“APJN”), Ormet Primary Aluminum Corporation (“Ormet”), and the Industrial Energy Users-Ohio (“IEU”). And for good reason: the Partial Stipulation has no basis in law or policy; and it will impose nearly \$1 billion in above-market prices on AEP Ohio’s customers while preventing those customers from seeking lower prices in the competitive market. While other utilities’ customers currently receive millions of dollars in savings from competitive offers using market pricing, the Partial Stipulation is designed to prevent a majority of AEP Ohio customers from receiving the same benefits until June 1, 2015. The Commission should not condone AEP Ohio’s attempt to protect its own generation at the expense of retail customers and competitive markets.

The Partial Stipulation seeks to resolve multiple proceedings in a manner which would have significant and adverse impacts on all of AEP Ohio’s customers. One element of the Partial Stipulation is an electric security plan for AEP Ohio’s standard service offer (“SSO”) customers

¹ In addition to Staff, the Stipulating Parties are Ohio Energy Group (“OEG”), Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (jointly, “Constellation”), Ohio Hospital Association (“OHA”), Ohio Manufacturers’ Association Energy Group (“OMA-EG”), The Kroger Company (“Kroger”), City of Hilliard, Ohio (“Hilliard”), City of Grove City, Ohio (“Grove City”), Association of Independent Colleges and Universities of Ohio (“AICUO”), Exelon Generation Company, LLC (“Exelon”), Duke Energy Retail Sales, LLC (“Duke Retail”), AEP Retail Energy Partners LLC (“AEP Retail”), Wal-Mart Stores East, LP and Sam’s East, Inc. (“Wal-Mart”), Retail Energy Supply Association (“RESA”), Paulding Wind Farm II LLC (“Paulding”), Ohio Environmental Council (“OEC”), Environmental Law and Policy Center (“ELPC”), Natural Resources Defense Council (“NRDC”), Enernoc, Inc. (“Enernoc”), and PJM Power Providers Group (“P3”).

(the “Proposed ESP”). The Proposed ESP would establish “a standard service offer of all competitive retail electric services necessary to maintain essential electric service” for SSO customers, for service starting January 1, 2012 through May 31, 2015.² Another element of the Partial Stipulation is a proposal to resolve the Commission’s review of the wholesale capacity charges to be imposed by AEP Ohio on CRES providers serving non-SSO customers in Case No. 10-2929-EL-UNC (the “10-2929 Docket”), which AEP Ohio seeks to set at purportedly cost-based rates that are well-above market prices. The Partial Stipulation also resolves AEP Ohio’s merger application,³ its application to amend its emergency curtailment service riders,⁴ and its application for approval of a mechanism to recover fuel costs deferred in its first ESP proceeding.⁵ FES’ opposition to the Partial Stipulation focuses on the Proposed ESP and the proposed resolution of the 10-2929 Docket. Both proposals must be rejected because they violate Ohio law and policy and will cost AEP Ohio’s customers a billion dollars more than market-based rates.

As discussed in Sections II and IV below, the Proposed ESP is not more favorable in the aggregate than the expected results of a Market Rate Offer or “MRO.” An electric security plan or “ESP” must satisfy the statutory standards set forth in R.C. § 4928.143. Here, the Proposed ESP does not. Given the Commission’s Order on Remand issued October 3, 2011, in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO (the “Remand Order”), which removed all Provider of Last Resort (“POLR”) charges from AEP Ohio’s current SSO rates, all witnesses agree that the Proposed ESP’s pricing is less favorable than MRO pricing. Indeed, after adjusting only for the

² Revised Code (“R.C.”) § 4928.141(A); *see also* Case Nos. 10-346-EL-SSO and 10-348-EL-SSO.

³ Case No. 10-2376-EL-UNC.

⁴ Case Nos. 10-343-EL-ATA and 10-344-EL-ATA.

⁵ Case Nos. 11-4920-EL-RDR and 11-4921-EL-RDR.

impact of the Remand Order, Staff witness Fortney agreed that the ESP fails his quantitative test because retail customers will pay AEP Ohio at least \$276.6 million more under the Proposed ESP than they would under an MRO in the first 36 months.⁶ Similarly, FES witness Schnitzer estimated that the Proposed ESP would result in excess costs of \$350 million to \$800 million as compared to an MRO.⁷ In fact, AEP Ohio's own witness testified the Proposed ESP pricing was less favorable than an MRO by \$104.7 million. If the Proposed ESP is approved, all parties agree that AEP Ohio's SSO customers will pay more for service than they would under an MRO.

Because the Proposed ESP clearly fails the ESP vs. MRO test on a quantitative basis, AEP Ohio argues that other purported benefits of the Partial Stipulation can be used to offset the obviously above-market pricing of the Proposed ESP. In particular, as discussed in Section III below, AEP Ohio suggests that the cost of the Proposed ESP can be counterbalanced with the alleged "benefit" resulting from resolution of the 10-2929 Docket, under which AEP Ohio will continue to price capacity for a minority of non-SSO customers using the PJM Reliability Pricing Model ("RPM") market price while quadrupling the average price all other non-SSO customers pay for the next forty-one months. Yet AEP Ohio has always priced capacity at the RPM market price and the Commission has directed it to use the RPM market price. AEP Ohio has offered no valid justification for switching to an arbitrary capacity price that is four times higher than market pricing.

AEP Ohio's desire to raise the capacity price charged to CRES providers for forty-one months before changing it back cannot be considered a "benefit" of the Proposed ESP because,

⁶ Hearing Transcript ("Tr."), Volume ("Vol.") X, pp. 1696-97. After correcting for an error Mr. Fortney made in carrying forward the market prices determined by Staff witness Johnson, retail customers will pay AEP Ohio at least \$325.5 million more under the Proposed ESP than they would under an MRO over 41 months. See Section II.B.1.c., *infra*.

⁷ See Testimony of Michael A. Schnitzer on behalf of FirstEnergy Solutions Corp., FES Exs. 3 and 4 ("Schnitzer Direct") at p. 4, and discussion, *infra*.

among other things, it's not a benefit to SSO customers. AEP Ohio's willingness to stipulate to conduct that is required by law, while abandoning a frivolous litigation position, simply cannot be viewed as a benefit – to the contrary, it reflects an additional \$1.27 billion cost of the Partial Stipulation.⁸ Indeed, the idea that AEP Ohio would argue that the Proposed ESP is more favorable simply because AEP Ohio will provide what it claims is a discounted price on capacity to wholesale suppliers for non-SSO customers is nonsense. Regardless of whether AEP Ohio is discounting its capacity price charged to CRES providers (it is not), this does not provide the Commission with legal authority to approve an ESP that would cost customers hundreds of millions of dollars more than an MRO. The Proposed ESP must rise and fall on its own terms and conditions. And, it falls by hundreds of millions of dollars.

Where the tests for the Partial Stipulation and the Proposed ESP overlap, they both fail by all economic, policy, and regulatory measures. In addition to satisfying the statutory test under R.C. § 4928.143(C), an ESP must not violate state policy. Partial stipulations similarly must not violate important regulatory practices and principles, and must benefit ratepayers under the second and third prongs of the Commission's test. However, the Partial Stipulation and the Proposed ESP are discriminatory, anti-competitive and would damage the state's effectiveness in the global economy. For example, and as discussed in more detail in Sections V through IX below:

- The Partial Stipulation and the Proposed ESP are discriminatory.
 - The Partial Stipulation discriminates amongst shopping customers for wholesale capacity prices. It allows only a minority of shopping customers up to a specific percentage “cap” to access market-priced capacity prior to June 1, 2015. Any remaining customers who seek to shop would be subject to a discriminatory,

⁸ Testimony of Jonathan A. Lesser on behalf of FirstEnergy Solutions Corp., FES Ex. 2 (“Lesser Direct”) at pp. 10-11.

above-market capacity price, which would cost more than \$1.27 billion for all of AEP Ohio's customers.

- The Proposed ESP also discriminates on capacity price because it includes capacity in the base generation rates, which capacity price is unknown, but admittedly different than either of the capacity prices imposed on shopping customers.
- The Partial Stipulation and the Proposed ESP are anti-competitive.
 - The Proposed ESP provides for no wholesale competition until June 2015.
 - The Partial Stipulation's capacity price caps will prevent any retail shopping above the caps and force customers to stay with AEP Ohio's SSO service and pay above-market prices.
 - The Partial Stipulation's "Appendix C" procedure for the distribution of RPM-priced capacity to shopping customers is arbitrary and would effectively preclude any new governmental aggregation in AEP Ohio's service territory. The Partial Stipulation's impact on governmental aggregation is a particularly egregious violation of state law and policy that highlights the adverse impacts of the Partial Stipulation on residential customers.
 - Numerous existing barriers to shopping in AEP Ohio's service territory would be maintained for another three and a half years.
- The Partial Stipulation and the Proposed ESP would provide AEP Ohio with approximately \$1 billion in improper above-market revenues that would harm Ohio's economy and would cause the loss of thousands of Ohio jobs.

The Partial Stipulation is essentially a horse trade of the benefits of market-based pricing starting in June 2015 in exchange for acceptance of above-market pricing and anti-competitive and anti-shopping provisions over the next three and a half years. No residential customer representatives believe this is a fair trade, and neither do FES and IEU. As a result, these parties were excluded from the final negotiations leading to the Partial Stipulation. Incredibly, several of the Stipulating Parties did not even have the entire document to review until the morning it was signed, and they did not fully understand what they were signing. This is a dismal example of a Partial Stipulation gone wrong.

The Signatory Parties present a Partial Stipulation based on the suggested “need” to provide AEP Ohio with a “glide path” to market. What AEP Ohio’s customers need is the significant benefits of competition. The Signatory Parties agree that both wholesale and retail competition benefit customers. That competition can and should be made available now. AEP Ohio’s “glide path” to market ended years ago when it waived its right to recover generation transition costs. There is no need nor any basis on which to delay competition or provide additional compensation to AEP Ohio so that AEP Ohio can accomplish by 2015 what it should have accomplished (and knew it had to accomplish) beginning in 2001. In fact, it is AEP Ohio’s own delay that allows it to come before the Commission seeking approval of a Partial Stipulation that is anti-competitive and priced above-market. If AEP Ohio had accomplished legal separation when it should have, its customers would already be enjoying the savings opportunities provided by Ohio’s competitive market for retail electric generation service. AEP Ohio should be required to achieve structural separation of its competitive generation service immediately, with proper Commission oversight, to prevent any further disadvantages to AEP Ohio’s customers.

AEP Ohio has failed to satisfy any of the criteria for approval of the Partial Stipulation or the Proposed ESP, which benefit AEP Ohio at the expense of its customers and the development of Ohio’s wholesale and retail energy markets. The Commission lacks authority to approve either the Partial Stipulation or the Proposed ESP in its current form. They should be rejected altogether.⁹

⁹ To the extent the Partial Stipulation or the Proposed ESP are not rejected altogether, Section X below summarizes the numerous, significant modifications that must be made in order to make the proposals less offensive to state law and policy.

II. THE PROPOSED ESP SHOULD BE REJECTED BECAUSE IT IS NOT MORE FAVORABLE THAN AN MRO, AND IT BENEFITS NEITHER RATEPAYERS NOR THE PUBLIC INTEREST.

A. Ohio Law Requires The Commission To Compare The Proposed ESP With The Expected Results Of An MRO.

As a matter of law, the Proposed ESP must satisfy the statutory test for an ESP, regardless of whether it is supported by a partial stipulation. AEP Ohio and the Signatory Parties have attempted to blur this basic rule of law by focusing on the fact that the Proposed ESP is supposedly more favorable than the ESP originally proposed in this case, but that is not the legal standard. R.C. § 4928.143 mandates that the Commission can only approve, or approve and modify, a proposed ESP “if it finds that the electric security plan so approved, *including its pricing and all other terms and conditions*, including any deferrals and any future recovery of deferrals, *is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code* [in an MRO].”¹⁰ There is no statutory exception for stipulations that would allow the Proposed ESP to be approved based only on the fact that it was part of a negotiated agreement. Rather, AEP Ohio bears the burden of proof to establish that the Proposed ESP is more favorable in accordance with the statutory test.¹¹

AEP Ohio, however, has failed to meet its burden. To the contrary, its own evidence, as well as that of Staff and FES (and other non-Signatory Parties), establishes that the Proposed ESP is less favorable than the expected results of an MRO. In trying to avoid the impact of its own proposal, AEP Ohio and the Signatory Parties distort the statutory test by ignoring certain significant and expensive terms of the Proposed ESP and by comparing the Proposed ESP to

¹⁰ R.C. § 4928.143(C)(1) (emphasis added).

¹¹ R.C. § 4928.143(C)(1); *In re Ohio Edison Company*, Case No. 10-388-EL-SSO, ¶14 (May 13, 2010) (noting that the party proposing an ESP has the burden of proof).

MRO prices that are not market-based.¹² Both distortions are improper and contradict the explicit terms of the controlling statutes.

1. The Commission must consider all of the terms and conditions of the Proposed ESP.

It is well established that an ESP may only include provisions authorized by R.C. § 4928.143(B)(2). The Ohio Supreme Court recently held “[b]y its terms, R.C. 4928.143(B)(2) allows plans to include only ‘any of the following’ provisions. It does not allow plans to include ‘any provision.’ So if a given provision does not fit within one of the categories listed ‘following’ (B)(2), it is not authorized by statute.”¹³ R.C. § 4928.143(C)(1) thus requires that the Commission evaluate all such provisions, by requiring an assessment of an ESP’s “pricing and all other terms and conditions.”¹⁴ This requirement was recently affirmed by the Ohio Supreme Court.¹⁵

While this would obviously include the traditional pricing elements, the Commission also is required to evaluate the impact of all of the Proposed ESP’s riders on AEP Ohio’s customers when comparing the results of the Proposed ESP with the results which would be obtained under an MRO. There is nothing in Ohio law that would permit AEP Ohio to ignore the financial impact of certain riders included in the Proposed ESP simply because the riders’ values are not yet known with certainty. Rather, the Commission’s evaluation should reflect the most accurate and realistic estimates possible of the costs of those terms and conditions of the Proposed ESP on

¹² The Competitive Benchmark Price that AEP Ohio uses to develop the MRO price is based on above-market capacity prices negotiated in the Partial Stipulation. Thus, they are neither market-based or cost-based.

¹³ *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 520 (2011).

¹⁴ Emphasis added.

¹⁵ *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d at 407 (holding that the Commission must consider all terms and conditions of an ESP).

AEP Ohio's SSO customers.¹⁶ Moreover, as Dr. Lesser testifies, even the mere presence of nonbypassable riders will adversely affect competition because of the increased uncertainty such riders create.¹⁷

However, as discussed in detail below, AEP Ohio's analysis of the quantitative impact of its Proposed ESP fails to appropriately reflect the costs to its customers because AEP Ohio fails to include any estimate of the charges that would be imposed under several significant riders. While AEP Ohio appears to be able to forecast future market prices in the MRO, it appears unable to forecast the costs associated with particular riders in its own Proposed ESP. AEP Ohio may not simply wish these "placeholder" riders away and assume these riders will impose zero costs on customers. AEP Ohio has included these riders in the Proposed ESP and, thus, they must be considered when comparing the Proposed ESP to an MRO.

2. The Commission must consider the market prices that would result from an MRO.

Pursuant to R.C. § 4928.143(C), the Commission must compare the Proposed ESP's terms and conditions with the expected results of an MRO. A true comparison allows the Commission to assess the impact of the Proposed ESP objectively, to ensure that it provides benefits to AEP Ohio's customers as compared to market pricing. Not only has AEP Ohio tried to distort the ESP side of this comparison by ignoring significant riders, but it also has tried to improve the outlook for the Proposed ESP by distorting the MRO side of the comparison through its use of an improper capacity price of \$255/MW-day in the Competitive Benchmark Price component of an MRO.

¹⁶ See *In the Matter of the Application of Ohio Edison Company et al.*, Case No. 10-388-EL-SSO, 2010 WL 3442143, *33 (Aug. 25, 2010) (holding that an ESP evaluation must be conducted with reasonable estimates, and rejecting the use of assumptions which are "arbitrary and unrealistic").

¹⁷ Lesser Direct, p. 63.

The statutory ESP vs. MRO test specifically references a comparison to the “expected results that would otherwise apply under section 4928.142 of the Revised Code.”¹⁸ Section 4928.142 provides for a “standard service offer price for retail electric generation service that is delivered to the utility under a market-rate offer.”¹⁹ It also provides that “[t]he market-rate offer shall be determined through a competitive bidding process” and requires that the utility “or its transmission service affiliate belong[] to at least one regional transmission organization that has been approved by the federal energy regulatory commission; or [that] there otherwise is comparable and nondiscriminatory access to the electric transmission grid.”²⁰ Further, under the MRO, “[a]ll costs incurred by the electric distribution utility as a result of or related to the competitive bidding process or to procuring generation service to provide the standard service offer, including the costs of energy and capacity and the costs of all other products and services procured as a result of the competitive bidding process, shall be timely recovered through the standard service offer price”²¹ Thus, the statute clearly reflects that the comparable MRO should include competitive market-based pricing for the procurement of SSO supply, “including the costs of energy and capacity” procured through the competitive process.²²

Under such a framework, the only proper capacity price to include in the market-based offer component of an MRO would be market-based capacity prices, which for utilities in PJM are the RPM prices. The express language of Section 4928.142 does not allow for the inclusion of a purportedly cost-based capacity price, let alone an arbitrary and artificial negotiated capacity price. Both options would be antithetical to the “market-based offer” that is required by R.C. §

¹⁸ R.C. § 4928.143(C)(1).

¹⁹ R.C. § 4928.142(A).

²⁰ R.C. § 4928.142(A)(1), (B)(1).

²¹ R.C. § 4928.142(C)(3) (emphasis added).

²² R.C. § 4928.142(C)(3).

4928.142. The 10-2929 proposed capacity price in the Partial Stipulation at \$255/MW-day is wholly separate from and irrelevant to the Commission's consideration of the market-based capacity pricing that is an element of an MRO. In the statutory comparison of the Proposed ESP to the expected results of an MRO, the Commission must compare the Proposed ESP to a truly and wholly market-based offer, including the market price for capacity.

B. Every Single Witness, Signatory Party Or Otherwise, Who Conducted An ESP vs. MRO Price Test Found That The Proposed ESP Is More Costly Than The Expected Results Of An MRO.

An ESP vs. MRO price test was performed by AEP witness Thomas, FES witness Schnitzer, Staff witness Fortney, IEU witness Murray and OCC witness Duann. Every witness who performed the ESP vs. MRO test concluded that the Proposed ESP price is substantially higher than the projected MRO price and, thus, more costly to customers. AEP Ohio witness Thomas used a series of unrealistic assumptions designed to favor AEP Ohio²³ and still concluded that the Proposed ESP is less favorable in the aggregate than an MRO by \$0.71/MWh,

²³ Ms. Thomas' written testimony includes Exhibit LJT-2, which includes an average POLR charge of \$1.12/MWh and which claims the ESP is more beneficial by \$0.15/MWh. On October 3, 2011, the Commission issued the Remand Order. In the Remand Order, the Commission held that "AEP-Ohio did not demonstrate that its POLR charges requested in the ESP are cost-based nor demonstrate that its non-cost based POLR charges requested in the ESP were reasonable and lawful." Remand Order, p. 37. As a result of this conclusion, the Commission ordered that AEP Ohio refund the POLR charges which had been collected subject to refund and to file revised tariffs consistent with the Remand Order. Remand Order, p. 33, 38. AEP Ohio attempted to retain a POLR charge with a reduced value in its compliance filing. However, in an entry issued October 26, 2011 (the "Tariff Entry"), the Commission confirmed that AEP Ohio's position regarding a revised POLR charge lacked merit and ordered AEP Ohio to adopt tariffs completely removing the POLR charge. Therefore no discussion of Ms. Thomas' stale Exhibit LJT-2 is necessary.

or \$104.7 million.²⁴ Although Ms. Thomas claimed that her analysis did not account for the “other benefits of the Stipulation,” her math speaks for itself.²⁵

After correcting for the removal of the POLR charge from existing SSO rates as required by the Remand Order, Staff witness Fortney testified that the MRO would benefit customers by \$276.6 million, or \$2.12/MWh.²⁶ As discussed below, additional corrections to his calculation further increase the cost of the Proposed ESP. No other Stipulating Party attempted to compare the Proposed ESP to the expected results of an MRO.

FES witness Schnitzer estimated that the MRO’s benefits range from \$350 million to as much as \$800 million.²⁷ When Dr. Lesser’s estimate of the potential \$219.9 million in additional costs incurred through the Distribution Investment Rider (“DIR”) is added, an MRO is more favorable than the Proposed ESP by roughly \$1 billion.²⁸

Other parties also found that an MRO was more favorable than the Proposed ESP. IEU witness Murray estimated for OPCo the MRO’s benefit was \$4.83/MWh, or \$556 million over the term of the Proposed ESP.²⁹ For CSP, Mr. Murray estimated the MRO’s benefit was \$8.55/MWh, or \$660 million over the term of the Proposed ESP.³⁰ Thus, the aggregate impact is

²⁴ See Direct Testimony of Laura J. Thomas on behalf of Columbus Southern Power Company and Ohio Power Company, AEP Ex. 5 (“Thomas Direct”), Ex. LJT-3. The \$104.7 million cost of the ESP is determined by multiplying Ms. Thomas’ “ESP Price Benefit” times her forecasted load for the period from January 2012 through May 2015: $-0.71/\text{MWh} \times 147,493,900 \text{ MWh} = -\104.7 million .

²⁵ See Thomas Direct, p. 17.

²⁶ See Tr. Vol. X, pp. 1696-97.

²⁷ See Schnitzer Direct, p. 28.

²⁸ See Lesser Direct, p. 50.

²⁹ Tr. Vol. VIII, p. 1531.

³⁰ *Id.*

more than \$1 billion under Mr. Murray's analysis. OCC witness Duann also found that the MRO was more favorable than the Proposed ESP.³¹

As shown through the testimony from Mr. Schnitzer discussed in detail below, as well as the testimony of all other witnesses that performed an ESP vs. MRO price test, it is clear that the MRO price is more favorable to retail customers than the Proposed ESP price.

1. After accounting for the Remand Order's impact on the POLR Charge, every witness who conducted the ESP vs. MRO test found that the Proposed ESP was not more favorable in the aggregate.

a. The MRO is better than the Proposed ESP by \$350 million to \$800 million.

Mr. Schnitzer made an extensive comparison of the Proposed ESP and an MRO.³² Mr. Schnitzer found that AEP Ohio's 2012 to May 2015 ESP vs. MRO price analysis contained significant omissions and overstated the price benefits of the Proposed ESP. Most notably, Mr. Schnitzer demonstrated that AEP Ohio had understated several costs of the Proposed ESP, including fuel costs and the costs of riders GRR and PMR.³³ Mr. Schnitzer also showed that AEP Ohio had overstated the competitive benchmark component of the MRO price by using the above-market capacity price from the Partial Stipulation of \$255/MW-day in the market-based component of the MRO price.³⁴ This inflated and arbitrary price for capacity has never been approved by the Commission, is not consistent with the competitive procurement of capacity, and should not be included in the MRO price. It is also a logical fallacy to use the inflated capacity pricing created by the Partial Stipulation in the MRO price when that inflated price

³¹ Direct Testimony of Daniel J. Duann on behalf of the Office of Ohio Consumers' Counsel, OCC Ex. 1 ("Duann Direct"), p. 26.

³² See Schnitzer Direct, pp. 8-29, Exs. MMS-2, -3 and -4.

³³ See Schnitzer Direct, pp. 14-19.

³⁴ See Schnitzer Direct, pp. 20-24.

would never exist in MRO. Mr. Schnitzer further found that AEP Ohio had understated the Legacy ESP Total Generation Service Price by failing to adjust this price for forecasted fuel and environmental costs.³⁵ According to Mr. Schnitzer, simply by using reasonable assumptions, the Proposed ESP would be less favorable in the aggregate in a range from \$350 million to \$800 million.³⁶ Several Stipulating Parties with knowledge of competitive pricing have relied on Mr. Schnitzer's testimony and agreed with his methodology in their original testimony and on cross-examination.³⁷

b. Ms. Thomas' analysis showed that an MRO would cost less than the Proposed ESP by \$104.7 million.

Ms. Thomas' ESP vs. MRO test contained several material flaws and inaccuracies. However, even using her materially flawed analysis without the POLR charge (which the Commission should not rely upon for the reasons described *infra*), she concluded that the MRO was more favorable than the ESP by \$0.71/MWh, or \$104.7 million over the Proposed ESP term.³⁸ Ms. Thomas was thus forced to argue that the Proposed ESP is more favorable than an MRO based on "additional benefits" of the Stipulation identified by Mr. Allen and Mr. Hamrock,³⁹ which are rebutted below.

³⁵ See Schnitzer Direct, pp. 25-27.

³⁶ Schnitzer Direct, p. 28. Mr. Schnitzer's estimate is conservative, as it does not include the \$219.9 million in charges associated with the DIR or the \$24 million in charges associated with the MTR, which are discussed by FES witness Lesser. See Lesser Direct, pp. 42, 49-50.

³⁷ See, e.g., Tr. Vol. VI, pp. 981-982 (Constellation witness Fein agreed with Mr. Schnitzer's methodology regarding value of the ESP and the MRO, the competitive benchmark price, and how Rider GRR and Rider PMR would be valued); Tr. Vol. VI, pp. 1045, 1050-1051 (Exelon witness Dominguez also agreed with Mr. Schnitzer regarding capacity, non-bypassable riders, comparisons to the FirstEnergy auctions, and adopting Mr. Schnitzer's analysis).

³⁸ See Thomas Direct, p. 17, Ex. LJT-3 ($-\$0.71/\text{MWh} \times 147,493,900 \text{ MWh} = -\104.7 million).

³⁹ See Thomas Direct, p. 15.

There were several significant errors in Ms. Thomas' analysis which resulted in her greatly underestimating an MRO's benefits. In brief, Ms. Thomas: (1) failed to include any value for the GRR; (2) failed to include any value for the PMR; (3) failed to use AEP Ohio's own estimates of fuel costs; (4) failed to include any provision for the DIR; (5) failed to include any value for the MTR⁴⁰; and (6) assumed that it was appropriate to include the above-market capacity prices contained in the Partial Stipulation in an MRO even though neither the Commission nor FERC had ever adopted such charges in the past and the Ohio statute does not allow such non-market based charges to be included in the market-based component of the MRO price. Ms. Thomas' capacity conclusion is invalid as a matter of law because R.C. § 4928.142(C) requires that the MRO comparison should include competitive market-based pricing for the procurement of SSO supply. Ms. Thomas also failed to analyze the FirstEnergy utilities' auction results to act as a "control" on her analysis.⁴¹

As discussed in detail below, Ms. Thomas misstated many costs and completely omitted others. Despite these material mistakes, once Ms. Thomas complied with the Attorney Examiner's direction to incorporate the effect of the Remand Order into her calculation by removing the POLR charge from current SSO rates, she concluded that the Proposed ESP failed the ESP vs. MRO test by \$0.71/MWh, or \$104.7 million over the Proposed ESP term. Therefore, even ignoring all of the rest of Ms. Thomas' other mistakes discussed below, AEP Ohio recognizes that the Proposed ESP fails the ESP vs. MRO price test.

⁴⁰ Although Mr. Allen recognized the MTR charge of \$24 million as a cost under the Proposed ESP, Ms. Thomas did not include this charge in her analysis. Direct Testimony of William A. Allen on behalf of Columbus Southern Power Company and Ohio Power Company, AEP Ex. 4 ("Allen Direct") at p. 18.

⁴¹ See Tr. Vol. IV, pp. 573-576.

c. Staff Witness Fortney found that the Proposed ESP fails the ESP vs. MRO Test.

Mr. Fortney's MRO vs. ESP price comparison, as shown in his Attachment A, is restated below in Table 1. Mr. Fortney compared the ESP price increases included in the Partial Stipulation to a blended MRO price purporting to use Staff witness Johnson's market prices⁴² for the first thirty-six months of the ESP term. Because his testimony was filed prior to the Remand Order, it included a POLR charge for the current ESP pricing used in the MRO price blend required by R.C. § 4928.142(D).⁴³ Mr. Fortney's initial calculation, which did not reflect the Remand Order, showed that the ESP price was superior to the expected MRO price by approximately \$44 million. He testified that his conclusion that the ESP was more favorable in the aggregate than the expected results of an MRO was based primarily on this quantitative analysis.⁴⁴

⁴² As explained below, Mr. Fortney erred in his use of Mr. Johnson's market prices.

⁴³ Tr. Vol. X, p. 1695; *see also* Direct Testimony of Robert B. Fortney on behalf of the Staff of the Public Utilities Commission of Ohio, Staff Ex. 4 ("Fortney Direct").

⁴⁴ Tr. Vol. X, p. 1713.

Table 1 – Fortney Attachment A, As Filed Sept. 13, 2011⁴⁵

Category	2012	2013	2014	36 Months
<u>Market Pricing</u>				
Subtotal - Market Pricing	58.85	61.38	73.59	
<u>Current ESP Pricing</u>				
Standard Offer Generation Service	21.02	21.02	21.02	
Transmission Adjustment	2.14	2.14	2.14	
Environmental Investment (EICCR)	0.90	0.90	0.90	
Provider of Last Resort (POLR)	3.07	3.07	3.07	
Fuel Adjustment Clause (FAC)	33.10	33.10	33.10	
Generation Resource (GRR)	0.00	0.00	0.00	
Subtotal - Current ESP Pricing	60.23	60.23	60.23	
<u>MRO Blended Pricing</u>				
Market Pricing %	10.0%	20.0%	30.0%	
Current ESP Pricing %	90.0%	80.0%	70.0%	
Market Pricing	58.85	61.38	73.59	
Current ESP Pricing	60.23	60.23	60.23	
MRO Blended Pricing	60.09	60.46	64.24	
<u>Proposed ESP Pricing</u>				
Standard Offer Generation Service	24.50	25.70	27.20	
Transmission Adjustment	2.14	2.14	2.14	
Environmental Investment (EICCR)	0.00	0.00	0.00	
Provider of Last Resort (POLR)	0.00	0.00	0.00	
Fuel Adjustment Clause (FAC)	33.10	33.10	33.10	
Generation Resource (GRR)	0.18	0.22	0.26	
Subtotal - ESP Pricing	59.92	61.16	62.70	
ESP Pricing vs. Blended MRO Pricing	(0.17)	0.70	(1.54)	(0.34)
ESP Pricing vs. Blended MRO Pricing (\$)	(\$7,482,602)	\$30,452,450	(\$66,908,383)	(\$43,938,535)

Mr. Fortney's ESP vs. MRO price comparison is faulty in three respects. First, it includes a \$3.07/MWh POLR charge in the Current ESP Pricing which was eliminated by the Commission's subsequently issued Remand Order. Mr. Fortney admitted that, as a result of the Remand Order, the entire POLR charge should be removed from his calculation.⁴⁶ After making this one correction, Mr. Fortney agreed that the MRO price is more favorable than the ESP price over the thirty-six month period he analyzed by approximately \$276.6 million, as shown in Table

⁴⁵ All prices in \$/MWh, unless otherwise indicated.

⁴⁶ Tr. Vol. X, p. 1695.

2.⁴⁷ Indeed, the MRO price is more favorable than the ESP price in each of the three years analyzed by Mr. Fortney.⁴⁸

Table 2 – Fortney Attachment A With POLR Charge Removed Per Remand Order

Category	2012	2013	2014	36 Months
<u>Market Pricing</u>				
Subtotal - Market Pricing	58.85	61.38	73.59	
<u>Current ESP Pricing</u>				
Standard Offer Generation Service	21.02	21.02	21.02	
Transmission Adjustment	2.14	2.14	2.14	
Environmental Investment (EICCR)	0.90	0.90	0.90	
Provider of Last Resort (POLR)	0.00	0.00	0.00	
Fuel Adjustment Clause (FAC)	33.10	33.10	33.10	
Generation Resource (GRR)	0.00	0.00	0.00	
Subtotal - Current ESP Pricing	57.16	57.16	57.16	
<u>MRO Blended Pricing</u>				
Market Pricing %	10.0%	20.0%	30.0%	
Current ESP Pricing %	90.0%	80.0%	70.0%	
Market Pricing	58.85	61.38	73.59	
Current ESP Pricing	57.16	57.16	57.16	
MRO Blended Pricing	57.33	58.00	62.09	
<u>Proposed ESP Pricing</u>				
Standard Offer Generation Service	24.50	25.70	27.20	
Transmission Adjustment	2.14	2.14	2.14	
Environmental Investment (EICCR)	0.00	0.00	0.00	
Provider of Last Resort (POLR)	0.00	0.00	0.00	
Fuel Adjustment Clause (FAC)	33.10	33.10	33.10	
Generation Resource (GRR)	0.18	0.22	0.26	
Subtotal - ESP Pricing	59.92	61.16	62.70	
ESP Pricing vs. Blended MRO Pricing	2.59	3.16	0.61	2.12
ESP Pricing vs. Blended MRO Pricing (\$)	\$112,717,569	\$137,297,046	\$26,580,639	\$276,595,253

Second, Mr. Fortney committed two errors in adopting Mr. Johnson’s market prices. Mr. Fortney mistakenly testified that “Mr. Johnson did not provide a comparable market rate for beyond 2014,”⁴⁹ but Mr. Johnson provided a comparable market rate – what Mr. Johnson called

⁴⁷ Tr. Vol. X, pp. 1696-97.

⁴⁸ Tr. Vol. X, pp. 16713-14.

⁴⁹ Fortney Direct, p. 5.

the MRO price – for June 2014 through May 2015 of \$73.59/MWh.⁵⁰ Mr. Fortney compounded his error by using this June 2014-May 2015 price for all twelve months of 2014.⁵¹ Mr. Johnson’s comparable market rate for January through May, 2014, is \$61.38, not the \$73.59 used by Mr. Fortney.⁵² Fixing these errors in Mr. Fortney’s calculation results in the MRO price being more favorable than the ESP price by more than \$325 million, as shown in Table 3.

Table 3 – Fortney Attachment A With POLR Charge Removed Per Remand Order and Market Price Errors Corrected

Category	2012	2013	Jan.-May, 2014	June 2014 - May 2015	41 Months
<u>Market Pricing</u>					
Subtotal - Market Pricing	58.85	61.38	61.38	73.59	
<u>Current ESP Pricing</u>					
Standard Offer Generation Service	21.02	21.02	21.02	21.02	
Transmission Adjustment	2.14	2.14	2.14	2.14	
Environmental Investment (EICCR)	0.90	0.90	0.90	0.90	
Provider of Last Resort (POLR)	0.00	0.00	0.00	0.00	
Fuel Adjustment Clause (FAC)	33.10	33.10	33.10	33.10	
Generation Resource (GRR)	0.00	0.00	0.00	0.00	
Subtotal - Current ESP Pricing	57.16	57.16	57.16	57.16	
<u>MRO Blended Pricing</u>					
Market Pricing %	10.0%	20.0%	30.0%	34.0%	
Current ESP Pricing %	90.0%	80.0%	70.0%	66.0%	
Market Pricing	58.85	61.38	61.38	73.59	
Current ESP Pricing	57.16	57.16	57.16	57.16	
MRO Blended Pricing	57.33	58.00	58.43	62.75	
<u>Proposed ESP Pricing</u>					
Standard Offer Generation Service	24.50	25.70	27.20	27.20	
Transmission Adjustment	2.14	2.14	2.14	2.14	
Environmental Investment (EICCR)	0.00	0.00	0.00	0.00	
Provider of Last Resort (POLR)	0.00	0.00	0.00	0.00	
Fuel Adjustment Clause (FAC)	33.10	33.10	33.10	33.10	
Generation Resource (GRR)	0.18	0.22	0.26	0.26	
Subtotal - ESP Pricing	59.92	61.16	62.70	62.70	
ESP Pricing vs. Blended MRO Pricing	2.59	3.16	4.27	(0.05)	2.19
ESP Pricing vs. Blended MRO Pricing (\$)	\$112,717,569	\$137,297,046	\$77,472,483	(\$2,001,161)	\$325,485,936

Third, Mr. Fortney used 2011 fuel prices in his calculation instead of the fuel price estimates provided by AEP Ohio for the years at issue – 2012, 2013 and 2014 – which are the

⁵⁰ Tr. Vol. X, pp. 1685-85; Direct Testimony of Daniel R. Johnson on behalf of the Staff of the Public Utilities Commission of Ohio, Staff Ex. 3 (“Johnson Direct”) at p. 32 and Att. DRJ-4.

⁵¹ Tr. Vol. X, p. 1710; Fortney Direct, Att. A.

⁵² Tr. Vol. X, pp. 1685-86; Johnson Direct, p. 32 and Att. DRJ-4.

only fuel price estimates in the record for the Proposed ESP delivery period. Instead of using AEP Ohio's actual forecasts, which AEP Ohio has deemed extremely competitively-sensitive, Mr. Fortney used a fixed rate of \$33.10/MWh for the entire thirty-six months of his calculation.⁵³ Mr. Fortney agreed, however, that he would not expect the fuel cost to remain constant for three years, and that, if AEP Ohio's higher fuel forecasts were used, the ESP would be even less favorable.⁵⁴ Indeed, after adding AEP Ohio's forecast of fuel prices to the other corrections to Mr. Fortney's calculation shown above, the ESP price is more favorable than the MRO price by more than \$[REDACTED] million, as shown in Table 4. Mr. Fortney also agreed that using an updated transmission adjustment of \$2.73/MWh would make the ESP even less favorable.⁵⁵ Thus, Mr. Fortney's ESP vs. MRO price comparison, with appropriate corrections made, is consistent with Mr. Schnitzer's ESP vs. MRO price comparison showing that an MRO would be more favorable for retail customers by more than half a billion dollars.

⁵³ Tr. Vol. X, p. 1700; Fortney Direct, Att. A.

⁵⁴ Tr. Vol. X, pp. 1700-01.

⁵⁵ Tr. Vol. X, pp. 1702-04.

**Table 4 - Fortney Attachment A With POLR Charge Removed Per Remand Order,
Market Price Errors Corrected, and AEP Ohio's Fuel Forecasts Added⁵⁶**

Category	2012	2013	Jan.-May, 2014	June 2014 - May 2015	41 Months
Market Pricing					
Subtotal - Market Pricing	58.85	61.38	61.38	73.59	
Current ESP Pricing					
Standard Offer Generation Service	21.02	21.02	21.02	21.02	
Transmission Adjustment	2.14	2.14	2.14	2.14	
Environmental Investment (EICCR)	0.90	0.90	0.90	0.90	
Provider of Last Resort (POLR)	0.00	0.00	0.00	0.00	
Fuel Adjustment Clause (FAC)					
Generation Resource (GRR)	0.00	0.00	0.00	0.00	
Subtotal - Current ESP Pricing					
MRO Blended Pricing					
Market Pricing %	10.0%	20.0%	30.0%	34.0%	
Current ESP Pricing %	90.0%	80.0%	70.0%	66.0%	
Market Pricing	58.85	61.38	61.38	73.59	
Current ESP Pricing					
MRO Blended Pricing					
Proposed ESP Pricing					
Standard Offer Generation Service	24.50	25.70	27.20	27.20	
Transmission Adjustment	2.14	2.14	2.14	2.14	
Environmental Investment (EICCR)	0.00	0.00	0.00	0.00	
Provider of Last Resort (POLR)	0.00	0.00	0.00	0.00	
Fuel Adjustment Clause (FAC)					
Generation Resource (GRR)	0.18	0.22	0.26	0.26	
Subtotal - ESP Pricing					
ESP Pricing vs. Blended MRO Pricing					
ESP Pricing vs. Blended MRO Pricing (\$)					

2. AEP Ohio witness Thomas and Staff witness Fortney understated the cost of the Proposed ESP and overstated the cost of an MRO, while FES witness Schnitzer properly adjusted both sides of the equation.

Even though every witness who conducted an ESP vs. MRO price test in this case agreed that the Proposed ESP fails the ESP vs. MRO test when the Remand Order is properly incorporated, the AEP Ohio and Staff witnesses committed errors that, when corrected, on balance further show that an MRO is more favorable.

⁵⁶ Table 4 reflects FAC prices held constant from 2014 through the first five months of 2015 because AEP Ohio did not provide any FAC estimates for 2015. Table 4, therefore, reflects a conservative estimate. FES witness Schnitzer applied the same average growth found in AEP Ohio's estimates for the 2012 through 2014 period to estimate fuel costs for the first five months of 2015. Schnitzer Direct, p. 16.

a. AEP Ohio understated the Proposed ESP price by underestimating fuel costs and ignoring costs associated with the GRR, PMR, and DIR, which FES witness Schnitzer corrected.

Ms. Thomas' Proposed ESP price was too low because it significantly understated fuel costs and ignored potential costs associated with the GRR and PMR.⁵⁷ These adjustments alone would increase the Proposed ESP price by as much as \$9/MWh.⁵⁸ In addition to the adjustments made by Mr. Schnitzer, Dr. Lesser found that the DIR would increase the cost of the Proposed ESP by \$219.9 million.⁵⁹

i. Fuel Costs

Ms. Thomas developed the Proposed ESP price by adding the tariff generation price (or base 'g'), the "2011 Full Fuel," and the 2010/11 transmission related expenses.⁶⁰ Ms. Thomas estimated fuel costs of \$33.01/MWh in 2012 and \$33.00/MWh for the remainder of the Proposed ESP term.⁶¹ Ms. Thomas' fuel estimate significantly underestimates the Proposed ESP price, because AEP Ohio's own forecasts show that the Fuel Adjustment Clause ("FAC") is expected to increase from the 2011 cost figures used by Ms. Thomas.⁶²

AEP Ohio forecasts fuel costs through its complete financial forecasting model at least once a year.⁶³ As part of this forecasting process, AEP developed fuel forecasts for the years 2012-2014.⁶⁴ This forecast shows that AEP Ohio's own estimates predict fuel costs for this

⁵⁷ Schnitzer Direct, p. 14.

⁵⁸ Schnitzer Direct, p. 14, Ex. MMS-2.

⁵⁹ Lesser Direct, p. 50.

⁶⁰ Thomas Direct, Ex. LJT-3; Schnitzer Direct, p. 14.

⁶¹ Thomas Direct, LJT-3.

⁶² Schnitzer Direct, p. 15; FES Ex. 5.

⁶³ Tr. Vol. III, p. 365.

⁶⁴ Tr. Vol. III, p. 366.

period to be much higher than the 2011 value used by Ms. Thomas: \$[REDACTED]/MWh in 2012, \$[REDACTED]/MWh in 2013, \$[REDACTED]/MWh in 2014, and \$[REDACTED]/MWh in 2015.⁶⁵ The table below illustrates this difference:

Term	Thomas Estimate	AEP Ohio Estimate	Difference
2012	\$33.01	[REDACTED]	[REDACTED]
2013	\$33.00	[REDACTED]	[REDACTED]
2014	\$33.00	[REDACTED]	[REDACTED]
January-May 2015	\$33.00	[REDACTED]	[REDACTED]

Mr. Fortney also adopted the static values used by Ms. Thomas.⁶⁶ However, on examination Mr. Fortney acknowledged that he “would not expect the fuel cost to remain constant for three years.”⁶⁷ Mr. Fortney also acknowledged that AEP Ohio had produced a forecast that was higher than the static number he used, and “all other things being equal, if the fuel cost goes up, the value of the ESP would go down.”⁶⁸

Holding these fuel costs constant, while increasing the energy costs in the Competitive Benchmark Price in the MRO, as Ms. Thomas and Mr. Fortney did, created a systemic bias in AEP Ohio and Staff’s calculations.⁶⁹ If Ms. Thomas fails to acknowledge the estimated impact of changing fuel costs, there is no justification for using future estimated energy cost increases in her MRO calculation.

⁶⁵ See FES Ex. 5; Schnitzer Direct, p. 16 and Ex. MMS-2. To estimate fuel costs for the first five months of 2015, Mr. Schnitzer applied the same average growth found in AEP Ohio’s estimates for the 2012 through 2014 period. Schnitzer Direct, p. 16.

⁶⁶ Tr. Vol. X, p. 1700.

⁶⁷ Tr. Vol. X, p. 1701.

⁶⁸ Tr. Vol. X, p. 1701.

⁶⁹ Schnitzer Direct, p. 15.

To more accurately compare the Proposed ESP to an MRO, Mr. Schnitzer replaced the 2011 fuel cost used by Ms. Thomas with AEP Ohio's projected fuel costs.⁷⁰ Ms. Thomas and Mr. Fortney should also have used these estimated fuel costs in their analysis; these estimates are the best – indeed, the only – evidence of future fuel costs in the record for the Proposed ESP period. This would have increased the cost of the Proposed ESP in their calculations. By not using AEP Ohio's own fuel forecasts, Ms. Thomas underestimated the cost of the Proposed ESP by approximately \$[REDACTED] million.⁷¹

In her rebuttal testimony, Ms. Thomas claimed that it was “not necessary to include forecasted fuel changes” and that in prior cases “the Commission has not required that such forecasted data be reflected in the MRO Price Test.”⁷² However, on cross-examination, Ms. Thomas admitted that she did use forecasted data for certain items, such as her forecast of future energy prices.⁷³ Ms. Thomas also admitted that R.C. § 4928.142(D), upon which she relied for her statement that estimates were not required, does not prohibit the use of forecasted data in an MRO.⁷⁴ Thus, AEP Ohio chose to use forecast data selectively and inconsistently: it used forecasted prices for energy when they were beneficial (i.e., increased the MRO price); but did not use forecasted prices for fuel when they were not beneficial (i.e., increased the Proposed ESP price). As such, AEP Ohio's position lacks both credibility and merit.

⁷⁰ Schnitzer Direct, p. 16.

⁷¹ Using Ms. Thomas' projected load, making this adjustment would create an ESP price benefit of -\$[REDACTED]/MWh, or -\$[REDACTED] million. ($-\$[REDACTED]/\text{MWh} \times [REDACTED] \text{ MWh} = -\$[REDACTED]$). As Ms. Thomas has already recognized that the MRO is more favorable by \$[REDACTED] million, Ms. Thomas' total understatement associated with fuel costs is approximately \$[REDACTED] million.

⁷² Rebuttal Testimony of Laura J. Thomas on behalf of Columbus Southern Power Company and Ohio Power Company, AEP Ex. 23 (“Thomas Rebuttal”) at p. 2.

⁷³ Tr. Vol. XIII, p. 2342.

⁷⁴ Tr. Vol. XIII, p. 2344.

AEP Ohio's witnesses attempted to downplay the accuracy of AEP Ohio's estimated fuel costs, claiming that these estimates failed to consider the conditions that would take place under the Partial Stipulation.⁷⁵ Yet, although AEP Ohio and its affiliates have considerable forecasting capabilities, AEP Ohio's witnesses knew of no updated fuel forecasts or any study of the effect of shopping on fuel costs.⁷⁶ Further, Ms. Thomas admitted that AEP Ohio's fuel procurement practices would not significantly change simply because of a change in the mix of its customers served by its generating facilities.⁷⁷ Still further, the attempt to divert attention away from AEP Ohio's own fuel cost estimates begs this question: if the fuel cost estimates are no longer valid, why has AEP Ohio continued to claim that these estimates are still proprietary and highly confidential?

In her rebuttal testimony, Ms. Thomas also argued that forecasted environmental charges should also be included with forecasted fuel in order to make this a valid comparison.⁷⁸ FES certainly does not disagree with this point; this is exactly what Mr. Schnitzer did in his analysis. Indeed, Ms. Thomas' rebuttal testimony simply incorporates the average of Mr. Schnitzer's high and low environmental costs, which were originally presented by Mr. Schnitzer in his Exhibit MMS-4. Yet Ms. Thomas did not bother to complete her analysis using both updated fuel and environmental costs. Had she completed her calculation with Mr. Schnitzer's low environmental costs and updated fuel, this too would have showed that the MRO price was more favorable than the Proposed ESP price, even with the POLR charge improperly included in her analysis. Therefore, based on Ms. Thomas' own calculations, even if environmental forecasts are

⁷⁵ Tr. Vol. XIII, p. 2345.

⁷⁶ Tr. Vol. XIII, p. 2345.

⁷⁷ Tr. Vol. XIII, p. 2345.

⁷⁸ Thomas Rebuttal, pp. 2-4.

included, the Proposed ESP price is less favorable than the projected MRO price. Regardless of whether forecasted fuel and environmental costs are included in Ms. Thomas' calculation, the MRO is always more advantageous than the Proposed ESP.

ii. Generation Resource Rider ("GRR")

Ms. Thomas stated that she did not include any value for the GRR in her analysis for three reasons. First, she claimed that AEP Ohio had not developed an estimate for this rider.⁷⁹ This is wrong. AEP Ohio produced a specific revenue estimate for the Turning Point facility that AEP Ohio expects to recover through this rider.^{80 81} AEP Ohio witness Hamrock testified that the Turning Point cost estimates remain valid under the Partial Stipulation, assuming the Commission approves the GRR.⁸²

Second, Ms. Thomas claimed that the GRR should not be included in the ESP vs. MRO test because it is a non-bypassable rider and will therefore have no impact on the test.⁸³ Mr. Schnitzer explained the obvious logical flaw in this analysis:

⁷⁹ See Tr. Vol. IV, p. 597.

⁸⁰ Tr. Vol. III, p. 370 (Allen); Tr. Vol. IV, p. 597 (Thomas).

⁸¹ Under the Partial Stipulation, AEP Ohio will seek to also build and recover the costs for Muskingum River 6 ("MR6") facility. AEP Ohio did not create a similar cost estimate for the MR6 facility, which AEP Ohio also expects to include in the GRR. Tr. Vol. III, pp. 376-79. However, unlike Turning Point, for which AEP Ohio already has signed development agreements and has committed \$20 million in equity funding, AEP Ohio is unable to answer basic questions regarding MR6, including whether it intends to recover construction work-in-process costs associated with MR6, who would own MR6, whether it intends to competitively bid MR6, whether it intends to recover the closure costs associated with Muskingum River 5 ("MR5") through the GRR, and whether it will ever build MR6. Tr. Vol. III, pp. 376-78; Tr. Vol. V, pp. 857-58, 864. AEP also failed to create any cost estimate for the development of up to 350 MW of customer-sited combined heat and power, waste energy recovery, and distributed generation resources, which AEP Ohio also anticipates including in the GRR (in contravention of the express terms of the Partial Stipulation). Schnitzer Direct, p. 18; Tr. Vol. V, pp. 865-67; Stipulation and Recommendation, filed Sept. 7, 2011 ("Stip."), § IV.1.d. However, the failure to develop an estimate does not allow AEP Ohio to ignore these costs.

⁸² Tr. Vol. V, p. 863.

⁸³ Thomas Direct, p. 16.

GRR is a new generation-related rider specific to the Company's Initial ESP Proposal and Stipulation ESP. It is not a rider that would be an element of an MRO. Therefore, it should be included in the Stipulation ESP Price but not the MRO Price.⁸⁴

Staff witness Fortney agreed with Mr. Schnitzer's approach. He included a value for the GRR in the Proposed ESP Price and excluded it from the expected MRO price.⁸⁵ On cross-examination, Mr. Fortney explained that he believed that it was fair and reasonable to create a value for rider GRR, and that if he had not included a value for this rider he would have been concerned that he was underestimating or understating the potential cost of the ESP.⁸⁶

Third, Ms. Thomas claimed that the GRR should not be included in the ESP vs. MRO test because it is a "place holder until such time as the Commission approves any project-specific costs to be included in the GRR." Therefore there are no charges under this rider to be included in the MRO Price Test.⁸⁷ Ms. Thomas failed to acknowledge that the GRR would not exist in an MRO, and therefore it is a provision of the Proposed ESP which must be accounted for, as recognized by Mr. Schnitzer and Mr. Fortney.⁸⁸ This is especially true since AEP Ohio had produced an estimate of the costs of at least one project that AEP Ohio intends to recover through this rider. Indeed, even a zero dollar placeholder would adversely affect competition because of the uncertainty it would create for potential suppliers.⁸⁹ If AEP Ohio does not want to include a GRR cost estimate in the ESP vs. MRO test, then it should remove the GRR from the Proposed ESP.

⁸⁴ Schnitzer Direct, pp. 16-17.

⁸⁵ Schnitzer Direct, p. 17; Fortney Direct, p. 4, Att. A.

⁸⁶ Tr. Vol. X, pp. 1694-95.

⁸⁷ Thomas Direct, p. 15.

⁸⁸ Schnitzer Direct, pp. 16-17; Fortney Direct, p. 4, Att. A.

⁸⁹ Lesser Direct, p. 63.

After pointing out these issues, Mr. Schnitzer simply used AEP Ohio's own cost estimates to forecast the Turning Point facility's revenue requirement and netted out the energy and capacity revenues that will be available to the facility.⁹⁰ Mr. Schnitzer did not adjust the cost of the Proposed ESP upward to account for the MR6 project because development of the MR6 project and cost recovery prior to June 1, 2015, is unlikely.⁹¹ Therefore, for the Turning Point facility alone, Mr. Schnitzer included in the Proposed ESP price a GRR charge of \$0.15/MWh in 2013, \$0.21/MWh in 2014, and \$0.24/MWh in 2015.⁹² Staff witness Fortney determined estimated GRR charges would be \$0.18/MWh in 2012, \$0.22/MWh in 2013, and \$0.26/MWh in 2014 based on Turning Point estimated costs.⁹³

As shown by the analysis used by Mr. Schnitzer and Mr. Fortney, the GRR is a material provision of the Partial Stipulation and should be included in the MRO test. The fact that additional costs that could be included in the GRR are not yet certain does not mean that Ms. Thomas should ignore available cost estimates for the Turning Point project. Her decision to ignore these costs results in her erroneous calculation inappropriately understating the cost of the Proposed ESP in comparison to an MRO by an additional \$19.2 million.⁹⁴

⁹⁰ See Schnitzer Direct, p. 18. The Partial Stipulation leaves open the question of whether the energy and capacity of the GRR facilities will be bid into PJM auctions or utilized in some other fashion.

⁹¹ Schnitzer Direct, p. 18.

⁹² Fortney Direct, Att. A. Any additional costs which are actually incurred for MR6 or the customer-sited projects would increase these values. Schnitzer Direct, p. 18.

⁹³ Notably, AEP Ohio witness Roush has also failed to include the GRR in its rate impact analysis. Tr. Vol. I, p. 98.

⁹⁴ Using Ms. Thomas' projected load, making this adjustment would create an ESP price benefit of -\$0.84/MWh, or -\$124 million. ($-\$0.84/\text{MWh} \times 147,493,900 \text{ MWh} = -\$123,894,876$). As Ms. Thomas has already recognized that the MRO is more favorable by \$104.7 million, Ms. Thomas' total understatement associated with the GRR is approximately \$19.2 million for the Turning Point facility alone.

iii. Pool Modification Rider (“PMR”)

On December 17, 2010 – before the original ESP application was filed and more than eight months prior to the Proposed ESP being filed – AEP Ohio and other AEP entities provided written notice that they were terminating the AEP Power Pool.⁹⁵ Under this agreement, AEP operating companies share capacity and energy under a predefined pricing structure.⁹⁶ Although termination of the Pool is not a cause or effect of the Partial Stipulation, the Partial Stipulation authorizes AEP Ohio to establish a rider – the PMR – to recover lost revenues resulting from Pool termination or modification.⁹⁷ If the impact of the pool termination or modification on AEP Ohio during the ESP term is greater than \$50 million, AEP Ohio may pursue cost recovery of the entire impact⁹⁸ through a separate proceeding.⁹⁹

AEP Ohio has not estimated the potential impact of the PMR.¹⁰⁰ However, Mr. Nelson claimed that the “entire impact” of the PMR will be measured by calculating the “lost receipts versus what you may replace that with.”¹⁰¹ The potential “lost receipts” portion of this analysis is extremely significant. AEP Ohio has estimated that its annual pool capacity revenue would be approximately \$350-\$400 million.¹⁰² Accordingly, depending on how AEP Ohio replaces this revenue in the future, this rider could lead to very significant impacts for Ohio customers. Yet,

⁹⁵ Direct Testimony of Philip J. Nelson, AEP Ex. 7 (“Nelson Direct”) at p. 19.

⁹⁶ Nelson Direct, p. 17.

⁹⁷ See Stip., § IV.5; Tr. Vol. V, p. 713.

⁹⁸ If the “impact” on AEP Ohio is \$60 million prior to May 31, 2015, AEP Ohio may pursue recovery of the entire \$60 million as part of the PMR. See Nelson Direct, p. 25; Tr. Vol. V, p. 708.

⁹⁹ See Stip., § IV.5.

¹⁰⁰ Tr. Vol. V, p. 710.

¹⁰¹ Tr. Vol. V, p. 713.

¹⁰² Tr. Vol. V, pp. 710-713.

those significant impacts are completely ignored by the Signatory Parties in the ESP vs. MRO test.

Despite the potentially significant impact of the PMR on the future price of the ESP, Ms. Thomas failed to include any provision for the PMR in her ESP vs. MRO test.¹⁰³ Much like the estimated GRR charges, Ms. Thomas claimed that the estimated PMR charges should not be included in the ESP vs. MRO test because the PMR is a placeholder until such time as the Commission approves changes for that rider.¹⁰⁴ Ms. Thomas thus did not attempt to estimate a value for this rider.¹⁰⁵ Ms. Thomas also claimed (without support) that the effect of a pool modification rider could flow through to the generation pricing under an MRO because a portion of the load in an MRO would be served under SSO pricing.¹⁰⁶

Ms. Thomas' argument fails because the PMR is an element of the ESP which would not be included in an MRO.¹⁰⁷ Indeed, even Ms. Thomas admitted that the PMR would not be part of the MRO.¹⁰⁸ AEP Ohio negotiated for the PMR, which suggests AEP Ohio believes it has significant value.¹⁰⁹ It is an element of the Proposed ESP. It is not appropriate to simply ignore this element of the Proposed ESP because the final amount to be recovered under this rider is not yet absolutely certain. Accordingly, estimated values for this rider must be established and used as part of the ESP vs. MRO test.

¹⁰³ See Thomas Direct, Ex. LJT-3.

¹⁰⁴ See Tr. Vol. IV, p. 569.

¹⁰⁵ Tr. Vol. IV, p. 595.

¹⁰⁶ Tr. Vol. IV, pp. 595-96. Mr. Fortney also failed to quantify the PMR in his analysis, but he did label the PMR under the category, "Things that are part of the ESP but would not be in an MRO." See Fortney Direct, Att. A.

¹⁰⁷ See Schnitzer Direct, pp. 16-17, 19-20; Fortney Direct, Att. A.

¹⁰⁸ Tr. Vol. IV, p. 596.

¹⁰⁹ Tr. Vol. VII, pp. 1419-1420.

Mr. Schnitzer developed a high and low estimate of the financial impact of the PMR for the period from September 1, 2013 through May 31, 2015.¹¹⁰ Mr. Schnitzer developed an estimate based on the potential lost capacity revenues due to the termination of the AEP Pool.¹¹¹ Erring on the side of caution, Mr. Schnitzer relied on forecasted pool transfer prices for 2012-2014 provided by AEP Ohio in discovery.¹¹² To the extent that AEP Ohio would seek to recover any other costs associated with pool termination besides lost capacity revenues, the PMR costs would be even higher than projected by Mr. Schnitzer.¹¹³

To create his high estimate, Mr. Schnitzer calculated capacity revenue losses as the difference between the AEP capacity transfer price and the RPM capacity transfer price (as was used by an AEP Ohio affiliate in an Indiana proceeding).¹¹⁴ Mr. Schnitzer offset the lost capacity revenues with the associated incremental energy revenues as a result of pool termination.¹¹⁵ As a result of this analysis, Mr. Schnitzer's high estimate of the total impact of pool termination, net of offsetting increases in energy revenue, was more than \$525 million, or \$8.75/MWh.¹¹⁶ To create his low estimate, Mr. Schnitzer assumed that rather than sell excess capacity and energy at market, AEP Ohio would be able to negotiate prices with its affiliates that split the difference between market and forecast transfer prices, thereby reducing costs to be recovered in the rider by half, or \$262.5 million or \$4.375/MWh.¹¹⁷ AEP Ohio has recognized that pool receipts of between \$350-400 million annually are at risk due to the decision to

¹¹⁰ Schnitzer Direct, p. 19.

¹¹¹ Schnitzer Direct, p. 19.

¹¹² See Schnitzer Direct, p. 19, fn. 40.

¹¹³ Schnitzer Direct, p. 19, fn. 39.

¹¹⁴ See Schnitzer Direct, p. 19, fn. 40, 41.

¹¹⁵ Schnitzer Direct, p. 19.

¹¹⁶ Schnitzer Direct, p. 19.

¹¹⁷ Schnitzer Direct, p. 19.

terminate the pool agreement. However, AEP Ohio has not estimated the potential cost of this rider, despite the extremely significant impact it could have on Ohio customers using the very methodology AEP proposed in an Indiana proceeding. This is inappropriate. The costs of including this rider in the Proposed ESP, which costs would not be present in an MRO, should be included in the ESP vs. MRO price test. If AEP Ohio does not want to include a PMR cost estimate in the ESP vs. MRO test, then it should remove the PMR from the Proposed ESP.

iv. The DIR is an additional cost of the Proposed ESP

The Distribution Investment Rider (“DIR”) is a nonbypassable rider intended to allow AEP Ohio to recover for taxes and to earn a return on and of post-2000 plant-in-service associated with distribution net investment.¹¹⁸ Ms. Thomas improperly failed to include the DIR in her analysis, claiming that “while the DIR itself would not be part of an MRO, equivalent distribution rate cases can occur under an MRO and therefore, you kind of have the equivalent thing on both sides.”¹¹⁹ Ms. Thomas is incorrect for two reasons.

First, Ms. Thomas’ analysis ignored that the AEP Ohio companies currently have an application pending for a distribution base rate increase with a date certain of August 31, 2010.¹²⁰ Staff filed separate reports in these cases. On a combined company basis, Staff recommended a low annual increase of \$13.7 million and a high annual increase of \$29.6 million.¹²¹ The average annual increase proposed by Staff was \$21.6 million.¹²² Using the average annual increase calculated by Staff as his comparison for MRO purposes, Dr. Lesser analyzed the DIR provisions contained in the Partial Stipulation and determined that the Partial

¹¹⁸ Stip., § IV.1(n).

¹¹⁹ Tr. Vol. IV, p. 594.

¹²⁰ See Case No. 11-351-EL-AIR and 11-352-EL-AIR; Lesser Direct, pp. 49-53.

¹²¹ Lesser Direct, p. 49.

¹²² Lesser Direct, p. 49.

Stipulation would have the effect of increasing revenue to AEP Ohio by \$219.9 million over the Proposed ESP term.¹²³ Dr. Lesser concluded that the failure to recognize this very significant increase in costs understated the ESP compared to an MRO.

Second, if the DIR is approved in the form set forth in the Partial Stipulation, but the plant-in-service included in the DIR is also included in the rate base supporting Staff's recommended annual increase of \$21.6 million, then AEP Ohio will be double-recovering post-2000 costs through the date certain of August 31, 2010.¹²⁴ Thus, the DIR reaches back an additional 10 years, allowing AEP Ohio to recover costs during that period twice.¹²⁵ In AEP Ohio's rebuttal testimony, Mr. Allen was asked whether he agreed that the DIR will allow double recovery of costs. He replied: "No. Any costs recovered through the Companies' base distribution rates would not be recovered through the DIR."¹²⁶ It is unclear why Mr. Allen disagrees with this reading of the Partial Stipulation, but on cross-examination Mr. Allen stated that a revenue credit may be appropriate to avoid a double recovery.¹²⁷ However, this "revenue credit" does not appear in the Partial Stipulation, which specifically mandates recovery of and on post-2000 investment without any offset. Thus, to the extent the Partial Stipulation permits double recovery, that double recovery must be considered an additional cost of the Proposed ESP.

¹²³ Lesser Direct, pp. 50-51.

¹²⁴ Lesser Direct, p. 49.

¹²⁵ Lesser Direct, p. 50. This double recovery and the related flaws in the calculation of the DIR are discussed in detail by other parties. *See* Duann Direct, pp. 29-31 (finding that the pending distribution rate case, as a stand-alone traditional rate case, allows AEP Ohio to recover of and on the incremental net plant in-service after 2000 through the date certain, while the DIR provisions in the Partial Stipulation provide yet another opportunity to recover for these same costs).

¹²⁶ Rebuttal Testimony of William A. Allen on behalf of Columbus Southern Power Company and Ohio Power Company, AEP Exs. 20A and 20B ("Allen Rebuttal"), p. 5.

¹²⁷ Tr. Vol. XII, pp. 2054-56.

v. Summary of adjustments to Stipulation ESP Price

As discussed in detail above, each of the adjustments to the Stipulation ESP Price made by Mr. Schnitzer are reasonable and necessary. Mr. Schnitzer used AEP Ohio's own fuel cost estimates to conduct his analysis. For the GRR, Mr. Schnitzer used AEP Ohio's own revenue estimates for the Turning Point facility only (ignoring MR6 and the customer-sited issues). Mr. Schnitzer created a high and low case for the PMR which incorporated a variety of assumptions. The high case assumes that AEP Ohio can sell its excess energy and capacity at market prices and is consistent with AEP's own analysis of pool termination that the Company filed in Indiana. The low case assumes that AEP Ohio can negotiate prices with its affiliates that split the difference between market and the Company's forecasted transfer prices, thereby reducing costs to be recovered in the rider by half. These cost estimates prepared by Mr. Schnitzer are more reasonable and significantly different than the Company's unreasonable estimate of zero costs. For all practical purposes with respect to the MRO price test, AEP Ohio's analysis incorrectly assumes that the GRR and PMR riders do not exist in the Proposed ESP. This simply is not true, and the costs of these riders should not be ignored when considering all terms and conditions of the Proposed ESP. Finally, Dr. Lesser calculated the additional cost of the ESP related to additional recovery of distribution costs through the DIR.

Based on the aforementioned adjustments, corrections to Ms. Thomas' Proposed ESP price are significant. As shown in detail on Mr. Schnitzer's Ex. MMS-2, under Mr. Schnitzer's low case PMR adjustments, he found that the Proposed ESP price is \$[REDACTED], or \$[REDACTED] higher than the value used by Ms. Thomas.¹²⁸ Using his high case PMR adjustments, the Proposed ESP

¹²⁸ Schnitzer Direct, Ex. MMS-2.

price is \$■■■■■, or \$■■■■■ higher than the value used by Ms. Thomas.¹²⁹ These adjustments do not include the additional \$219.9 million calculated by Dr. Lesser.¹³⁰

The chart below shows the impact of the changes to fuel, GRR, and PMR on Ms. Thomas' analysis. Of note, Mr. Schnitzer's analysis uses different shopping assumptions than Ms. Thomas' analysis, and Mr. Schnitzer's methodology is actually more favorable to AEP Ohio than that used by Ms. Thomas. The results provided below use Ms. Thomas' methodology to illustrate the significant nature of these changes under AEP Ohio's own analysis.

¹²⁹ Schnitzer Direct, Ex. MMS-2.

¹³⁰ Lesser Direct, pp. 50-51.

AEP Ohio
Electric Security Plan
Alternative Market Rate Offer Price Test
Exhibit LJT-3 - Including Fuel Update, GRR, and Schnitzer's High PMR

		2012	Jan 2013 - May 2014	Jun 2014 - May 2015	Wtd Average (4) = weighted (1), (2) and (3)	
Generation Service Price		(1)	(2)	(3)		
1	2011 Base ESP 'g' Rate	24.05	23.97	23.97		23.99
2	2011 Full Fuel*					
		33.01	33.00	33.00	-	33.00
3	Total Generation Service Price					
Expected Bid Price						
4	Competitive Benchmark - Capacity Cost	70.53	74.66	79.85		74.95
5	Shopping Benchmark Weight	79%	66%	59%		
6	Competitive Benchmark - RPM	57.16	58.68	72.32		62.21
7	Shopping Benchmark Weight	21%	34%	41%		
8	Expected Bid Price	67.72	69.23	76.76		70.98
MRO Pricing						
9	Generation Service Price					
10	Generation Service Weight	90%	77%	66%		
11	Expected Bid Price	67.72	69.23	76.76		70.98
12	Expected Bid Weight	10%	23%	34%		
13	MRO Annual Price	58.13	59.79	63.70		60.44
MRO - ESP Price Comparison						
14	MRO Annual Price	58.13	59.79	63.70		60.44
15	Stipulation ESP Price	59.71	61.34	62.34	-	61.15
16	ESP Price Benefit**	(1.58)	(1.55)	1.36		(0.71)

b. AEP Ohio overstated the Competitive Benchmark Price by assuming the above-market capacity prices from the Partial Stipulation would apply to the market-based component of the MRO.

In the 10-2929 Docket, AEP Ohio proposed that the Commission adopt a full embedded cost-based capacity charge. The Commission rejected this proposal in its December 8, 2010 Order in the 10-2929 Docket (the “10-2929 Entry”), holding that Ohio’s state compensation mechanism for capacity would remain what it had always been – market-based RPM prices.¹³¹ Various parties, including FES and Staff, opposed AEP Ohio’s proposal, which was scheduled for hearing.¹³²

Despite the fact that the capacity pricing issue was still being actively litigated, Ms. Thomas’ analysis of the MRO price was based on a blending of the negotiated capacity prices in the Partial Stipulation of \$255/MW-day and RPM prices.¹³³ Ms. Thomas simply assumed that it was appropriate to use the negotiated capacity prices in the Partial Stipulation for purposes of developing the market price benchmark in an MRO. She did this despite admitting that the Stipulation does not contemplate what happens if the Proposed ESP is not approved.¹³⁴ Ms. Thomas also admitted that the capacity prices in the Partial Stipulation only apply if the ESP is approved.¹³⁵ Therefore, that capacity price would not apply in an MRO. Everyone agrees that the Partial Stipulation capacity price of \$255/MW-day is not a cost-based or market-based figure, rather it is a negotiated number agreed to by some, but not all, parties. Thus, this negotiated

¹³¹ See Schnitzer Direct, p. 23; *see also*, 10-2929 Entry at ¶ 4 (citing to Case No. 08-917-EL-SSO *et al.*)

¹³² See Docket, Case No. 10-2929-EL-UNC.

¹³³ See Schnitzer Direct, p. 20; Thomas Direct, p. 9.

¹³⁴ Tr. Vol. IV, p. 578.

¹³⁵ Tr. Vol. IV, p. 579.

“made up” figure cannot in any way reflect the competitive market outcome under an MRO. The competitive benchmark price component in the MRO should be based on competitive market prices, not a “made up” negotiated figure.

As compared to the Competitive Benchmark Price using RPM pricing, Ms. Thomas’ approach increases the Competitive Benchmark Price over the Proposed ESP period by \$12.74/MWh.¹³⁶ Ms. Thomas admitted that, even before removing POLR charges, using RPM prices for capacity in her Competitive Benchmark Price in the MRO price makes the “ESP benefit” zero or slightly negative.¹³⁷ Removing POLR charges only makes this “ESP benefit” even more negative.

The ESP vs. MRO test is intended to compare resulting costs under two sets of conditions: (1) if the Proposed ESP is adopted; and (2) if an MRO is implemented. Yet Ms. Thomas illogically assumes that the MRO would be affected by the result of the Proposed ESP. As Mr. Schnitzer points out: the MRO should be based on RPM market prices and “not the negotiated Stipulation AEP Ohio capacity price or the capacity price filed in Case No. 10-2929-EL-UNC.”¹³⁸

Market-based rates are the only rates which have been in place in Ohio since AEP joined PJM. They are the rates used by AEP Ohio in its last ESP. They are the rates CRES providers relied upon and expected to apply for the PJM planning years at issue here. Using these rates,¹³⁹

¹³⁶ Schnitzer Direct, p. 21.

¹³⁷ Tr. Vol. IV, pp. 581, 592-93.

¹³⁸ Schnitzer Direct, p. 22. As Mr. Schnitzer also noted, AEP Ohio’s position on capacity is inconsistent with its prior positions. For its 2009-2011 ESP, AEP Ohio used RPM pricing for capacity costs. Schnitzer Direct, p. 22. It now claims that those prices should not be used. Schnitzer Direct, p. 22. Obviously, AEP Ohio has reversed course for no other reason than that it does not like the RPM market pricing that will be in place from mid-2012 to mid-2014.

¹³⁹ And including the ripple effects of this change to Ms. Thomas’ analysis as shown in the accompanying table.

Mr. Schnitzer found that the Competitive Benchmark Price would be \$8.90/MWh lower than Ms. Thomas' estimate:¹⁴⁰

Corrections to Competitive Benchmark Price (Expected Bid Price)

(\$/MWh)	Thomas RPM CBP	Thomas \$255 CBP	Thomas Blended CBP	MMS CBP (RPM)	Total Corrections
Simple Swap	43.88	43.88	43.88	43.90	0.02
Basis Adjustment	0.58	0.58	0.58	0.58	0.00
Load Following/Shaping Adjustment	2.87	3.69	3.44	2.79	-0.65
Capacity	4.79	16.08	12.55	4.76	-7.79
Ancillary Services	0.60	0.60	0.60	0.60	0.00
Alternative Energy Requirement	0.79	0.79	0.79	0.79	0.00
ARR Credit	-1.12	-1.12	-1.12	-1.10	0.01
Losses	1.85	1.89	1.88	1.81	-0.07
Transaction Risk Adder	2.96	3.57	3.38	2.96	-0.42
Retail Administration	5.00	5.00	5.00	5.00	0.00
Total	62.20	74.95	70.98	62.08	-8.90

c. AEP Ohio understated the Legacy ESP Total Generation Service Price.

The Legacy ESP Total Generation Service Price is the price of the current ESP which is used as a variable in the ESP vs. MRO analysis.¹⁴¹ AEP Ohio miscalculated the Legacy ESP Total Generation Service Price in three ways. First, AEP Ohio, through Ms. Thomas, used 2011 fuel costs instead of its actual forecast fuel prices. As discussed above, Mr. Schnitzer corrected Ms. Thomas' calculation of the Stipulation ESP price to reflect AEP Ohio's estimate of future fuel costs. As this comparison would also affect the Legacy ESP Total Generation Service Price

¹⁴⁰ Schnitzer Direct, p. 24, Ex. MMS-3. The changes to the Load Following/Shaping Adjustment, Losses, and Transaction Risk Adder are all ripple effects associated with the change in capacity prices.

¹⁴¹ R.C. §§ 4928.143, 4928.142(D).

that is used to calculate the blended MRO price, Mr. Schnitzer used these same fuel values in his Legacy ESP Total Generation Service Price.¹⁴² Mr. Schnitzer adjusted the 2011 fuel cost figure to reflect known and measurable changes in fuel costs consistent with R.C. § 4928.142(D).¹⁴³

Second, Ms. Thomas failed to use future environmental cost estimates. Instead, she used 2011 costs. Ms. Thomas assumed a 2011 EICCR figure (\$0.90/MWh) and held that price constant through the Proposed ESP period. In contrast, Mr. Schnitzer also adjusted the 2011 environmental cost figure to reflect known and measurable changes in environmental costs consistent with R.C. § 4928.142(D).¹⁴⁴ Mr. Schnitzer projected higher costs based on AEP Ohio's forecast of its costs to comply with the consent decree signed by AEP and new environmental rules which may affect AEP Ohio.¹⁴⁵ Using AEP Ohio's public pronouncements of its future compliance costs, Mr. Schnitzer quantified the impact of these projected environmental costs under both a high and a low case.¹⁴⁶ Under the low case forecast by AEP Ohio, Mr. Schnitzer projected that the 2015 EICCR would rise to \$3.97/MWh.¹⁴⁷ Under the high case, Mr. Schnitzer projected that the EICCR would rise to \$8.56/MWh.¹⁴⁸ In either case, this would be significantly higher than the \$0.90/MWh projected by Ms. Thomas based on 2011 costs.

¹⁴² Schnitzer Direct, p. 25.

¹⁴³ Schnitzer Direct, p. 25.

¹⁴⁴ Schnitzer Direct, pp. 25-27.

¹⁴⁵ Schnitzer Direct, pp. 26-27 (relying on AEP Ohio's estimation for these costs provided in AEP Ohio's response to FES Int. 10-2).

¹⁴⁶ Schnitzer Direct, p. 27.

¹⁴⁷ Schnitzer Direct, p. 27.

¹⁴⁸ Schnitzer Direct, p. 27.

Third, Ms. Thomas' analysis initially included a POLR charge as part of her Generation Service Price component of her MRO price.¹⁴⁹ She continued to include a POLR charge even after the Commission issued the Remand Order.¹⁵⁰ As the Commission noted in an October 26, 2011 Entry in Case No. 08-917-EL-SSO, no POLR charges belong in AEP Ohio's current ESP. Thus, no such charges should be included in any MRO price calculation in this case. Ms. Thomas' Exhibit LJT-3 shows the effect of eliminating the POLR charge from the MRO price calculation: the MRO price would be substantially less than the ESP price.¹⁵¹

In contrast to Ms. Thomas, Mr. Schnitzer properly valued the Legacy ESP portion of the MRO. He used the most recent fuel cost estimates.¹⁵² As noted, he used reasonable estimates for environmental costs.¹⁵³ He also removed the POLR charge.¹⁵⁴ Notably, by including higher figures for fuel and environmental costs in the Legacy ESP Total Generation Service Price, Mr. Schnitzer increased the MRO price relative to the ESP price. This is what fair and proper analytical methods dictate. Unlike AEP Ohio's witnesses, Mr. Schnitzer's methodology was not designed to produce a pre-determined result.

Mr. Schnitzer's corrections to the Total Generation Service Price are shown in his Exhibit MMS-4. These exhibits provide a variety of scenarios under which Mr. Schnitzer conducted an MRO price test by incorporating each of the adjustments discussed above. Under no scenario is the Proposed ESP more favorable than an MRO.

¹⁴⁹ Thomas Direct, Ex. LJT-2.

¹⁵⁰ Thomas Direct, p. 17.

¹⁵¹ Thomas Direct, Ex. LJT-3.

¹⁵² Schnitzer Direct, Ex. MMS-4.

¹⁵³ Schnitzer Direct, Ex. MMS-4. Ms. Thomas relies upon Mr. Schnitzer's EICCR estimates in her rebuttal testimony. Thomas Rebuttal, p. 4.

¹⁵⁴ Schnitzer Direct, Ex. MMS-4.

d. Mr. Schnitzer concluded that the Proposed ESP is less favorable than an MRO by \$350 to \$800 million.

After making the corrections and adjustments discussed above, Mr. Schnitzer used a methodology similar to that employed by Ms. Thomas to blend the corrected Competitive Benchmark Price and the Total Generation Service Price to derive a corrected MRO price.¹⁵⁵ He then compared the corrected MRO price to the Proposed ESP price.¹⁵⁶ Based on his analysis, Mr. Schnitzer found that the Partial Stipulation would result in excess costs when compared to an MRO of \$350 to \$800 million.¹⁵⁷ Based on this result, Mr. Schnitzer concluded that the Proposed ESP price is substantially less favorable than the expected price under an MRO.¹⁵⁸

Mr. Schnitzer also concluded that a modified ESP that relies on fixed-price full requirements solicitations could result in an SSO price that is substantially less than the Proposed ESP price.¹⁵⁹ A modified ESP based on SSO supply through competitive solicitations of fixed-price full requirements products is different from an MRO because blending is eliminated. Mr. Schnitzer's analysis showed that the Competitive Benchmark Price was approximately \$8/MWh lower over the period than the Proposed ESP Price (using RPM pricing), and as a result a modified ESP that fully relies on competitive solicitations could save customers \$1.0 billion over the January 2012 through May 2015 period as compared to the Proposed ESP.^{160 161}

¹⁵⁵ Schnitzer Direct, p. 28.

¹⁵⁶ Schnitzer Direct, p. 28.

¹⁵⁷ Schnitzer Direct, p. 28. Even if AEP Ohio's claimed POLR charge of \$1.11/MWh were included, the Proposed ESP would impose from \$200 to \$650 million in costs on customers as compared to an MRO. Schnitzer Direct, p. 28.

¹⁵⁸ Schnitzer Direct, p. 28.

¹⁵⁹ Schnitzer Direct, p. 29.

¹⁶⁰ Schnitzer Direct, p. 29. Alternatively, these benefits could be made available to AEP Ohio's customers during the period prior to June 2015 if the Commission were to eliminate the RPM set-aside caps in the Partial Stipulation, thereby allowing more customers to shop and access lower market prices.

III. AEP OHIO’S UNSUPPORTED CAPACITY PRICES CANNOT BE USED TO INVENT NON-EXISTENT BENEFITS FOR THE PROPOSED ESP.

Because even AEP Ohio’s comparison of ESP pricing to MRO pricing showed that an MRO would be cheaper for customers, AEP Ohio invented other “benefits” to argue that the ESP is more favorable. The largest of these claimed benefits is AEP Ohio’s agreement in the Partial Stipulation to provide a limited amount of market-based capacity pricing to CRES providers over the first forty-one months of the Proposed ESP term. AEP Ohio claimed this as a benefit because it is less than the \$355/MW-day capacity pricing requested in Case No. 10-2929. AEP Ohio relies upon the net present value of this “discounted” capacity to show that the Proposed ESP is more favorable than an MRO.¹⁶² Without this “benefit,” AEP Ohio’s own analysis would show that the Proposed ESP fails the ESP vs. MRO test.¹⁶³

As discussed in detail above in Section II(A), Ohio law requires that an MRO consider competitive market based pricing, “including the costs of energy and capacity.”¹⁶⁴ This statute does not permit the inclusion of the purported cost-based capacity charge, let alone an arbitrary and artificial negotiated capacity price. Both options would be antithetical to the “market-based offer” that is provided for by R.C. § 4928.142. The Commission must compare the Proposed ESP to a truly and wholly market-based offer, including the market price for capacity.

AEP Ohio’s claimed benefits do not exist, even if considered to be part of the Proposed ESP. Mr. Allen claimed that “AEP Ohio is providing capacity to CRES providers at a significant

¹⁶¹ As discussed in detail in Section IV(E) below, the Commission has the authority to accelerate the transition to market under an MRO by waiving any blending after two years. R.C. § 4928.142(D). If blending is waived, an MRO could result in a similar benefit to customers as a modified ESP that relies on fixed-price full requirements solicitations.

¹⁶² Allen Direct, pp. 18-19.

¹⁶³ See Allen Direct, Ex. WAA-6.

¹⁶⁴ R.C. § 4928.142(C)(3).

discount than would be expected under an MRO.”¹⁶⁵ Mr. Allen quantified this “benefit” as having a net present value of \$856 million.¹⁶⁶ Mr. Allen calculated the difference between AEP Ohio’s proposed, allegedly cost-based capacity charge and RPM market rates for the limited amount of market-based capacity made available during each year of the Partial Stipulation.¹⁶⁷ Mr. Allen’s alleged “benefit” was thus measured relative to AEP Ohio’s capacity price proposal (which has never been approved by FERC or the Commission) and was not measured relative to an MRO. Mr. Allen refused to consider the reduced “benefit” which exists because AEP Ohio is not entitled to recover its claimed full embedded cost of capacity through a state compensation mechanism. After a lengthy discussion, he agreed that if the price for capacity that AEP Ohio could properly collect was the RPM price, then the benefit would be zero.¹⁶⁸ In fact, as described below, the purported “benefit” is more accurately described as a cost of the Partial Stipulation.

This purported “capacity price discount” benefit overlooks several things. First and foremost, to claim a benefit from not having CRES providers pay a higher capacity price, AEP Ohio would have to show that it was entitled to charge that price. The only capacity price which has ever been in effect for CRES providers purchasing capacity from AEP Ohio has been RPM pricing.¹⁶⁹ AEP Ohio used RPM pricing in its 2009-2011 ESP.¹⁷⁰ AEP Ohio attempted to persuade FERC to adopt cost-based pricing – and failed. The Commission specifically adopted

¹⁶⁵ Allen Direct, p. 18.

¹⁶⁶ Allen Direct, p. 19.

¹⁶⁷ Tr. Vol. III, p. 433-435.

¹⁶⁸ Tr. Vol. III, pp. 436-441.

¹⁶⁹ Tr. Vol. V, p. 735.

¹⁷⁰ See Schnitzer Direct, pp. 22-23.

RPM pricing as Ohio's state compensation mechanism on December 8, 2010.¹⁷¹ AEP Ohio sought to change Ohio's state compensation mechanism to a cost-based system, which was universally opposed by all parties, including Staff. Staff found that AEP Ohio's approach was "not reasonable" and recommended the use of RPM prices.¹⁷² At no point has Ohio ever adopted AEP Ohio's proposed cost-based mechanism.

No other party, including any other Signatory Party, supported the view that AEP Ohio would have been entitled to charge \$355/MW-day for capacity or that not having to pay that price for capacity is a "benefit" of the Proposed ESP. In addition to Staff, RESA witness Ringenbach testified that she did not believe that AEP Ohio was entitled to charge \$355/MW-day absent the Partial Stipulation.¹⁷³ OEG witness Baron testified supporting the use of RPM pricing.¹⁷⁴ Constellation witness Fein testified that AEP Ohio was not entitled to recover its proposed capacity charge, and that the proposed charge would have been anticompetitive with an adverse effect on shopping: "We obviously took issue with the original filing that included that [\$355/MW-day] number and, you know, we're not supportive of that."¹⁷⁵ Exelon witness Dominguez also believed AEP Ohio was not entitled to recover its proposed capacity charge.¹⁷⁶

Perhaps the clearest explanation of why Mr. Allen's purported capacity "benefit" lacks merit came from Staff witness Fortney. Mr. Fortney did not include any "benefit" for the capacity price set asides in his ESP vs. MRO analysis.¹⁷⁷ Fortney agreed that Staff, through its

¹⁷¹ See 10-2929 Entry.

¹⁷² See Direct Testimony of Hisham M. Choueiki on behalf of the Staff of the Public Utilities Commission of Ohio, Staff Ex. 2 ("Choueiki Direct") at pp. 4, 7-8.

¹⁷³ Tr. Vol. IV, pp. 539-540.

¹⁷⁴ Tr. Vol. III, p. 236.

¹⁷⁵ Tr. Vol. VI, pp. 970-971, 982-983.

¹⁷⁶ Tr. Vol. VI, pp. 1043-1044.

¹⁷⁷ Tr. Vol. X, p. 1707.

witness Dr. Choueiki, supported capacity pricing at RPM.¹⁷⁸ When Mr. Fortney was asked why he did not include Mr. Allen's purported capacity "benefit," his response succinctly summarized the flaw in Mr. Allen's position:

Q. So would it be fair to say that -- would it be fair to say that if one was going to have a benefit calculated from not having to pay a capacity price of \$355, one would have to assume that AEP was entitled to charge that amount?

A. I play the lottery and occasionally when one of the jackpots gets fairly high I take out my pad of paper and I write down what I'm going to spend the money on, who I might leave it to, and who I might give it to, and I guess, for example, if I took my pad of paper out and I put Ms. Grady's name down, she's a nice person, it probably isn't much of a benefit to her unless I actually win the lottery and until I actually give her a million dollar check.

So I know you like yes or no answers, so I think the answer to your question is yes, I think when you are going to compare two things, one of the things has to be a certain.

Q. And you didn't attempt to calculate that benefit because you didn't think it was a benefit, did you?

A. It may be a meaningful number for AEP. I do not believe it's a meaningful number for the comparison of the MRO to the ESP.¹⁷⁹

FES couldn't have put it better. There is simply no "benefit" to customers from the Partial Stipulation's providing a limited amount of capacity at RPM prices.

Dr. Lesser discussed this purported benefit in detail and explained why Mr. Allen's contention lacked merit. After discussing the economic reasons for adopting RPM pricing, the 10-2929 Entry, and the flaws in AEP Ohio's capacity calculation, Dr. Lesser concluded that the capacity pricing in the Partial Stipulation was actually a cost to customers, not a benefit. Dr.

¹⁷⁸ Tr. Vol. X, p. 1707.

¹⁷⁹ Tr. Vol. X, p. 1707-1708.

Lesser somewhat colorfully explained why raising prices inappropriately, but not raising them as high as was originally proposed, is not a benefit:

Again, therefore, equating a ‘benefit’ to CRES customers from not recovering monies for which it has no right to collect in the first place, is specious. One might as well argue that the thief who stole your wallet, but not your watch, ‘benefitted’ you, because he could have stolen the watch too.¹⁸⁰

Mr. Schnitzer also added that AEP Ohio’s initial above-market capacity request would significantly overcompensate AEP Ohio for its capacity. Therefore, AEP Ohio’s requested above-market compensation is not the appropriate benchmark on which to measure “savings.”¹⁸¹

A. AEP Ohio’s Proposal Changes The Capacity Compensation System Which Has Been In Place Since AEP Ohio Joined PJM And Seeks To Impose A Dramatic Price Increase On Customers.

1. AEP historically has been compensated for capacity at RPM prices.

AEP Ohio historically has been compensated for capacity by CRES providers at RPM market-based prices.¹⁸² As of September 27, 2011 (and effective through May 31, 2012), AEP Ohio charged CRES providers an amount based upon \$110/MW-day, the PJM RPM RTO clearing price for the 2011/2012 delivery year.¹⁸³ AEP Ohio witness Nelson acknowledged that, for as long as CRES providers have been purchasing capacity from AEP Ohio, AEP Ohio has priced that capacity at RPM market price.¹⁸⁴ Mr. Nelson acknowledged that OPCo has never received \$379.23/MW-day for capacity from shopping customers.¹⁸⁵ AEP Ohio witness

¹⁸⁰ Lesser Direct, p. 26.

¹⁸¹ Schnitzer Direct, p. 34.

¹⁸² Nelson Direct, p. 7.

¹⁸³ Direct Testimony of Roy J. Shanker on behalf of FirstEnergy Solutions Corp., FES Ex. 14 (“Shanker Direct”), p. 11.

¹⁸⁴ Tr. Vol. V, p. 735.

¹⁸⁵ Tr. Vol. V, p. 743.

Hamrock admitted that AEP Ohio currently prices capacity at RPM prices, and that the Commission has never authorized AEP Ohio to charge anything other than the RPM price.¹⁸⁶

2. Capacity prices proposed by AEP Ohio

On November 24, 2010, in FERC Case No. ER11-2183-000, AEP Ohio filed new “capacity compensation formulae.”¹⁸⁷ In that proceeding, AEP Ohio proposed that the same cost-based capacity charges it later proposed in 10-2929 Docket would be charged to CRES providers for load that migrated from AEP Ohio to the CRES provider.¹⁸⁸ AEP Ohio’s proposed combined rate was \$388/MW-day using 2009 data.¹⁸⁹ In the FERC’s order dated January 20, 2011, it held that the PUCO had adopted, as provided for by the Reliability Assurance Agreement (“RAA”), the use of the RPM auction price as the state compensation mechanism for capacity compensation related to load migrating to CRES providers.¹⁹⁰ Accordingly, the FERC rejected AEP Ohio’s proposal.¹⁹¹

The Commission entry relied on by the FERC was issued December 8, 2010, in the 10-2929 Docket.¹⁹² In this entry, the Commission formally adopted the current capacity charges established by the three-year RPM capacity auction conducted by PJM as the state capacity compensation mechanism.¹⁹³

¹⁸⁶ Tr. Vol. V, pp. 842-843.

¹⁸⁷ Shanker Direct, p. 12.

¹⁸⁸ Shanker Direct, p. 12.

¹⁸⁹ In its filing in this ESP proceeding, AEP Ohio initially used the combined value of \$347.97/MW-day (combined CSP-OPCo) and sought to apply this same price for the entire term of the ESP. Shanker Direct, p. 13. In the 10-2929 Docket and later in testimony filed in this proceeding to support the Partial Stipulation, AEP Ohio sought to use a combined cost-based capacity charge of \$355.72/MW-day. Direct Testimony of Kelly D. Pearce, AEP Ex. 3 (“Pearce Direct”), p. 10.

¹⁹⁰ FERC Entry dated January 20, 2011, Case No. ER11-2183-000; Shanker Direct, p. 13.

¹⁹¹ FERC Entry dated January 20, 2011, Case No. ER11-2183-000; Shanker Direct, p. 13.

¹⁹² FERC Entry dated January 20, 2011, Case No. ER11-2183-000; Shanker Direct, p. 13.

¹⁹³ 10-2929 Entry; Shanker Direct, p. 14.

Despite these rulings by the Commission and the FERC in this proceeding and in the 10-2929 Docket, AEP Ohio's litigation position continues to be that Ohio's state compensation mechanism should be altered so that AEP Ohio can recover 100% of its claimed fixed generation costs, without any offset for energy sales, from CRES providers without any exposure to market risk. Various intervenors oppose this position, arguing that the appropriate capacity rate is the market rate.¹⁹⁴ The Commission's Staff also oppose this request and have clearly stated that AEP Ohio's proposal is "not reasonable."¹⁹⁵ Staff concluded that market-based capacity charges – RPM charges – should be used instead.¹⁹⁶

In the Partial Stipulation, the Signatory Parties recommend that the Commission set the capacity charge in the 10-2929 Docket to be the PJM RPM-based rate, except that an interim rate of \$255/MW-day would be charged to CRES providers for all shopping above certain thresholds during the first forty-one months of the Proposed ESP.¹⁹⁷ The interim rate has no record support and is well above market. In fact, it is well above AEP Ohio's actual non-stranded costs, as explained in detail below. Starting June 1, 2015, RPM market-based pricing would apply universally.¹⁹⁸

3. The Partial Stipulation's capacity price proposal is nearly four times higher than RPM pricing and could impose over \$1 billion in extra costs on customers.

As discussed in detail above, AEP Ohio currently prices capacity at RPM prices. Mr. Schnitzer provided the RPM prices for the Proposed ESP period: \$116.16/MW-day for June

¹⁹⁴ Shanker Direct, p. 15.

¹⁹⁵ Choueiki Direct, p. 4.

¹⁹⁶ Choueiki Direct, pp. 7-8.

¹⁹⁷ See Stip., § IV.2(b)(1).

¹⁹⁸ See Stip., § IV.2(b)(1).

2011 – May 2012¹⁹⁹; \$16.52/MW-day for June 2012 – May 2013; \$27.73/MW-day for June 2013 – May 2014; and \$125.94/MW-day for June 2014 – May 2015.²⁰⁰ If the Partial Stipulation’s \$225/MW-day capacity price is adopted, any customers shopping above the RPM set-aside caps will be paying nearly four times higher than the market price for capacity.²⁰¹ As such, this provision curtails shopping and harms customers.²⁰²

Dr. Lesser conducted an extensive analysis of the true cost to customers of the Partial Stipulation’s capacity charge. Even using Ms. Thomas’ “market price” (which is overstated as discussed above), Dr. Lesser found that the capacity charge could actually cost customers \$1.27 billion dollars.²⁰³ Dr. Lesser compared Ms. Thomas’ “market” price using the Partial Stipulation’s above-market capacity price of \$255/MW-day to her “market” price using RPM clearing prices, and then allocated this difference to AEP Ohio’s load that is denied market pricing by the Partial Stipulation.²⁰⁴ If all of the load in excess of the RPM set-aside cap were to shop, the resulting cost to AEP Ohio ratepayers and CRES providers would be an additional \$1.27 billion dollars.²⁰⁵ Even if the load in excess of the capacity cap does not shop, AEP Ohio must be assumed to be recovering this above-market cost currently through its generation rates from SSO customers, or else it would be unfairly discriminating against CRES providers and

¹⁹⁹ The PJM RTO clearing price is subsequently adjusted and multiplied by a scaling factor, pool requirement, and loss factor to determine the total price paid by CRES providers. The RPM clearing price for the 2011/2012 deliver year was approximately \$110/MW-day. Shanker Direct, p. 11.

²⁰⁰ Schnitzer Direct, p. 21.

²⁰¹ Direct Testimony of Tony C. Banks on behalf of FirstEnergy Solutions Corp., FES Ex. 1 (“Banks Direct”) at p. 12.

²⁰² Lesser Direct, p. 10; Banks Direct, Exs. TCB-8 and TCB-9; Schnitzer Direct, p. 36-37.

²⁰³ Lesser Direct, p. 10.

²⁰⁴ Lesser Direct, p. 11 (describing Table 1).

²⁰⁵ Lesser Direct, p. 11.

shopping customers. Thus, AEP Ohio is imposing a \$1.27 billion dollar cost on all customers who are denied access to market-priced capacity.²⁰⁶

Even if the rest of Mr. Allen’s purported “benefits” of the Proposed ESP are accepted (which would be improper, as discussed below), a proper evaluation of the dramatic capacity price increase contained in the Proposed ESP flips Mr. Allen’s calculation.

B. There Is Only One Right Price For Capacity: The RPM Market-Based Price.

In addition to the past rulings of the Commission and the FERC, as well as the fact that AEP Ohio has historically used RPM pricing, there continue to be compelling reasons why the only appropriate price for capacity is the RPM market-based price.

1. The PJM Reliability Assurance Agreement does not authorize recovery of AEP Ohio’s full embedded costs.

Under PJM’s Reliability Assurance Agreement (“RAA”) and its FRR election, AEP Ohio is obligated to procure its share of a regional capacity requirement within PJM.²⁰⁷ The FRR election allows eligible Load Serving Entities (“LSEs”), such as AEP Ohio, the option to submit an FRR capacity plan to meet a fixed capacity requirement as an alternative to participating in the RPM Base Residual Auction (“BRA”) for capacity.²⁰⁸ AEP Ohio has voluntarily made the FRR election since the inception of RPM and has continued this election through the 2014/15 delivery year.²⁰⁹ By making the FRR election, AEP Ohio avoids paying auction rates for capacity.²¹⁰

²⁰⁶ Lesser Direct, p. 11.

²⁰⁷ See Shanker Direct, p. 5.

²⁰⁸ See PJM Reliability Assurance Agreement, Schedule 8.1, Sec. D (“FRR Capacity Plan”).

²⁰⁹ Shanker Direct, p. 6.

²¹⁰ Shanker Direct, p. 6.

The FRR alternative accommodates retail switching.²¹¹ In accordance with the PJM RAA, AEP Ohio's capacity charges have been established by the Commission at a level equal to the current respective delivery year (i.e., June 1, 2011-May 31, 2012) clearing price for the Regional Transmission Organization ("RTO") as established in PJM's RPM.²¹²

The RAA also allows any eligible LSE (such as CRES providers) within an FRR designated area that has retail access to establish its own FRR plan.²¹³ However, such an election can only occur after the existing FRR plan for the region (e.g., AEP Ohio's FRR plan) ends.²¹⁴ As a result, LSEs, such as FES and other suppliers, are "locked in" to purchasing capacity from AEP Ohio through May 31, 2015 – the portion of the ESP term during which AEP Ohio's current FRR is in place.²¹⁵

Capacity rates in PJM normally are set via the RPM auction process that constitutes PJM's capacity market.²¹⁶ All supply offers are subject to price caps.²¹⁷ These price caps mean that offers must be based on a resource's short run marginal costs, or "avoidable" costs.²¹⁸ Specifically, suppliers' caps are established at the avoided cost rate (the "ACR"), as specified in section 6.8 of Attachment DD of the PJM tariff.²¹⁹ Suppliers cannot make offers at their full embedded costs.²²⁰

²¹¹ Shanker Direct, p. 6.

²¹² See 10-2929 Entry.

²¹³ Shanker Direct, p. 7. So long as certain requirements are met, including both the identification of adequate reliability resources and notice. Shanker Direct, p. 6.

²¹⁴ Shanker Direct, p. 7.

²¹⁵ Shanker Direct, p. 7.

²¹⁶ Shanker Direct, p. 7.

²¹⁷ Shanker Direct, p. 8.

²¹⁸ Shanker Direct, p. 8.

²¹⁹ Shanker Direct, p. 8.

²²⁰ Shanker Direct, p. 8.

The purpose of the price caps is to replicate the offer and bid behavior that would be expected in a competitive environment.²²¹ In the absence of market power, individual suppliers would be expected to offer supplies at their short-term “to go” costs.²²² This would represent the costs that could be avoided by either retiring or “mothballing” an existing unit for a year.²²³ The ACR values used in the PJM auction process reflect an attempt to administratively set the determination of such “to go” costs, allowing not only for typical marginal short-term costs, but also allowing for the types of incremental investment that would be expected with maintaining large, capital intensive projects.²²⁴

Nothing in the RAA provides for AEP Ohio or any supplier participating under the FRR alternative to recover its full embedded cost of capacity.²²⁵ The RAA does address default pricing options in FRR regions for LSEs operating under retail access programs to receive some capacity payments from migrating load.²²⁶ These alternatives may be related in some fashion to costs or reflect other compensation established by a state regulatory authority.²²⁷ In the absence of a specific state designation, this capacity payment for migrating load defaults to the PJM RPM auction results for the unconstrained RTO area.²²⁸

The RAA specifically addresses compensation to AEP Ohio if a customer switches to a CRES provider. Under Schedule 8.1, Section D.8, the RAA provides:

²²¹ Shanker Direct, p. 8.

²²² Shanker Direct, pp. 8-9.

²²³ Shanker Direct, p. 9.

²²⁴ Shanker Direct, p. 9.

²²⁵ Shanker Direct, p. 9.

²²⁶ Shanker Direct, p. 9.

²²⁷ Shanker Direct, p. 9.

²²⁸ Shanker Direct, p. 9.

In the case of load reflected in the FRR Capacity Plan that switches to an alternative retail LSE, 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 alternative retail LSE shall compensate the FRR Entity at [rest-of-pool or “RTO” RPM clearing prices], 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 costs or such other basis shown to be just and reasonable.²²⁹

Thus, the default compensation is the RTO capacity clearing price, which itself is based on mitigated avoided cost or “to go” offers.²³⁰ There is no mention in the RAA of full embedded costs.²³¹ The alternatives to this default rate are to be based on some cost-related basis or other just and reasonable compensation.²³² AEP Ohio has recognized that the default price under the RAA is the RPM price.²³³ Therefore, Dr. Shanker opined that the most appropriate state compensation mechanism under the RAA is RPM pricing (which the Commission has adopted through the 10-2929 Entry), but if any cost basis were to be considered it would have to be linked to marginal or “to go” cost concepts and clearing prices similar to the RPM default provision and not be based on full embedded cost recovery.²³⁴

2. From a policy perspective, the correct price for capacity is the RPM market-based price.

Dr. Shanker’s testimony contained an extensive analysis of the policy choice for capacity pricing. In brief, Dr. Shanker found that regardless of whether the Commission looks at capacity

²²⁹ See Shanker Direct, pp. 10-11.

²³⁰ Shanker Direct, p. 11.

²³¹ Shanker Direct, p. 11.

²³² Shanker Direct, p. 11.

²³³ Tr. Vol. V, pp. 746-747.

²³⁴ Shanker Direct, p. 11.

pricing in the long run or in the short run, the only right price for capacity is the RPM market-based rate.

a. Long run implications

In the long run, the RPM auction price to value capacity transferred from the FRR entity (AEP Ohio) to CRES providers is the “right price” in terms of economic efficiency.²³⁵ It is the closest approximation to the market value of capacity available.²³⁶ Pricing or transferring commodities at their market price is sound policy, so that there is a rational trade-off between the value captured by utilizing a good versus selling it in the market.²³⁷

Even leaving aside economic efficiency, the RPM pricing avoids distorted incentives for AEP Ohio and CRES providers. If the long-run capacity transfer price is set at anything other than RPM, CRES providers would have an incentive to divert capacity into AEP Ohio’s FRR region in order to obtain the higher capacity payments.²³⁸ AEP Ohio’s own witnesses acknowledged this potential issue, and made several recommendations in an effort to mitigate the effect of these distorted incentives.²³⁹ However, there is no reason to create the wrong price incentives and then try and mitigate the market impact of those incorrect price incentives.

b. Short run implications

The Partial Stipulation’s proposed capacity transfer price is also inappropriate in the short run. In the short-run, the Partial Stipulation provides for above-market payments to AEP Ohio

²³⁵ Shanker Direct, p. 18.

²³⁶ Shanker Direct, p. 18.

²³⁷ Shanker Direct, p. 18.

²³⁸ Shanker Direct, p. 19.

²³⁹ Shanker Direct, p. 19 (discussing Direct Testimony of Dr. Pearce in the 10-2929 Docket, filed August 31, 2011).

from competitive suppliers.²⁴⁰ To the extent that competitive suppliers can divert resources from other applications, this again would create an allocative inefficiency by creating an incentive to remove resources from where they are valued more in order to displace mispriced lower valued AEP Ohio resources.²⁴¹ But even if such resources cannot be displaced, the use of a higher than market price has other undesirable impacts.²⁴² In the interim until the 2015-16 delivery year, the use of higher than market prices results in any shopping customer above the “caps” paying more than they should for capacity.²⁴³ This both discourages and slows the development of new competitive suppliers, and also supplies a competitive advantage now, and going forward, for AEP Ohio in its ability to compete for retail customers.²⁴⁴

In rebuttal testimony, AEP Ohio has claimed that the Partial Stipulation’s blended capacity charge is below RPM prices in some recent years.²⁴⁵ AEP Ohio attempts to claim that since the blended capacity charge is lower than RPM has been in the past, that AEP Ohio’s cost-based charge is appropriate. This argument is misleading and incorrect. On cross examination, Mr. Nelson admitted that CRES providers don’t pay a blended price; they either pay RPM prices or \$255/MW-Day.²⁴⁶ Mr. Nelson also admitted that he was including the constrained PJM pricing from PJM East in his calculation.²⁴⁷ Mr. Nelson admitted that at no time since RPM came into effect through May 2015 has the RPM price been at or above \$255/MW-day in the

²⁴⁰ Shanker Direct, p. 20.

²⁴¹ Shanker Direct, p. 20.

²⁴² Shanker Direct, p. 20.

²⁴³ Shanker Direct, p. 20.

²⁴⁴ Shanker Direct, p. 20.

²⁴⁵ Rebuttal Testimony of Philip J. Nelson, AEP Ex. 21 (“Nelson Rebuttal”), pp. 9-10.

²⁴⁶ Tr. Vol. XII, pp. 2182-2183.

²⁴⁷ Tr. Vol. XII, pp. 2182-2183.

PJM unconstrained region.²⁴⁸ While Mr. Nelson may claim that RPM prices are volatile, that “volatile and uncertain” market has always produced prices in Ohio’s unconstrained zone that are a fraction of AEP Ohio’s claimed \$355/MW-day capacity costs. Therefore, in the short run, AEP Ohio’s proposal imposes significant costs on customers and should be rejected.²⁴⁹

c. Even Signatory Parties agree that the correct price for capacity is RPM.

In light of the dramatic impact of AEP Ohio’s proposed changes to the capacity pricing structure, there was extensive testimony regarding this issue from several parties, including Signatory Parties. For example, Staff witness Choueiki testified that AEP Ohio’s proposal to use cost-based rates was “not reasonable.”²⁵⁰ Staff also found that “to the extent there is a transparent forward capacity price available in the market, such a price should be used”²⁵¹ Mr. Fortney agreed with this analysis, and agreed that Staff supported pricing at RPM.²⁵² Mr. Fortney further explained in his “lottery” example described above that there was no benefit to customers associated with AEP Ohio’s non-RPM pricing proposal. Based on these conclusions, Staff did not include any provision in an MRO for a “capacity benefit” since the only right price for capacity is the RPM market-based price.

Other signatory parties also agreed that the only correct price for capacity is the RPM price. For example, RESA witness Ringenbach testified that capacity charges to CRES providers should be RPM based.²⁵³ Ms. Ringenbach also agreed that, absent the Partial

²⁴⁸ Tr. Vol. XII, p. 2183.

²⁴⁹ Tr. Vol. XII, pp. 2188-2189.

²⁵⁰ Choueiki Direct, p. 4.

²⁵¹ Choueiki Direct, pp. 4, 7-8.

²⁵² Tr. Vol. X, p. 1707.

²⁵³ Tr. Vol. IV, pp. 539-540.

Stipulation, AEP Ohio was not entitled to charge CRES providers a capacity price of \$355/MW-day.²⁵⁴ OEG, Constellation, and Exelon offered similar testimony.²⁵⁵

d. RPM pricing does not subsidize CRES Providers.

AEP Ohio has alleged that under an RPM pricing model the FRR entity (AEP Ohio) could be subsidizing (or be subsidized by) a CRES provider if the RPM rate is above or below the FRR entity's costs.²⁵⁶ The core fallacy of AEP Ohio's argument is the presumption that it is entitled to full embedded costs absent any offsets and that any payment less than this constitutes a subsidy to the CRES provider.²⁵⁷ There is no reason for such a presumption as a matter of law or economics.²⁵⁸ In terms of economic efficiency, the right price for transfers of capacity from AEP Ohio to CRES providers is the market price.²⁵⁹ It is the only result that avoids subsidies, as the payments are equal to the opportunity costs that AEP Ohio has for a market disposition (not an assumed regulatory disposition) of the capacity.²⁶⁰ If AEP Ohio were free to sell this capacity, the best approximation of what it would receive is the RPM price.²⁶¹ The use of PJM RPM capacity charges is not anti-competitive, and does not provide a subsidy to CRES providers, for four related reasons.

First, AEP Ohio historically has charged CRES providers RPM pricing and is now seeking to change the current system as part of the Partial Stipulation for the period January 1,

²⁵⁴ Tr. Vol. IV, p. 540.

²⁵⁵ See Tr. Vol. III, p. 236 (OEG); Tr. Vol. VI, pp. 970-971, 982-983 (Constellation); Tr. Vol. VI, pp. 1043-1044 (Exelon).

²⁵⁶ Pearce Direct, pp. 6-7; Tr. Vol. II, p. 187.

²⁵⁷ Shanker Direct, p. 17.

²⁵⁸ Shanker Direct, p. 17.

²⁵⁹ Shanker Direct, p. 17.

²⁶⁰ Shanker Direct, p. 17.

²⁶¹ Shanker Direct, p. 17.

2012 through May 31, 2015. It is this attempted change that would be anti-competitive, not maintaining the status quo of charging RPM prices. CRES providers no longer have the ability to make their own FRR election, and to supply their own capacity, during any part of this period and are thus trapped into paying AEP Ohio's above market price.²⁶² If anything, AEP Ohio's proposed pricing is anti-competitive because such pricing forces potential competitive suppliers to pay above-market rates, which will effectively preclude them from offering savings to customers in AEP Ohio's service territory. Such pricing also discriminates against shopping customers when CRES providers cannot avoid AEP Ohio's abusive exercise of market power.²⁶³

Second, one object of retail competition in Ohio should be to "show" a market-based rate to customers. This is the rate that allows customers to make the appropriate economic decisions regarding their energy usage, based on market-based price signals. RPM capacity prices are the best indicators of market price for the associated service.²⁶⁴ As such, RPM prices should be used to show customers a market-based rate in order to encourage efficient market outcomes.

Third, AEP Ohio would not be subsidizing CRES providers by providing capacity below AEP Ohio's purported "costs" because, among other reasons, AEP Ohio's cost calculations are inaccurate and do not reflect PJM-allowed costs.²⁶⁵ As is discussed in detail below, AEP Ohio's "cost" calculation is inflated, includes improper costs, and fails to account for necessary offsets for sales of energy.

Fourth, even leaving aside the reasons identified by Dr. Shanker, AEP Ohio's position is also hypocritical. AEP Ohio claims that any payment below its full embedded costs would mean

²⁶² Shanker Direct, p. 16; Lesser Direct, p. 8.

²⁶³ Shanker Direct, p. 16.

²⁶⁴ Shanker Direct, p. 16.

²⁶⁵ Shanker Direct, p. 16.

it is subsidizing CRES providers. However, after it separates its generation assets as required by the Partial Stipulation, it would no longer be recovering its full embedded cost-based rate in any event. AEP Ohio claims that if AEP GenCo receives RPM pricing at that point, and if CRES providers also pay RPM prices, then there would be no subsidy at that time.²⁶⁶ The only distinction between these two periods appears to be that during the bulk of the ESP period, AEP Ohio didn't want to charge RPM prices, and once the FRR election terminates AEP Ohio does want to charge RPM prices. Whether or not a subsidy exists does not depend on AEP Ohio's whim.

e. Conclusion regarding capacity pricing

Because the "right" capacity prices will apply after June 1, 2015, the Partial Stipulation reached the correct long-run result. However, in the short run, suppliers are "locked in" to purchasing capacity from AEP Ohio and are unable to elect to self-supply into AEP Ohio's FRR zone. As a result, AEP Ohio's capacity pricing proposal creates an unjustified subsidy flowing from CRES providers and their customers to AEP Ohio.²⁶⁷ In addition to subsidizing AEP Ohio, this high capacity price will have the effect of precluding shopping by all to whom it would apply, as further described below. It is undisputed that the current law and practice in Ohio contains the "right" capacity price, both as reflected in AEP Ohio's historical use of RPM pricing (for CRES providers and in previous ESPs) and in the Commission's 10-2929 Entry. It would be irrational to move from the status quo, which has the right pricing, to an interim alternative that creates these subsidies, inefficiencies, and effectively precludes shopping; particularly when at

²⁶⁶ Tr. Vol. II, p. 190.

²⁶⁷ Shanker Direct, p. 20.

the end of three years we would go back to the correct pricing.²⁶⁸ Therefore, there is only one right price for capacity – the RPM price.

C. Even If Cost-Based Capacity Pricing Were Proper, AEP Ohio's Calculation Is Incorrect.

Mr. Allen's calculation of the "benefit" of capacity priced below \$355/MW-day is dependent on the cost-based pricing model proposed by AEP Ohio. However, even if a cost-based capacity price were appropriate (which it is not, as discussed above), AEP Ohio's calculation of capacity costs is materially flawed and overstated. As such, Mr. Allen's calculation of the "benefit" of RPM pricing is similarly overstated.

AEP Ohio witness Pearce calculated AEP Ohio's full embedded costs, which were then incorporated into AEP Ohio witness Thomas' testimony.²⁶⁹ For 2010, Dr. Pearce calculated CSP's embedded capacity costs to be \$477.1 million and OPCo's embedded capacity costs to be \$660.5 million, for a total embedded capacity cost of \$1,137.6 million.²⁷⁰ Through his use of a formula rate, Dr. Pearce calculated a full embedded cost-based capacity price of \$355.72/MW-day.²⁷¹

1. Dr. Pearce's calculation is incorrect because AEP Ohio previously agreed to waive recovery of certain stranded costs and already recovered other costs.

a. S.B. 3 required that all generation plant investment after January 1, 2001 be recovered solely in the market.

Under S.B. 3, all generation plant investment after January 1, 2001 was to be recovered solely in the market.²⁷² Each electric utility was given an opportunity during a transition period

²⁶⁸ Shanker Direct, p. 20.

²⁶⁹ See Thomas Direct, p. 10; Ex. LJT-1.

²⁷⁰ Lesser Direct, p. 14.

²⁷¹ See Thomas Direct, p. 10.

²⁷² R.C. § 4928.01(A)(28); Lesser Direct, p. 15.

to recover any previously-sunk costs in their generating facilities (i.e., costs incurred prior to the transition date of January 1, 2001) that would be uneconomic or “stranded” in competitive markets.²⁷³ Because S.B. 3 provided a clear demarcation date between pre-transition and post-transition generation costs, any cost-based capacity charges levied by AEP Ohio could apply only to generating plant that was in-service on or before December 31, 2000, the day before the transition date of January 1, 2001, and only then if AEP Ohio had not waived recovery and/or already fully recovered these costs during the transition period.²⁷⁴ That transition period is long over.

Stranded costs are defined as the difference between the market value of an asset and its net undepreciated book value.²⁷⁵ For example, if a generating unit’s market value is estimated at \$500 million and its net book value is \$600 million, then the unit has stranded costs of \$100 million.²⁷⁶ Stranded costs are relevant to the capacity charge AEP Ohio proposes to charge all customers for two reasons.²⁷⁷ First, stranded costs hinge on the net undepreciated book value of generating plant-in-service (“GPIS”).²⁷⁸ If the market value of a generating asset is greater than its net GPIS, then there are no stranded costs associated with that asset.²⁷⁹ Second, because, as discussed below, R.C. § 4928.01(A)(28) defined the starting date of competitive retail electric service as January 1, 2001, all generating plant investment subsequent to that date must be recovered from the market, rather than in cost-based rates. Thus, the only legitimate embedded

²⁷³ Lesser Direct, pp. 15-16 (*citing* Case Nos. 99-1730-EL-ETP and 99-1731-EL-ETP, the “ETP Proceeding”).

²⁷⁴ Lesser Direct, p. 16.

²⁷⁵ R.C. § 4928.39(C); *see also* Lesser Direct, p. 16.

²⁷⁶ Lesser Direct, p. 16.

²⁷⁷ Lesser Direct, p. 16.

²⁷⁸ Lesser Direct, p. 16.

²⁷⁹ R.C. § 4928.39(C); *see also* Lesser Direct, p. 16.

capacity costs AEP Ohio could have recovered as stranded costs were those costs related to generating plant that was in service prior to the start of competitive retail service.

Under S.B. 3, stranded cost recovery took two forms, which became known as Generation Transition Costs (“GTCs”) and Regulatory Transition Costs (“RTCs”).²⁸⁰ An electric utility could recover GTCs through a transition charge during the transition period, provided the costs satisfied statutory requirements.²⁸¹ At the end of the transition period, which was December 31, 2005, unless modified by the Commission as part of a utility’s transition plan, “the utility shall be fully on its own in the competitive market.”²⁸² Similarly, an electric utility could recover its RTCs both during the transition period and for several years thereafter, but in any case no later than December 31, 2010.²⁸³ For AEP Ohio, the transition period for recovering RTCs ended as of December 31, 2008.²⁸⁴ Thus, AEP Ohio’s ability to recover stranded costs of its generating facilities – i.e., any costs that would not be fully recovered through the competitive market after the transition period – ended almost six years ago for GTCs and almost three years ago for RTCs.²⁸⁵ Under the transition provisions of S.B. 3, the PUCO was, and is, prohibited from authorizing “the receipt of transition revenues or any equivalent revenues by an electric utility except as expressly authorized.”²⁸⁶ Moreover, the statute explicitly bars an electric utility from including any transition costs in an ESP or MRO: “A standard service offer under section 4928.142 or 4928.143 of the Revised Code shall exclude any previously authorized allowances

²⁸⁰ R.C. § 4928.39; *see also* ETP Proceeding.

²⁸¹ R.C. §§ 4928.40, 4928.31; Lesser Direct, p. 17.

²⁸² R.C. § 4928.38.

²⁸³ R.C. § 4928.40.

²⁸⁴ ETP Proceeding, Stipulation (May 8, 2000) at Att. 1.

²⁸⁵ Lesser Direct, p. 17.

²⁸⁶ *See* R.C. § 4928.38.

for transition costs, with such exclusion being effective on and after the date that the allowance is scheduled to end under the utility's rate plan."²⁸⁷ Yet, under the Proposed ESP, AEP Ohio will be recovering above-market transition costs until May 31, 2015.

b. Dr. Pearce inappropriately included stranded costs in his capacity cost calculation.

Dr. Pearce's formula rate includes no adjustment mechanism to remove stranded costs from his capacity cost calculation. This is inappropriate because S.B. 3 provided a clear demarcation date between pre-transition and post-transition generation costs. Any cost-based capacity charges levied by AEP Ohio could apply only: (1) to generating plant that was in-service on or before December 31, 2000, the day before the transition date of January 1, 2001; and (2) if AEP Ohio had not waived recovery and/or already fully recovered these costs.²⁸⁸

Thus, there are three reasons why AEP Ohio is wrong that the Stipulation benefits ratepayers in this proceeding by offering a limited amount of RPM set-aside capacity at less than the \$355.72/MW-day value. AEP Ohio witness Pearce calculated using a cost-based, formula rate approach based on generating plant in service as of December 31, 2010. By using generating plant in service as of December 31, 2010, Dr. Pearce included stranded costs in his analysis. First, the transition period during which AEP Ohio was allowed to recover stranded generation costs is long over, and AEP Ohio is not entitled to any other cost-based recovery.²⁸⁹ Second, AEP Ohio has already recovered all of its stranded generation costs.²⁹⁰ Third, AEP includes in its capacity charges generating plant investment made by AEP Ohio between January

²⁸⁷ See R.C. § 4928.141.

²⁸⁸ Lesser Direct, p. 18.

²⁸⁹ R.C. § 4928.01(A)(28); Lesser Direct, p. 19.

²⁹⁰ Lesser Direct, p. 19.

1, 2001 and December 31, 2010 – ten years’ worth of investment that, under S.B. 3, should be recovered only from market-based sales.²⁹¹

i. The transition period for recovering stranded generation costs is over, and AEP Ohio is not entitled to cost-based recovery of generation costs.

The transition period for AEP Ohio to recover GTCs ended on December 31, 2005.²⁹² The transition period for AEP Ohio to recover RTCs ended on December 31, 2008.²⁹³ Therefore, based on the statutory requirements alone, AEP Ohio is barred from recovering these costs through a second “transition to market” as provided in the Partial Stipulation.

In the transition plan proceeding filed by CSP and OPCo in 1999, the two companies estimated stranded costs of between \$894 million and \$953 million.²⁹⁴ As part of the stipulation approved by the PUCO in that case, CSP and OPCo waived the recovery of stranded generation costs through GTCs or other equivalent revenues through any mechanism other than competitive market pricing.²⁹⁵ Therefore, any attempt to receive from ratepayers above market charges is in violation of the law and of AEP Ohio’s own agreements. AEP Ohio has admitted in this proceeding that in the ETP cases it “agreed not to pursue S.B. 3’s opportunity for recovery of stranded generation investment.”²⁹⁶

²⁹¹ Lesser Direct, p. 19.

²⁹² R.C. § 4928.38; Lesser Direct, p. 17.

²⁹³ ETP Proceeding, Stipulation (May 8, 2000) at Att. 1.

²⁹⁴ Lesser Direct, p. 18.

²⁹⁵ ETP Proceeding, Opinion and Order (Sept. 28, 2000) at pp. 15-16, 18; ETP Proceeding, Stipulation (May 8, 2000) at pp. 3, 10; *see also* Lesser Direct, p. 18.

²⁹⁶ Nelson Rebuttal, p. 8.

Not only is recovery barred, but AEP Ohio expressly waived the recovery of generation-related stranded costs expected to result from market pricing.²⁹⁷ In the ETP Proceeding, CSP and OPCo agreed that their only opportunity to recover RTCs would be limited to \$616 million, which CSP would recover over eight years and OPCo would recover over seven years, and that this was sufficient to recover all stranded generation-related regulatory assets.²⁹⁸ Thus, as of no later than January 1, 2009, AEP Ohio had committed to recover its sunk costs (as well as its variable costs) only in the competitive market.²⁹⁹

ii. AEP Ohio has already recovered its stranded generation-related costs.

AEP Ohio has already recovered its stranded generation-related costs. As was done by AEP Ohio in the ETP Proceeding, Dr. Lesser relied on AEP Ohio's estimates of the stranded cost estimates of AEP Ohio witness Landon to determine the stranded costs of AEP Ohio as of December 31, 2000. AEP Ohio's highest estimate of stranded costs was \$953.1 million.³⁰⁰ As Dr. Lesser demonstrated, because AEP Ohio had already recovered almost \$1.43 billion in depreciation costs between December 31, 2000 and December 31, 2010, AEP Ohio had already fully recovered all stranded generation costs.³⁰¹ The depreciation accruals have eliminated from AEP Ohio's books the stranded costs estimated by Mr. Landon, leaving only costs that are "un-stranded" and, thus, must be recovered through competitive markets at market pricing.³⁰²

²⁹⁷ ETP Proceeding, Opinion and Order (Sept. 28, 2000) at pp. 15-16, 18; ETP Proceeding, Stipulation (May 8, 2000) at pp. 3, 10; *see also* Lesser Direct, p. 18.

²⁹⁸ Lesser Direct, p. 18.

²⁹⁹ Lesser Direct, p. 18.

³⁰⁰ Lesser Direct, pp. 21-22.

³⁰¹ Lesser Direct, p. 22.

³⁰² Lesser Direct, p. 22.

iii. AEP Ohio's capacity cost calculation ignores S.B. 3 and inappropriately includes costs incurred after December 31, 2000.

As explained above, under S.B. 3 all generation plant investment after January 1, 2001 was to be recovered solely in the market.³⁰³ Despite this clear statutory standard, AEP Ohio's capacity cost calculation includes investments made after December 31, 2000.³⁰⁴

In rebuttal testimony, AEP Ohio attempted to rehabilitate its capacity calculation by justifying its inclusion of stranded costs in its capacity cost calculation. Mr. Nelson argued that "the ETP cases were retail cases, and they have no bearing on a wholesale rate charged to CRES providers."³⁰⁵ This argument completely ignores the language of S.B. 3, which expressly prohibits the recovery of stranded costs as sought by AEP Ohio.³⁰⁶ This argument also ignores the nature of the charges at issue, and their retail application. As discussed above, AEP Ohio has made an FRR election which forces customers to purchase their capacity from AEP Ohio. Therefore, this is not simply a wholesale charge which stands in a vacuum. Instead, it is a charge which will be directly applicable to every customer forced to pay AEP Ohio's above-market capacity charges.

Mr. Nelson also claimed that the Commission "has not excluded any significant generation plant costs from the Company's retail SSO rates."³⁰⁷ This completely misses the point. The examples cited by Mr. Nelson are instances of the Commission granting cost-based rates. AEP Ohio has repeatedly admitted its generation rates are not cost-based.³⁰⁸

³⁰³ R.C. § 4928.01(A)(28); Lesser Direct, p. 15.

³⁰⁴ Lesser Direct, p. 29.

³⁰⁵ Nelson Rebuttal, p. 2.

³⁰⁶ See R.C. § 4928.17(A).

³⁰⁷ Nelson Rebuttal, p. 2.

³⁰⁸ See, e.g., Direct Testimony of David M. Roush, AEP Ex. 2 ("Roush Direct") at pp. 8-9.

Mr. Nelson further claimed that the Commission has approved recovery of environmental investment since 2000.³⁰⁹ Mr. Nelson never explains why this impacts the provisions of S.B. 3, or why this would invalidate Dr. Lesser's interpretation of S.B. 3 or the ETP cases.

2. Dr. Pearce's calculation is incorrect because AEP Ohio's formula rate fails to include an offset for energy-related sales.

Dr. Pearce's formula rate double-recovers for capacity costs by failing to include the contributions to embedded capacity costs from energy-related sales for resale.³¹⁰ Dr. Pearce's formula would inappropriately permit AEP Ohio to keep all profits from such sales, and would lead to an inappropriate double-recovery for AEP Ohio.

In its formula rate estimates of 2010 capacity costs, Dr. Pearce subtracted out only those revenues from capacity-specific sales for resale.³¹¹ Dr. Pearce ignored the fact that AEP Ohio also recovers a portion of its fixed costs when it makes energy-related sales for resale because revenues received from those sales that exceed AEP Ohio's variable O&M plus fuel costs recover a portion of its embedded capacity costs.³¹² Dr. Pearce ignored the fact that AEP Ohio's profit from energy-related sales helps recover those embedded costs and provides an additional return on embedded rate base.³¹³ Thus, AEP Ohio recovers a portion of its embedded costs twice: first, through its embedded capacity cost and second through off-system energy sales.³¹⁴ AEP Ohio is clearly not allowed to double recover those costs, which would be incompatible with basic rate regulation.³¹⁵ The correct approach, which was not followed by Dr. Pearce,

³⁰⁹ Nelson Rebuttal, p. 3.

³¹⁰ Lesser Direct, p. 23.

³¹¹ Lesser Direct, p. 24.

³¹² Lesser Direct, p. 24.

³¹³ Lesser Direct, p. 24.

³¹⁴ Lesser Direct, p. 24.

³¹⁵ Lesser Direct, p. 24.

would be to subtract all revenues from sales for resale that contribute to the recovery of embedded generation capacity costs.³¹⁶

As is discussed below, Dr. Lesser's analysis shows that by failing to include an offset for energy sales which exceed marginal costs for those sales, AEP Ohio has dramatically and inappropriately overstated its capacity costs. Specifically, Dr. Lesser found that AEP Ohio overstated its capacity costs by \$248 million by failing to include an offset for energy sales.

D. As Shown By Dr. Lesser's Analysis, AEP Ohio's Actual Capacity Cost Is \$57.35/MW-day.

Dr. Lesser made two corrections to AEP Ohio's formula rate. First, Dr. Lesser adjusted AEP Ohio's formula rate to include an offset for energy-related sales for resale where revenues received exceed variable costs.³¹⁷ Second, Dr. Lesser recalculated the capacity cost based on depreciation for pre-2001 GPIS only.³¹⁸ This included removing post-2000 investment, accounting for the additional depreciation of existing GPIS as of January 1, 2001 to determine the net undepreciated value of that GPIS as of December 31, 2010, adjusting the income tax payments, and adjusting the investment tax credit AEP Ohio would receive.³¹⁹ Based on these adjustments, Dr. Lesser concluded that the overall average embedded capacity cost value for AEP Ohio was \$57.35/MW-day, which is slightly lower than the \$63.22/MW-day average of the PJM RPM market-clearing prices for the period January 2012-May 2015. Thus, Mr. Allen's purported capacity "benefit" from the ESP is a fiction.

³¹⁶ Lesser Direct, p. 24.

³¹⁷ See Lesser Direct, pp. 23-28.

³¹⁸ See Lesser Direct, p. 29.

³¹⁹ See Lesser Direct, pp. 28-29.

1. AEP Ohio should have included an energy offset.

To calculate the amount by which energy sales for resale exceed variable costs, Dr. Lesser calculated the actual profits from energy-related sales for resale made by AEP Ohio in 2010, using the AEP Ohio 2010 FERC Form-1 reports.³²⁰ Dr. Lesser found that AEP Ohio's combined total non-requirements energy-related sales for resale were \$1,073 million. To determine the profits from such sales which would then recover embedded generating costs and provide AEP Ohio with an additional return on environmental investment, Dr. Lesser determined the total variable costs associated with power production expenses.³²¹ Dr. Lesser then subtracted this value from the energy sales revenues reported by AEP Ohio for plants other than Waterford and Darby (which were constructed after the January 1, 2001 transition date) in order to only incorporate pre-transition GPIS.³²² Using this approach, Dr. Lesser concluded that AEP Ohio's pre-2001 generating plants contributed \$248 million towards embedded cost recovery in the aggregate, which AEP Ohio would double-recover by charging its reported embedded capacity cost value.³²³

2. AEP Ohio inappropriately included post-2000 investment in its formula rate proposal.

As explained above, under S.B. 3 all generation plant investment after January 1, 2001 was to be recovered solely in the market.³²⁴ In order to exclude post-2000 investment from AEP Ohio's formula rate, Dr. Lesser recalculated the capacity cost based on depreciation for pre-2001

³²⁰ Lesser Direct, p. 25.

³²¹ Lesser Direct, p. 26.

³²² Lesser Direct, p. 27.

³²³ Lesser Direct, pp. 27-28.

³²⁴ R.C. § 4928.01(A)(28); Lesser Direct, p. 15.

GPIS only.³²⁵ Dr. Lesser also accounted for the additional depreciation of existing generating plant that was in service on January 1, 2001 to determine the net undepreciated value of that generating plant as of December 31, 2010, because it is that undepreciated value that determines the “rate base,” and return on that rate base.³²⁶ He also adjusted the income tax payments that AEP Ohio would receive.³²⁷

3. AEP Ohio’s true capacity cost is \$57.35/MW-day.

After making the aforementioned adjustments for energy sales and to exclude the assets improperly included by AEP Ohio, Dr. Lesser concluded that the capacity cost estimate for CSP is \$179.60/MW-day. The capacity cost estimate for OPCo is (\$44.88)/MW-day, which means that OPCo’s revenues from off-system capacity and energy sales are greater than its remaining embedded capacity costs. In effect, any capacity price for OPCo’s generation assets is a benefit to OPCo, meaning that any market price allows OPCo to earn a more than fair return on its fixed assets. The overall average embedded capacity cost value for AEP Ohio is \$57.35/MW-day, which is slightly lower than the \$63.22/MW-day average of the PJM RPM market-clearing prices for the period January 2012-May 2015.

During Dr. Lesser’s cross-examination, AEP Ohio implied that his capacity cost estimate was flawed because OPCo’s capacity cost was negative under his analysis.³²⁸ As Dr. Lesser explained, OPCo has already depreciated many of its generation assets, and is now making a significant profit on those assets. “OPC is making, because its plants are heavily depreciated it’s making significant profits on that depreciated investment and, hence, if you were truly going to

³²⁵ Lesser Direct, p. 29.

³²⁶ Lesser Direct, p. 29.

³²⁷ Lesser Direct, p. 29.

³²⁸ See Tr. Vol. VII, pp. 1355-1358.

charge an embedded cost rate, its rate would be negative.”³²⁹ In the real world, of course, OPCo’s would not pay others to take its capacity. Instead, it would handsomely benefit from participation in a competitive market, where suppliers are incentivized to lower their costs so they can recoup additional profits if their costs are lower than the market price. In some scenarios, as with CSP, the market price may reflect losses because its costs are higher than market. In other scenarios, as with OPCo, the market price may reflect profits because costs are lower than market. Regardless, under either scenario, unless revenues from energy are considered, AEP Ohio would be recovering for the same costs twice (once through the rate and once through the accompanying energy sales). Therefore, the only economically efficient price is the market price, and this is the best mechanism for pricing capacity.

AEP Ohio also questioned Dr. Lesser’s use of the FERC Form-1 2010 fuel costs because account 501 includes 2010 fuel deferrals that reduce the “actual” 2010 fuel costs by approximately \$130 million.³³⁰ Mr. Nelson claimed that \$130 million should have been added back to Account 501, which would have increased Dr. Lesser’s calculation of total energy-related production costs in his Table 5. However, on cross-examination Mr. Nelson admitted that the very fuel deferrals on which he based his opinion were already going to be recovered on a non-byassable basis through the PIRR.³³¹ These fuel costs exist as a regulatory asset in a separate account, and were properly excluded by AEP Ohio from Account 501. Because AEP Ohio would automatically recover these deferrals through the PIRR even if all customers shopped, including them again in the cost-based capacity price to be charged to CRES suppliers would result in double-recovery of these costs. AEP Ohio should not be allowed to recover these

³²⁹ Tr. Vol. VII, p. 1356.

³³⁰ Nelson Rebuttal, p. 4.

³³¹ Tr. Vol. XII, p. 2205.

deferred fuel costs twice – from customers in the PIRR and from CRES suppliers in the capacity price.

E. Conclusion Regarding Purported Capacity Benefit

AEP Ohio claims that its customers receive a benefit of \$856 million because the Partial Stipulation does not require them to pay the inappropriate above-market capacity charge originally proposed by AEP Ohio. The Company’s capacity price “benefit” analysis is flawed. It improperly compares the Partial Stipulation to its own proposals and fails to make a comparison to an MRO, as required by Ohio law. The capacity price included in the Partial Stipulation is simply not a benefit of the Proposed ESP when compared to an MRO because there is no evidence that AEP Ohio’s initially proposed capacity rate – which is not currently in effect, is opposed by numerous parties, and has never been approved by this Commission or FERC – would be imposed in an MRO. As correctly explained by Staff witness Fortney’s lottery example, simply because AEP Ohio would have liked to charge this ridiculous above-market rate does not make the actual above-market costs of the Partial Stipulation a “benefit” to customers. The capacity rate proposed by AEP Ohio should not be used as the “yardstick” from which to measure benefits, and it certainly should not be included as a proxy for market prices in the market-based price component of an MRO. AEP Ohio has failed to measure benefits relative to an MRO. Rather, it has compared the negotiated Partial Stipulation result to the Company’s own request. As Mr. Fortney concluded, the purported capacity benefit should not be included in the MRO test because “[i]t may be a meaningful number for AEP. I do not believe it's a meaningful number for the comparison of the MRO to the ESP.”³³²

³³² Tr. Vol. X, p. 1708.

Even leaving aside the fact that the AEP Ohio capacity proposal should not be considered at all, AEP Ohio's calculation of this "benefit" is not valid. S.B. 3 prohibits recovery for post-2000 investment, but AEP Ohio seeks to recover for this investment the rate used to calculate this "benefit." AEP Ohio has agreed to forego guaranteed recovery of stranded generation costs, but now seeks to recover for these costs through the rate used to calculate this "benefit." AEP Ohio utilizes its generation assets to create off-system sales of energy, but fails to account for these profits when calculating the rate used to calculate this "benefit." As shown by these obvious examples, as AEP Ohio's purported capacity cost calculation is incorrect, Mr. Allen's purported benefits calculated using this inappropriate number are also overstated.

IV. THE OTHER "BENEFITS" OF THE PROPOSED ESP THAT AEP OHIO RELIES ON ARE ILLUSORY.

AEP Ohio has also identified several other non-price items which it claims are benefits of the Stipulation not reflected in Ms. Thomas' calculations. AEP Ohio had to identify these benefits because even its own calculations show the MRO would be more favorable than the Proposed ESP. However, as demonstrated below, AEP Ohio's additional claimed benefits lack merit, and the Proposed ESP fails the ESP vs. MRO test.

A. The Cost Of Higher ESP Prices

Mr. Allen calculated the net present value of the cost of the Proposed ESP prices over MRO prices, relying on Ms. Thomas' calculations. In his Exhibit WAA-4, Mr. Allen originally recognized that the ESP would cost customers \$18 million over the first 41 months of the ESP, \$22 million on a net present value ("NPV") basis.³³³ After the Commission's Remand Order was issued, the Attorney Examiners directed Mr. Allen to perform this same calculation by removing the POLR charge as required by the Commission's order. In his Exhibit WAA-6, Mr. Allen

³³³ Allen Direct, p. 18, Ex. WAA-4.

found that the higher ESP prices would cost customers \$116 million over the ESP term, \$108 million on a NPV basis.³³⁴

B. Phase In Recovery Rider Carrying Costs

Mr. Allen also purported to quantify a benefit associated with the PIRR.³³⁵ Mr. Allen claimed that since the Partial Stipulation would lower the carrying charge of this regulatory asset from 11.15% to 5.34%, customers would receive a NPV benefit of \$104 million from this provision of the Proposed ESP.³³⁶ This benefit is overstated because: (1) the PIRR deferral amount and carrying costs are incorrectly calculated; (2) AEP Ohio intended to pursue securitization even without the Partial Stipulation; and (3) once securitization occurs, the benefit will be gone.

1. The PIRR carrying costs are incorrectly calculated because they do not reflect the Remand Order's impact regarding POLR costs.

Mr. Allen calculated this purported benefit by including the entire amount of the PIRR regulatory asset. In the Remand Order, however, the Commission required AEP Ohio to reduce the amount of this deferral to reflect its decision that the POLR charge was unwarranted. Despite this direction from the Commission, Mr. Allen failed to adjust his PIRR calculation accordingly.³³⁷ Mr. Allen admitted that if the amount of the deferral is reduced, the carrying charge would be lower.³³⁸ AEP Ohio has provided no record evidence that accounts for this

³³⁴ Even though Mr. Allen has recognized that the Proposed ESP fails the price test and imposes additional costs on customers as compared to an MRO, his calculation is still flawed. As discussed in detail above relating to Ms. Thomas' calculations, she has materially understated the costs of the Proposed ESP and has overstated the costs of the MRO. As such, Mr. Allen's quantification of Ms. Thomas' results are also flawed, and grossly understate the cost of the Proposed ESP by between \$350 and \$800 million, as detailed in Section II above.

³³⁵ Tr. Vol. III, p. 428.

³³⁶ Allen Direct, p. 16, WAA-6.

³³⁷ Tr. Vol. III, p. 430.

³³⁸ Tr. Vol. III, p. 429.

correction. Because Mr. Allen based his calculation on a fuel deferral which is no longer accurate, his PIRR “benefit” is overstated.

2. There is no benefit to customers arising from the Partial Stipulation’s agreements regarding securitization.

Mr. Allen’s purported benefit is calculated largely by determining the effect of the reduction in the carrying charge from 11.15% to 5.34% over a seven-year recovery period.³³⁹ If AEP Ohio securitizes the fuel deferral in 2012 as planned,³⁴⁰ the supposed “benefit” from the change in carrying costs will be greatly reduced. Any benefits of securitization result from the first ESP order and pending legislation and cannot be credited to the Partial Stipulation. Mr. Allen has not recognized or quantified the risk that this could occur, and therefore his calculation of this “benefit” is invalid.

The Partial Stipulation includes provisions regarding securitization, but they do not create any benefit for customers and do not require anybody to do anything.³⁴¹ Moreover, there is nothing in the Partial Stipulation which commits AEP Ohio actually to securitize this asset. The lack of a relationship between the securitization provisions of the Partial Stipulation and any customer benefit was discussed by AEP Ohio witness Hamrock. Mr. Hamrock acknowledged that securitization of fuel deferrals is not dependent on the Partial Stipulation.³⁴² He also recognized that the Partial Stipulation merely provides support from the Signatory Parties for securitization.³⁴³ The Commission can take administrative notice of the fact that securitization

³³⁹ Allen Direct, p. 16.

³⁴⁰ Tr. Vol. V, p. 839.

³⁴¹ See Stip., § IV.6 (the Signatory Parties agreed to: “work in good faith to pass suitable and appropriate legislation to address the matter as soon as reasonably possible”).

³⁴² Tr. Vol. V, pp. 839-840.

³⁴³ Tr. Vol. V, p. 840.

legislation was introduced in the General Assembly on November 1, 2011, without any prompting from a Partial Stipulation or any Commission order approving it.

Simply stated, there is nothing in the Partial Stipulation which provides any benefit to customers arising from securitization. While securitization itself may be worthwhile and beneficial to customers and AEP Ohio, there is nothing in the Partial Stipulation which creates that benefit. The benefit of securitization exists independent of the Partial Stipulation. Therefore, once the deferred fuel costs are securitized, Mr. Allen's purported "benefit" of a reduced carrying charge rate is no longer valid.

C. Mr. Allen Incorrectly Calculated The "Benefit" Arising From The Partnership With Ohio And Ohio Growth Fund Initiatives By Failing To Consider The Likelihood These Gifts Would Not Be Made.

Under the Proposed ESP, if AEP Ohio's return on equity exceeds 10% for the prior calendar year, AEP Ohio will provide the Partnership with Ohio Initiative ("PWO") with \$3 million annually for the benefit of low income customers.³⁴⁴ The Ohio Growth Fund ("OGF") provisions of the Partial Stipulation are similar. If AEP Ohio's return on equity exceeds 10% for the prior calendar year, AEP Ohio will provide OGF with \$5 million annually for the benefit of economic development.³⁴⁵ Mr. Allen calculated a purported NPV benefit of \$10 million³⁴⁶ relating to the PWO grant.³⁴⁷ Mr. Allen calculated a purported NPV benefit of \$17 million³⁴⁸ for the OGF provisions of the Proposed ESP.³⁴⁹

³⁴⁴ Stip., § IV.1(u).

³⁴⁵ Stip., § IV.1(v).

³⁴⁶ Mr. Allen's \$10 million NPV estimate is based on the maximum total amount which could be provided to the PWO under the terms of the Partial Stipulation.

³⁴⁷ Allen Direct, Ex. WAA-6.

³⁴⁸ Mr. Allen's \$17 million NPV estimate is also based on the maximum total amount which could be provided to the OGF under the terms of the Partial Stipulation.

³⁴⁹ Allen Direct, Ex. WAA-6.

Mr. Allen's error with regard to both of these grants was his failure to account for the fact that these are conditional gifts. Upon cross examination, Mr. Allen admitted that AEP Ohio was not bound to make these gifts unless its return on equity exceeded 10%, and that the gifts were conditional.³⁵⁰ Mr. Allen's own pro forma financials showed that there is a chance that the 10% return on equity trigger will not be met.³⁵¹ Despite the fact that there is at least a chance that the full gift may not be made in any specific year, Mr. Allen failed to account for the likelihood that these gifts would not be made.³⁵²

Mr. Allen's calculation of the benefits of these provisions is flawed, because he failed to account for the express conditions placed on these grants by the Stipulation. Even if he believes that AEP Ohio's return on equity is likely to meet the 10% trigger, there is no guarantee that it will do so. He should have accordingly taken this risk into account in his quantification of the benefits of these provisions of the Stipulation and failed to do so. His benefit calculation is accordingly flawed.

D. Regulatory Certainty Does Not Outweigh Higher Prices.

Mr. Hamrock claimed that the certainty of the Partial Stipulation's provisions regarding a variety of issues constitutes a non-quantifiable benefit of the Proposed ESP.³⁵³ Mr. Hamrock is incorrect. Simply put, AEP Ohio's customers should not be forced to pay \$1 billion more than an MRO just for "certainty." Indeed, all that is certain is that AEP Ohio customers would pay

³⁵⁰ Tr. Vol. III, p. 422.

³⁵¹ Allen Direct, Ex. WAA-5 at p. 6 (for calendar year 2012, Mr. Allen projected a return on equity of 7.71% excluding off-system sales).

³⁵² Tr. Vol. III, pp. 423-424.

³⁵³ Direct Testimony of Joseph Hamrock on behalf of Columbus Southern Power Company and Ohio Power Company, AEP Ex. 8 ("Hamrock Direct") at pp. 6-7, 28-29.

less under an MRO. “Certainty” does not provide any basis for a claimed benefit, much less for approving the Proposed ESP.

E. The AEP Transition To Market Is Not A Benefit Of The ESP.

AEP Ohio and Staff both claimed that AEP Ohio’s transition to market is a qualitative benefit of the Proposed ESP.³⁵⁴ This transition to market is not a qualitative benefit, because there are several conditions on that transition. By way of example, the competitive bid process to supply SSO customers, anticipated in 2015, is contingent on AEP Ohio separating its generating assets and terminating the pool agreement.³⁵⁵ The Partial Stipulation does not impose any penalty on AEP Ohio if it fails to reach this condition precedent.³⁵⁶ As AEP Ohio’s transition to market is contingent, it is not a benefit which should be considered under the Proposed ESP.

Another reason the transition to market is not a qualitative benefit of the Proposed ESP relative to an MRO is the potential full transition to market is possible under an MRO faster than the default five years under R.C. § 4928.142. Under an MRO, the Commission has the authority to waive any blending after two years.³⁵⁷ Because the transition to market could occur in as little as two years under an MRO, there is no qualitative relative benefit to the potential transition to market under the Proposed ESP.

³⁵⁴ Tr. Vol. X, p. 1761; Hamrock Direct, p. 6.

³⁵⁵ Tr. Vol X, p. 1762; Tr. Vol. V, pp. 729-730.

³⁵⁶ See Tr. Vol X, p. 1762.

³⁵⁷ Tr. Vol. X, p. 1709; R.C. § 4928.142(D); *In the Matter of the Application of Duke Energy Ohio for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service.*, Case No. 10-2586, 2011 WL 1827190, ¶ 15 (May 04, 2011).

F. AEP Ohio's Investment in Natural Gas and Solar Is Not a Benefit of the Proposed ESP.

Mr. Hamrock also extolled the virtues of AEP's transition to natural gas as a benefit of the Proposed ESP.³⁵⁸ Mr. Fortney also identified the MR6 project in particular, and its use of Ohio shale gas, as one of the potential benefits of the Proposed ESP that could not be quantified.³⁵⁹ However, Mr. Hamrock admitted that AEP's commitment to fleet transformation is an AEP-wide business objective that pre-dated the Partial Stipulation and will continue with or without it.³⁶⁰ He also stated that construction of MR6 itself is not dependent upon the Partial Stipulation and that shale gas contracts will only be entered into if economically justified and prudent.³⁶¹ Mr. Fortney acknowledged that, as of today, no one knows whether any of the alleged benefits which he identified as "qualitative benefits" will ever happen.³⁶² As this qualitative benefit may never happen, and the MR6 facility and related natural gas contracts depend not upon the Partial Stipulation but AEP's performance of its business plan, this is not a benefit of the Proposed ESP.

To the extent AEP Ohio claims that its proposed investment in the Turning Point facility constitutes a qualitative benefit of the Proposed ESP, this claim also lacks merit. AEP Ohio was required to make a commitment to invest \$20 million in Turning Point as a result of CSP's 2009 SEET proceeding.³⁶³ That commitment was not premised on any guaranteed cost recovery of the investment through a nonbypassable surcharge.³⁶⁴ Despite what AEP Ohio committed in the

³⁵⁸ Hamrock Direct, pp. 16-17.

³⁵⁹ Tr. Vol. X, pp. 1752, 1762-1763.

³⁶⁰ Tr. Vol. V, pp. 855-856.

³⁶¹ Tr. Vol. V, pp. 857-860.

³⁶² Tr. Vol. X, pp. 1762-1763.

³⁶³ Tr. Vol. VI, p. 864.

³⁶⁴ Tr. Vol. VI, pp. 864-865.

SEET proceeding, AEP Ohio is now claiming in this proceeding that the Turning Point project is expressly conditioned on CSP obtaining guaranteed nonbypassable cost recovery.³⁶⁵ Because AEP Ohio already was unconditionally committed to Turning Point as a result of the 2009 CSP SEET case, development of the Turning Point project conditioned on approval of the Partial Stipulation is not a qualitative benefit of the Proposed ESP.

V. THE PROPOSED ESP VIOLATES STATE POLICY AND OTHER IMPORTANT REGULATORY PRACTICES AND PRINCIPLES THAT DO NOT BENEFIT RATEPAYERS OR THE PUBLIC INTEREST.

The Proposed ESP is not more favorable in the aggregate than the expected results of an MRO, and therefore must be denied. But, even if the Commission could find that there was any quantitative benefit of the Proposed ESP (despite the numerous calculations, including Staff's, that show otherwise), the Proposed ESP must still be denied because it violates state policy and, therefore, the Partial Stipulation also fails to satisfy the second prong of the Commission's test for the reasonableness of stipulations.

A. The Partial Stipulation And Its Proposed ESP Are Discriminatory.

It is this state's policy to "ensure the availability to consumers of . . . nondiscriminatory, and reasonably priced retail electric service."³⁶⁶ As Staff witness Fortney testified, the "[s]ame service for similarly situated customers should be priced equally."³⁶⁷ Constellation witness Fein also acknowledged that the Commission should avoid discriminatory pricing policies.³⁶⁸ However, in violation of this significant and fundamental state policy, the Proposed ESP

³⁶⁵ Tr. Vol. VI, p. 865.

³⁶⁶ R.C. § 4928.02(A).

³⁶⁷ Tr. Vol. X, pp. 1691-1692.

³⁶⁸ Tr. Vol. VI, p. 971.

establishes two *different* prices for the *same* capacity service for similarly situated shopping customers.

- *Capacity prices that would be paid under the Partial Stipulation would be different, significantly different.* Shopping customers who fall under the caps will pay RPM market-based prices for AEP's capacity, at an average of \$63/MW-day over the term of the Proposed ESP.³⁶⁹ Shopping customers who do not fall under the caps will pay \$255/MW-day for AEP's capacity, a price which is approximately four times higher than the price to be paid by shopping customers under the cap.³⁷⁰

- *Shopping customers who could be subject to either capacity price are similarly situated.* Under the Partial Stipulation, customers would be assigned to five Groups, distinguished only by the date on which the customers took action to shop. Signatory Party witnesses acknowledged that there is no real distinction, for example, between Group 1 customers (who can get all of the RPM-priced capacity they can use) and Group 2 customers (who get RPM-priced capacity as long as their load does not increase by more than 10%).³⁷¹ Customers who decide to shop after September 7, 2011 will simply be funneled as Group 5 customers into the queue. Therefore, a small commercial customer who decides on Monday at noon to shop may pay \$63/MW-Day for capacity, but a neighboring small commercial customer who decides an hour later to shop may pay \$255/MW-Day for capacity. This type of distinction reflects no real difference between the customers, and provides no basis for setting customers' price for retail electric service.

³⁶⁹ Stip. § IV.2(b); Banks Direct, p. 20.

³⁷⁰ See Stip. § IV.2(b); Banks Direct, pp. 19-20.

³⁷¹ See Tr. Vol. VI, p. 973 (Constellation witness Fein); see also Tr. Vol. VI, p. 1043 (Exelon witness Dominguez).

- *The service these shopping customers are paying for is exactly the same – AEP’s capacity.* Signatory Party witnesses, including Staff, acknowledged that there is no difference in the capacity service provided through the Partial Stipulation at two different prices.³⁷²

As a result, the Partial Stipulation violates the state’s policy against discriminatory pricing. Signatory Party witnesses essentially testified to that effect – because of the Partial Stipulation’s capacity price caps, shopping customers pay different amounts for the same service.³⁷³ This wide disparity in capacity prices between the similarly situated customers has no economic justification, is discriminatory, and violates fundamental ratemaking principles of fairness, cost-causation, and efficiency. There is no economic, legal, or public policy basis for setting similarly situated customers’ capacity prices at different levels for the same retail electric service.

Moreover, the Partial Stipulation imposes capacity prices that discriminate not only amongst shopping customers, but also between shopping and non-shopping customers. SSO customers pay a wholly separate, unknown price for the same AEP Ohio capacity. AEP Ohio witness Hamrock acknowledged that there will be three different capacity prices: (1) the arbitrary \$255/MW-day price; (2) the RPM price; and, (3) the SSO price.³⁷⁴ AEP Ohio has been unable to identify the capacity price paid by SSO customers – and, in fact, could not identify the price for capacity being charged today through the SSO or at any time during the Proposed ESP.³⁷⁵ AEP Ohio witness Pearce, the Companies’ witness on capacity cost, did not know what

³⁷² See Tr. Vol. X, p. 1692 (Staff witness Fortney); Tr. Vol. III, pp. 236-237 (OEG witness Baron); Tr. Vol. VI, p. 972 (Constellation witness Fein).

³⁷³ See, e.g., Tr. Vol. X, p. 1692 (Staff witness Fortney acknowledging same); Tr. Vol. VI, p. 972 (Constellation witness Fein acknowledging same).

³⁷⁴ Tr. Vol. VI, p. 844.

³⁷⁵ See Tr. Vol. I, pp. 85-86 (AEP Ohio witness Roush); Tr. Vol. V, pp. 730-731 (AEP Ohio witness Nelson).

capacity cost would be included in the SSO's base generation rate.³⁷⁶ Mr. Hamrock did not even know how the SSO capacity price compares to the other two prices.³⁷⁷

Other provisions of the Partial Stipulation are discriminatory as well. For example, as discussed below, the RPM-price cap system discriminates against any new customers who seek to shop in AEP Ohio's territory based on the arbitrary cap procedure and grouping of customers. This procedure also discriminates against governmental aggregation customers, as also described below. The \$10/MWh shopping credit for all GS1 and GS2 schools and certain GS-2 customers is another discriminatory component of the Proposed ESP.³⁷⁸ As with the shopping caps, the Proposed ESP incorporates an arbitrary date limit that prevents some schools from receiving the credit (those that shop after September 7, 2011) and grants the credit to other schools (those that were shopping as of September 7, 2011).³⁷⁹ GS-2 customers are also limited based on an arbitrary and different date, September 6, 2011.³⁸⁰ Even then, those who are eligible for the credit may not receive it because it is limited to only 1 million MWh.³⁸¹

It is a fundamental and firm tenet of state policy that retail electric service should be offered on a nondiscriminatory basis. However, the terms of the Partial Stipulation clearly discriminate amongst shopping customers, and between shopping and non-shopping customers. Accordingly, the Partial Stipulation and the Proposed ESP should be rejected. At a minimum, the Commission should insure that all AEP Ohio customers pay the same price for capacity and,

³⁷⁶ Tr. Vol. II, p. 179.

³⁷⁷ Tr. Vol. VI, p. 844.

³⁷⁸ See Banks Direct, p. 19.

³⁷⁹ See Stip., § IV.1(c).

³⁸⁰ See Stip., § IV.1(c).

³⁸¹ Stip., § IV.1(c).

as it has been for years, the price of capacity for CRES providers should be set at RPM market prices.

B. The Partial Stipulation and its Proposed ESP Are Anti-Competitive.

The most striking and egregious failure of the Partial Stipulation to conform to state policy is found in its numerous anti-competitive terms.

1. It is state law and policy -- and the Commission's mission -- to ensure and foster a competitive market for retail electric service

Over a decade ago, the General Assembly declared an end to the traditional vertically-integrated electric utility industry and required from that time forward that retail electric generation service should be a competitive service: "Beginning on the starting date of competitive retail electric service [January 1, 2001], retail electric generation, aggregation, power marketing, and power brokerage services supplied to consumers within the certified territory of an electric utility are competitive retail electric services that the consumers may obtain subject to this chapter from any supplier or suppliers."³⁸² The General Assembly specifically delineated a number of state policies designed to foster open and robust competition and encourage retail customers' access to competitive options.

It is the policy of this state to do the following throughout this state: . . .

(B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;

(C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities; . . .

³⁸² R.C. §§ 4928.01(A)(28), 4928.03.

(F) Ensure that an electric utility’s transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces;

(G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;

(H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates;

(I) Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power³⁸³

The Commission has delegated authority to enforce and promote state law and policy regarding competition in retail electric service. R.C. § 4928.06, entitled “Commission to ensure competitive retail electric service,” directs the Commission to establish and protect the competitive market. In that section, the Commission is required to, among other things, “ensure that the policy specified in section 4928.02 of the Revised Code is effectuated,” “monitor and evaluate the provision of retail electric service in this state. . . for the purpose of discerning any competitive retail electric service that is no longer subject to effective competition,” and to “exercise [its] authority, to resolve abuses of market power by any electric utility that interfere with effective competition in the provision of retail electric service.”³⁸⁴ Given its statutory charge to ensure and foster an effective competitive market for retail electric service, it is not surprising that the Commission’s mission is to “facilitat[e] an environment that provides

³⁸³ R.C. § 4928.02 (emphasis added).

³⁸⁴ R.C. § 4928.06(A), (C), (E)(1).

competitive choices.”³⁸⁵ Staff witness Fortney affirmed that the Commission’s Staff supports upholding state policy, including the elimination of anti-competitive practices and the elimination of discriminatory rates.³⁸⁶

2. Competition provides numerous benefits to Ohio and customers.

The General Assembly’s decision and direction to establish a competitive market for retail electric generation service is supported by the numerous benefits of competition. “Competition is the best way to promote lower generation prices for customers, to promote greater productivity and efficiencies from the numerous existing generating plants, to reduce the risk imposed on customers, and to provide the appropriate market signals regarding the need for new generation.”³⁸⁷ FES witness Schnitzer further explained:

In competitive markets . . . , price signals, rather than administrative determinations, guide generation investment. This encourages the right amount of generating capacity with the appropriate levels of reliability, as well as the right mix of generating technologies in the right locations. Competition makes investors, rather than consumers, responsible for investment decisions with no assured recovery of the investment.³⁸⁸

With those incentives to make appropriate and economic investments and to efficiently improve operating performance, suppliers can then reduce their costs and offer lower prices to attract customers. Lower costs combined with competitive market pressures will result in lower prices to customers.³⁸⁹ The availability of lower electric prices from a competitive market then “ripples” into positive impacts on the state’s economy.

³⁸⁵ See Banks Direct, p. 5.

³⁸⁶ Tr. Vol. X, p. 1691.

³⁸⁷ Banks Direct, pp. 15-16.

³⁸⁸ Schnitzer Direct, p. 38.

³⁸⁹ See Banks Direct, p. 16.

For example, households forced to spend more money on subsidized generation will reduce their spending on other goods and services, affecting businesses that cater to those consumers. Similarly, businesses paying increased electric bills must either reduce their output, increase their prices, or both. These impacts will, in turn, lead to job loss, which will in turn further reduce consumer spending, causing even greater economic losses.

Because of the interconnections among industries, and between industries and households, a change in the price of just one good or service can cause ripple effects throughout the Ohio economy. Positive ripple effects add jobs and increase disposable income as more workers are hired, more equipment and supplies are purchased from other local businesses, more wages are paid to employees, and more taxes are paid to government entities. Conversely, negative ripple effects result in job loss and decreased disposable income.³⁹⁰

Not surprisingly, therefore, customers nationally and here in Ohio overwhelmingly support competition.³⁹¹ Over 1.6 million Ohio customers have taken advantage of the competitive market for retail electric service.³⁹² But only approximately 1% of those customers are located in AEP Ohio's service territory, despite the fact that AEP Ohio serves over 30% of the state's customers.³⁹³ Customers in AEP Ohio's service territory should have access to the competitive market as do customers in other EDUs' territories. To date, they have been precluded from enjoying the benefits of a fully competitive market.

³⁹⁰ Lesser Direct, pp. 55-56.

³⁹¹ See Banks Direct, pp. 16-17 (citing national survey in which 88% of respondents favored consumers' choice in electric suppliers and noting that the Commission's statistics reflect that over 1.6 million customers are shopping for retail electric service in Ohio).

³⁹² See Banks Direct, p. 16.

³⁹³ Banks Direct, p. 4; Tr. Vol. VII, p. 1219.

3. The Partial Stipulation and AEP Ohio's own statements reflect that AEP Ohio is, and has been, intentionally resistant to a competitive market.

AEP Ohio has not disguised its intent to limit competition in its distribution service territory. Signatory Party CRES witnesses Dominguez and Ringenbach both acknowledged that they believe AEP Ohio has a corporate policy to discourage shopping.³⁹⁴ Indeed, AEP Ohio's executives have repeatedly and publically touted its efforts to discourage shopping:

"I don't like customers switching in Ohio" and "there is a concern over the opportunity of customers to shop."

- AEP Ohio's CEO, Oct. 2010

AEP has instituted "regulatory responses to customers switching" that will continue.

- AEP's CFO, January 2011

"[T]he rate design activities that are filed in the [original] ESP when we get to 2012, I think you will see a real drop-off in the number of shopping customers. They will still be there and still have the freedom to do that, but their economic advantage will be to stay on the AEP system as a retail customer."

- AEP Ohio's CEO, January 2011³⁹⁵

Constellation witness Fein observed that "[t]here are a number of items that have been on the books in [AEP Ohio's] tariffs since the opening on [sic] the marketplace" that are barriers to shopping – including no rate-ready billing and the lack of certain information sharing.³⁹⁶ AEP Ohio is apparently confident that it can avoid any additional shopping in the future. AEP Ohio

³⁹⁴ Tr. Vol. VI, p. 1036; Tr. Vol. IV, pp. 538-539.

³⁹⁵ Banks Direct, pp. 35-36, Exs. TCB-4-7.

³⁹⁶ Tr. Vol. VI, pp. 978-980.

witness Allen admitted that all of AEP Ohio's own forecasts of shopping in its service territory assume that there will be no shopping growth in AEP Ohio after January 1, 2012.³⁹⁷

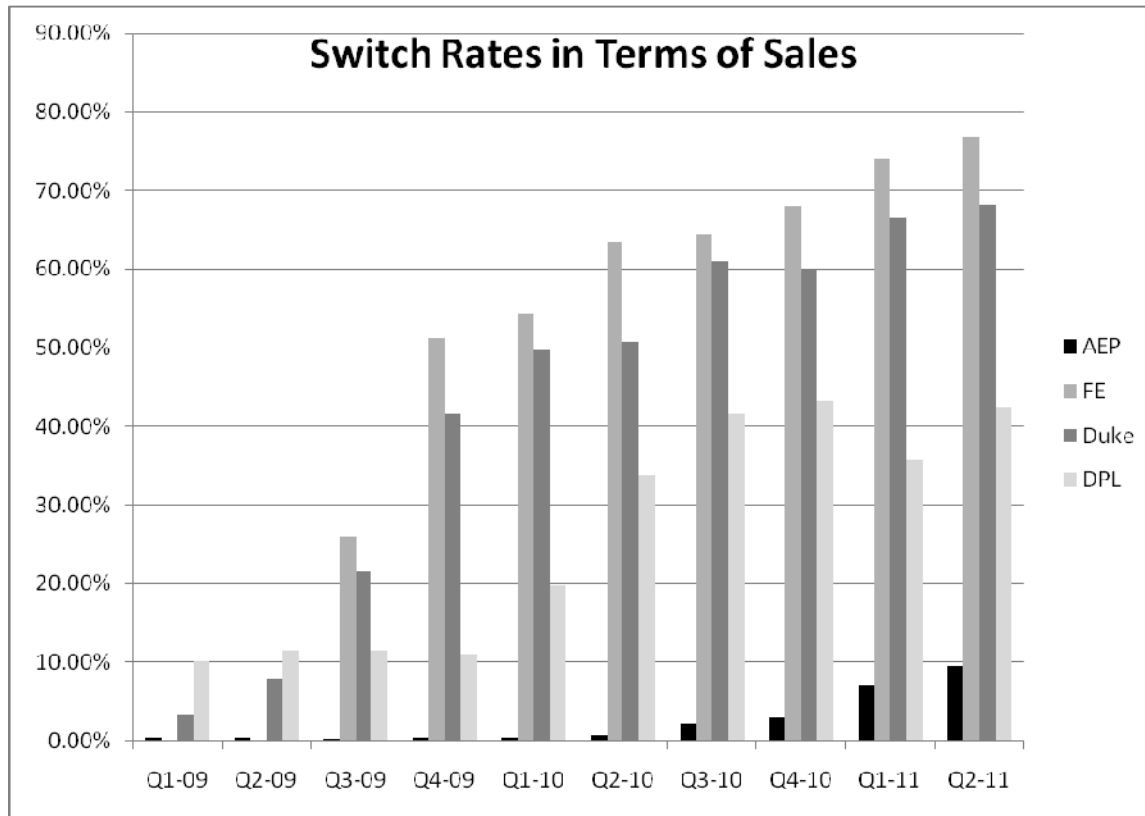
Thus far, AEP Ohio has been able to achieve its improper goals. AEP Ohio has the lowest shopping numbers in the state. The Commission's data reflects that, as of June 30, 2011, AEP Ohio had a combined switch rate of 9.61% in terms of sales.³⁹⁸ In contrast, Ohio's other EDUs have switch rates ranging from 42.46% to 81.78%.³⁹⁹ The graph below illustrates the vast difference in current shopping rates in terms of sales between AEP Ohio and the other Ohio EDUs.⁴⁰⁰

³⁹⁷ Tr. Vol. III, p. 392.

³⁹⁸ Banks Direct, p. 22.

³⁹⁹ Banks Direct, p. 22.

⁴⁰⁰ Banks Direct, p. 23. AEP Ohio's own August 2011 data slightly increased its overall switch rate to 14.05%, including pending switches. Banks Direct, p. 22. But even at 14.05%, the next lowest rate (in DPL's territory) is approximately three times higher than AEP Ohio's. Given AEP Ohio's expressed goal of limiting shopping and the data confirming its historic successes in that regard, the Proposed ESP's anti-competitive terms should come as no surprise.



4. The Proposed ESP would provide for no wholesale competition until 2015.

On the wholesale level, CBPs offer a well-established and familiar process for securing the benefits of competition for SSO customers. As FES witness Banks explained:

[A] CBP allows customers to benefit from suppliers competing head-to-head to provide SSO service. The staggered auctions and slice-of-system product also allows suppliers to mitigate their costs and reduce their financial risks, which should then lead to lower prices for customers. Customers are better protected from market price fluctuations through a CBP. In a CBP, the supplier of full-requirements service bears the risks, including risks relating to price uncertainty, volumetric uncertainty, customer shopping, and other sources. Suppliers are better equipped to manage these risks and mitigate the impact of market variations. As a result, a CBP also promotes lower, more stable prices for customers.⁴⁰¹

⁴⁰¹ Banks Direct, pp. 38-39.

Constellation witness Fein agreed that a CBP for SSO load provides a proper balance between getting the most competitive prices and maintaining a reasonable level of price stability for customers.⁴⁰² Mr. Fein also testified that a CBP benefits customers by shifting risks away from customers and onto suppliers.⁴⁰³ As a result of the benefits, Exelon witness Dominguez recommended that the Commission adopt a CBP to procure SSO load.⁴⁰⁴

The Commission has also seen first-hand the benefits of a wholesale CBP through the recent, successful auctions to procure the FirstEnergy Ohio utilities' SSO load. The initial rounds of the auctions were significantly over-subscribed, reflecting significant supplier participation, including American Electric Power Service Corporation ("AEPSC").⁴⁰⁵ The FirstEnergy Ohio utilities' customers, therefore, benefited from the promotion of lower SSO prices as these suppliers competed to win tranches. Indeed, the 2009 auction resulted in a clearing price of \$61.50/MWh, and the 2010/2011 auctions resulted in even lower prices, averaging \$55.60/MWh across the delivery periods.⁴⁰⁶ More recently, the third auction on October 25, 2011, resulted in a yet lower clearing price of \$52.83 for service provided June 2012 through May 2014.⁴⁰⁷ This wholesale competition also provides benefits to shopping customers because the favorable SSO prices establish the benchmark for CRES suppliers to beat.⁴⁰⁸ As can be seen in the chart above showing switch rates, FirstEnergy Ohio utility customers are taking

⁴⁰² Tr. Vol. VI, p. 966.

⁴⁰³ Tr. Vol. VI, pp. 965-966.

⁴⁰⁴ Tr. Vol. VI, pp. 1037-1038.

⁴⁰⁵ See Banks Direct, pp. 39-40.

⁴⁰⁶ Banks Direct, p. 40, n. 33.

⁴⁰⁷ *In the Matter of the Procurement of Standard Service Offer Generation for Customers of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 10-1284-EL-UNC, Finding and Order (Oct. 26, 2011) at ¶ 8.

⁴⁰⁸ See Banks Direct, p. 40.

advantage of this secondary benefit; as of June 2011, over 70% of the FirstEnergy Ohio utilities' sales receive generation service from CRES providers even with the favorable SSO price.

Despite the clear benefits acknowledged by Signatory CRES Parties, the Proposed ESP would unnecessarily delay the implementation of wholesale competition for at least another three and a half years. Under the Proposed ESP, AEP Ohio would continue to provide the SSO generation service until June 1, 2015, without any competitive market supply. It is not until June 1, 2015 that SSO customers would receive the benefits of market-based generation service provided by a series of CBPs.⁴⁰⁹ There is no need, however, to delay AEP Ohio's customers' ability to receive the benefits of wholesale competition until June 2015. There is no evidence to suggest that AEP Ohio cannot hold a CBP for its SSO load starting in 2012. AEP Ohio has not identified any provision of the Pool Agreement that would preclude a CBP.⁴¹⁰ AEP Ohio also could participate in the CBP if appropriate protections were put into place to avoid any affiliate competitive advantages. The only justification for AEP Ohio's delay is its desire to receive above-market revenue for another three and a half years before it would finally "have to" join the competitive market established by the General Assembly a decade ago. In fact, a CBP for AEP Ohio's SSO load starting in June 2015 is not a certainty under the Proposed ESP either. AEP Ohio would be "relieved of its obligation to conduct additional auctions" for SSO service beginning June 2015 if certain FERC approvals are not received.⁴¹¹ Thus, AEP Ohio's customers may not receive the benefits of wholesale competition at any point during the Proposed ESP.

⁴⁰⁹ See Stip., § IV.1(r).

⁴¹⁰ See Tr. Vol. V, pp. 720-721 (AEP Ohio witness Nelson acknowledged that there is nothing "explicit[]" in the Pool Agreement that would preclude a wholesale power procurement auction, and stating that he "wouldn't waste [his] time" to perform any analysis of whether such a procurement would have any impact on the pool members); FES Ex. 12.

⁴¹¹ See Stip., § IV.1(t).

There is no basis on which the Commission should approve this unjustified delay and contingency. State law and state policy require competition. AEP Ohio's SSO customers deserve it now.

5. The Partial Stipulation limits retail competition until 2015 because AEP Ohio's proposed capacity price caps are caps on shopping.

The benefits of competition on the retail level are not subject to serious dispute. Exelon witness Dominguez testified that retail competition and customer choice benefits Ohio customers and Ohio generally.⁴¹² Customers in the FirstEnergy Ohio utilities' service territory have saved over \$100 million annually as a result of savings offered by competitive retail suppliers.⁴¹³ But the Partial Stipulation would preclude AEP Ohio's customers from the opportunity to reap such savings.

Under the Partial Stipulation, customers representing only 21% of AEP Ohio's load would be entitled to receive capacity at the RPM, market-based price during 2012.⁴¹⁴ This cap on RPM-priced capacity would increase slightly over the term of the Proposed ESP, to 29% (or 31% based on approval of securitization) in 2013, and 41% in 2014 until June 2015.⁴¹⁵ "[A]ny and all shopping in excess of the RPM-priced set aside limits will be priced at the \$255/MW-Day capacity rate."⁴¹⁶ Which of AEP Ohio's over 1 million customers will be lucky enough to receive the RPM-priced capacity would be established under complex and arbitrary procedures set forth in "Appendix C" to the Partial Stipulation.

⁴¹² Tr. Vol. VI, pp. 1037-1038.

⁴¹³ Banks Direct, p. 16.

⁴¹⁴ Stip., § IV.2(b)(3).

⁴¹⁵ Stip., § IV.2(b)(3).

⁴¹⁶ Stip., § IV.2(b)(3).

As discussed below, AEP Ohio itself and other Signatory Party witnesses acknowledged that the Partial Stipulation's caps and Appendix C will effectively allow AEP Ohio to continue to preclude retail shopping for the vast majority of its customers for another three and a half years – thereby allowing AEP Ohio to preserve a customer base even though generation service is, by law and policy, competitive in this state. To make matters worse, the majority of customers who will be unable to shop for lower priced electricity will be forced to remain on AEP Ohio's above-market Proposed ESP prices.

a. Capacity priced at \$255-MW/Day would not allow CRES providers to provide customers meaningful opportunities to save money relative to the SSO price.

The Commission need go no further than AEP Ohio's own admissions to confirm that the Partial Stipulation's caps will prevent shopping above the minimal cap percentages. On September 7, 2011 – *the very day the Partial Stipulation was signed and filed* – AEP Ohio's Senior VP for Regulatory Services, Richard Munczinski, proudly announced to AEP Ohio investors and market analysts that the Proposed ESP's caps would allow AEP Ohio to continue to limit shopping: "Over those [shopping cap] percentages, if you want to shop, you pay the full cost of \$255 per megawatt day. **So the thought and the theory is that the shopping will be constrained to the discounted RPM price.**"⁴¹⁷ AEP Ohio's executive further clarified that **AEP Ohio "should see no more shopping than the 20%, 30%, 40% levels that are included in the stipulation."**⁴¹⁸

Mr. Munczinski's admissions are well-supported. Any increase in capacity price would limit CRES providers' ability to make competitive offers to customers, as Signatory Party witnesses admitted. For example, RESA witness Ringenbach agreed that increases in capacity

⁴¹⁷ Banks Direct, p. 36, Ex. TCB-8 (emphasis added).

⁴¹⁸ Banks Direct, p. 36, Exh. TCB-9 (emphasis added).

costs charged to CRES providers would have the effect of reducing the amount of headroom for CRES providers, which would take savings away and deter CRES providers from offering service.⁴¹⁹ She further admitted that the \$255/MW-Day price arbitrarily set in the Partial Stipulation, which is four times higher than market, would limit or constrain shopping.⁴²⁰

Staff witness Fortney also testified that “if the CRES provider had to pay a higher capacity price, he would not be able to make as good an offer to the ultimate customer and so it would discourage shopping in that sense.”⁴²¹ Similarly, Constellation witness Fein testified that a 200% increase in capacity prices over RPM prices “would adversely affect shopping.”⁴²²

FES witnesses Banks and Schnitzer demonstrated Mr. Munczinski’s statements and the Signatory CRES Party witnesses’ testimony that the \$255/MW-Day capacity price would limit shopping over the caps. Specifically, Mr. Schnitzer compared the Proposed ESP price-to-compare with the CRES market cost to serve, under both the RPM market price for capacity and the \$255/MW-Day price for capacity.⁴²³ This analysis revealed that when capacity is priced at RPM, the CRES cost-to-serve is lower than the Proposed ESP price-to-compare; “[t]his represents a savings opportunity for customers who switch to CRES providers.”⁴²⁴ Mr. Schnitzer further showed that when capacity is artificially priced at \$255/MW-Day, the CRES cost-to-serve exceeds the Proposed ESP price-to-compare – meaning that CRES providers would have to

⁴¹⁹ Tr. Vol. IV, p. 543, 544.

⁴²⁰ Tr. Vol. IV, p. 544.

⁴²¹ Tr. Vol. X, pp. 1693-1694.

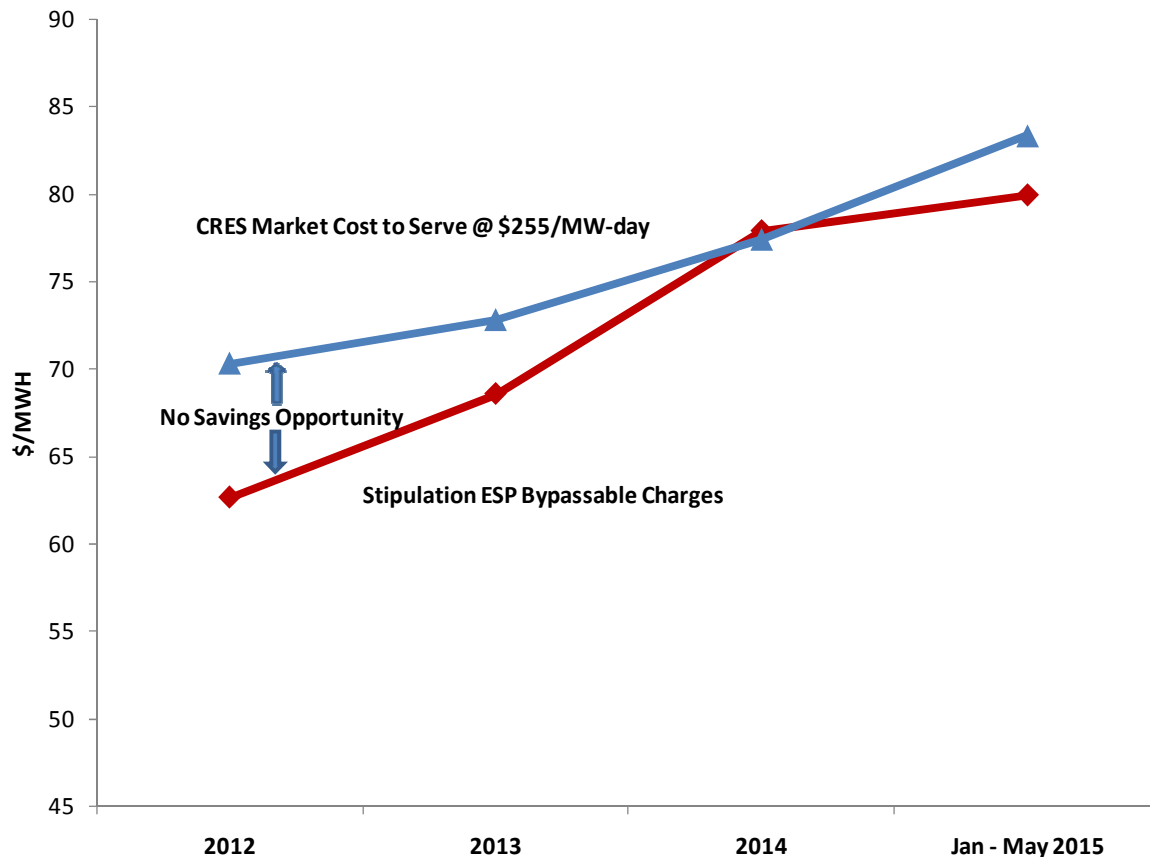
⁴²² Tr. Vol. VI, pp. 970-971.

⁴²³ See Schnitzer Direct, pp. 35-36.

⁴²⁴ Schnitzer Direct, p. 35.

serve customers at a loss in order to provide customers with savings from the price-to-compare.⁴²⁵

The Stipulation Would Limit Retail Choice When CRES Suppliers Have to Pay AEP Ohio's Above-Market \$255 per MW-Day Capacity Charge



As Mr. Schnitzer observed:

As a result, under the Stipulation, once AEP Ohio no longer has to provide capacity to CRES providers at RPM market prices, the Stipulation effectively shuts down the opportunity for customers to shop by making it very difficult for customers to shop for price savings.⁴²⁶

If the Commission approves above-market capacity pricing of \$255/MW-Day, this will force customers to stay with AEP Ohio's generation service – a result that mirrors Mr. Munczinki's

⁴²⁵ Schnitzer Direct, p. 36.

⁴²⁶ Schnitzer Direct, p. 36.

conclusions and AEP Ohio's executives' stated goals to inhibit shopping and favor their own generation.⁴²⁷

AEP Ohio offered the rebuttal testimony of William Allen to try to paint a better picture for the Partial Stipulation and to suggest that the \$255/MW-Day capacity price would provide CRES suppliers with headroom.⁴²⁸ His testimony lacks any credibility and should be disregarded altogether. First, Mr. Allen has no background on CRES issues, contracts, or prices. He admitted that he has no experience working with CRES providers and has had no involvement in dealing with CRES providers before this case.⁴²⁹ He admitted he has not seen enough CRES contracts to form an opinion as to what constitutes a "typical term of such a contract."⁴³⁰ He also admitted that he does not know what margins would be acceptable to CRES providers.⁴³¹ Yet, without any of the relevant background, he went on to "calculate" the headroom available to CRES providers and then conclude that CRES providers would make offers under such conditions.⁴³² Mr. Allen had no basis to offer his conclusions.

Regardless of Mr. Allen's utter lack of any competence to opine on CRES providers' behavior, his conclusions lack any merit. Even a cursory examination of his testimony demonstrates this. Most fundamentally, the "headroom" Mr. Allen concludes would be available at the \$255/MW-Day capacity price totals less than 1% of the market price.⁴³³ But, even this simplistic calculation is flawed in several material and fatal respects. Mr. Allen excluded the

⁴²⁷ Banks Direct, pp. 20, 35-36

⁴²⁸ See Allen Rebuttal, pp. 7-8.

⁴²⁹ Tr. Vol. XII, pp. 2086-2087.

⁴³⁰ Tr. Vol. XII, p. 2113.

⁴³¹ Tr. Vol. XII, p. 2091.

⁴³² Allen Rebuttal, pp. 7-9.

⁴³³ Tr. Vol. XII, pp. 2158 (confidential).

“transaction risk adder” and “retail administration adder” that AEP Ohio witness Thomas testified was needed to calculate a market price applicable for a CRES provider.⁴³⁴ These two price components total approximately \$8/MWh.⁴³⁵ Mr. Allen’s headroom analysis is, therefore, premised on the unsupported belief that CRES providers would make below-market offers to customers. If the Company’s own “transaction risk adder” and “retail administration adder” costs are added back in to Mr. Allen’s “market costs,” Mr. Allen acknowledged that the costs to CRES providers would be higher than the market price at which CRES providers could sell – resulting in negative headroom and limited opportunity for customers to shop.⁴³⁶ Moreover, Mr. Allen further admitted that even Ms. Thomas’s Stipulation ESP price (which is too low due to errors in her calculation, as discussed in Section II.B.2) is lower than Mr. Allen’s CRES market cost numbers, which would therefore result in negative “headroom” per Mr. Allen’s calculation.⁴³⁷

Mr. Allen also tried to testify that additional shopping could be seen at the \$255/MW-Day capacity price under long-term contracts that would allow for RPM-priced capacity in later years when the caps “increase.”⁴³⁸ Of course, Mr. Allen has no experience with CRES contracts and he did not know if contracts greater than 24 months are common.⁴³⁹ Thus, Mr. Allen essentially claims that shopping will occur only if a switched customer is able to receive capacity priced at RPM – again proving that shopping is constrained with a \$255/MW-Day capacity price. Nevertheless, as he acknowledged, Mr. Allen’s conclusion is based on conjecture; there is no

⁴³⁴ Tr. Vol. XII, p. 2160 (confidential).

⁴³⁵ Tr. Vol. XII, p. 2160 (confidential).

⁴³⁶ Tr. Vol. XII, p. 2160 (confidential).

⁴³⁷ Tr. Vol. XII, p. 2161 (confidential).

⁴³⁸ Allen Rebuttal, pp. 8-9.

⁴³⁹ Tr. Vol. XII, pp. 2113-2114.

guarantee that a shopping customer who does not fall under the cap initially will later receive RPM-priced capacity.⁴⁴⁰

FES witness Banks summarized the resulting impact of the RPM capacity price caps:

While certain Signatory Parties describe the discriminatory capacity price caps proposed for the first year of the [Proposed] ESP as providing the opportunity for shopping for AEP Ohio customers in a level equal to the load of Toledo Edison, the disturbing flip side is that in its first year, the [Proposed] ESP would effectively prohibit AEP Ohio customers in a level encompassing double the load of The Cleveland Electric Illuminating Company from shopping – approximately three times the load of Toledo Edison and the vast majority of AEP Ohio’s customers.⁴⁴¹

Indeed, by 2015 – when the cap is at its highest – shopping in AEP Ohio’s territory would still be less than the lowest rate of any other electric utility in 2011.⁴⁴² Finally, as Mr. Schnitzer points out from an economic perspective, the above-market capacity price of \$255 per MW-day will result in customers having to remain on AEP Ohio’s SSO service and having to pay above-market Proposed ESP prices.⁴⁴³

b. The caps do not allow for any real increase in shopping in AEP Ohio’s service territory.

The Partial Stipulation’s shopping caps would include those AEP Ohio customers who are already shopping and any increases in their usage.⁴⁴⁴ As a result, few new customers will be able to shop under the Partial Stipulation. AEP Ohio’s most recent data, produced after the submission of direct testimony, reflected that 7,923,575 MWh of load has already been assigned

⁴⁴⁰ See Tr. Vol. XII, pp. 2083-2084.

⁴⁴¹ Banks Direct, p. 5.

⁴⁴² See Banks Direct, p. 23.

⁴⁴³ Schnitzer Direct, p. 37.

⁴⁴⁴ See Stip. § IV.2(b)(2), (3), Appx. C.

under the cap.⁴⁴⁵ These assignments represent 80% of the 2012 cap.⁴⁴⁶ including 100% of the allotment for commercial customers.⁴⁴⁷ So, before the Partial Stipulation has even been submitted for the Commission’s consideration, less than a quarter of the RPM-price cap would be available for newly shopping customers.

The proposed increases in the caps over the next three years are also not meaningful. Based on the already existing allotments, the annual caps actually represent only 4% additional shopping in 2012, 14% in 2013, and 24% for 2014-June 2015.⁴⁴⁸ These minimal increases in the caps could be filled by the increased loads of existing shopping customers. AEP Ohio admitted that any additional energy allotments awarded to already shopping customers in 2013, for example, would count toward the set-aside percentage for 2014.⁴⁴⁹ This would further reduce the “new” available RPM-priced capacity available in subsequent years. Thus, the Partial Stipulation would allow AEP Ohio to stifle retail competition in its service territory for three and a half more years.

⁴⁴⁵ Tr. Vol. XIII, pp. 2072-2073; FES Ex. 18 (AEP Ohio cap data as of Oct. 14, 2011).

⁴⁴⁶ The 2012 cap established under the Partial Stipulation is different than the cap established under Appendix C. In the Partial Stipulation, the 2012 cap is described as “21% of AEP Ohio’s total retail load in 2012 (based on total kWh retail sales).” Stip., § IV.2(b)(3). AEP Ohio’s most recent estimate of its connected load for 2012 is 48,247,000,000 kWh. Allen Direct, Exh. WAA-5 at p. 5. However, in Appendix C, the 2012 cap is described as 21% of “annual retail sales . . . based on AEP Ohio’s annual average kWh based on the 24 months ended July 31, 2011 (47,023,697,140 kWh).” Stip., Appx. C at p. 1. The Partial Stipulation’s provision for the cap is higher than that set forth in Appendix C. Therefore, as discussed below, the Signatory Parties’ receipt of Appendix C on the evening before the Stipulation was signed further suggests that the Signatory Parties may not have appreciated what they were signing.

⁴⁴⁷ See FES Ex. 18.

⁴⁴⁸ See FES Ex. 18; Stip. § IV.2(b)(3); see also Banks Direct, p. 21 (calculations based on earlier AEP Ohio data).

⁴⁴⁹ FES Ex. 16(h); see also Stip., Appx. C.

c. The cap design would burden residential customers more than other customer classes.

The Partial Stipulation provides that the initial allotment of RPM-priced capacity would be available to customer classes on a “pro rata” basis until December 31, 2011.⁴⁵⁰ The pro rata allocation for residential customers in 2012 is 3,071,897 MWh.⁴⁵¹ However, Appendix C takes away from residential customers the share promised by the text of the Partial Stipulation: “If the allotment to any customer class as of September 7, 2011 exceeds 21%, then the allocation to the remaining classes shall be reduced on a pro rata basis such that the total allotment does not exceed 21%.”⁴⁵² As a result, residential customers received an allotment of only 2.5 million MWh under their initial pro rata allocation.⁴⁵³ The number of already-shopping commercial customers exceeded the pro rata allocation for the customer class.⁴⁵⁴ This oversubscription of commercial customers resulted in the transfer of half a million megawatt-hours from residential customers to commercial customers.⁴⁵⁵ The allocation for industrial customers also decreased and they, too, have effectively exceeded their adjusted pro rata allocation.⁴⁵⁶

Because the pro rata allocation will dissolve as of January 1, 2012, any unallocated allotment not awarded to residential customers prior to that date is expected to be awarded to other customer classes.⁴⁵⁷ This means that all of the commercial and industrial customers who

⁴⁵⁰ Stip. § IV.2(b)(3), Appx. C at p. 3.

⁴⁵¹ See FES Ex. 18.

⁴⁵² Stip., Appx. C, p. 3.

⁴⁵³ See FES Ex. 18.

⁴⁵⁴ See FES Ex. 18.

⁴⁵⁵ Tr. Vol. VI, pp. 919-920; FES Ex. 18.

⁴⁵⁶ Tr. Vol. XII, p. 2077; Tr. Vol. VI, p. 921; FES Ex. 18. AEP Ohio witness Allen explained that, while 54,357 MWh remains allocated for industrial customers as of October 14, 2011, the industrial customer next in line has a load larger than 54,000 MWh. Tr. Vol. XII, p. 2079.

⁴⁵⁷ See Stip., Appx. C, p. 3.

have not yet received an allocation, but have started shopping or provided notice of their intent to shop after September 7, 2011, but before December 31, 2011, will be “first-come, first-served” on January 1, 2012 – and likely will take up the remaining cap space soon on January 1st. Indeed, AEP Ohio witness Allen confirmed that 1,500 commercial and/or industrial customers have shopped since September 7th, but have not yet received an allotment of RPM-priced capacity.⁴⁵⁸ Mr. Allen tried to suggest that this proves that customers will shop under a \$255/MW-Day capacity price. Yet, the fact that 1,500 customers have switched merely shows that residential customers, who may attempt to switch later, will surely be precluded from receiving any meaningful allotment of the RPM-priced capacity because there are already 1,500 significant customers in the queue waiting for the January 1, 2012 re-allocation.⁴⁵⁹ In tandem with the Partial Stipulation’s fatal effects on additional governmental aggregation in AEP Ohio’s service territory (as discussed below), residential customers are guaranteed a lesser proportion of cap space – and fewer opportunities to save on electricity – during the term of the Proposed ESP.

6. The proposed “Appendix C” queue process would further inhibit competition.

The Partial Stipulation proposes to carry out the award of RPM-priced capacity through a complicated process set forth in Appendix C to the Partial Stipulation. The Signatory Parties have acknowledged that the Appendix C procedure is based on rules established in Michigan.⁴⁶⁰ They also acknowledged that Michigan’s rules implement a Michigan law that imposes specific

⁴⁵⁸ Allen Rebuttal, p. 9; Tr. Vol. XII, pp. 2080-2081, 2082 (“My review of the data though indicates that the vast majority of these customers are commercial customers. There are a few industrial customers and there are – by virtue of the set-aside process there are no residential customers.”).

⁴⁵⁹ Mr. Allen’s suggestion is also nonsensical given that customers who currently shop pay the RPM price for capacity, as has been available for all shopping customers over the entire term of the current ESP, and Mr. Allen does not know whether these new contracts are contingent on a future allotment of RPM capacity as of January 1st. See Tr. Vol. XII, p. 2083.

⁴⁶⁰ Tr. Vol. III, p. 391 (AEP Ohio witness Allen); Tr. Vol. VI, p. 973 (Constellation witness Fein); Tr. Vol. IV, p. 545 (RESA witness Ringenbach).

limits on shopping.⁴⁶¹ They further acknowledged that there is no such statute in Ohio.⁴⁶² Given its anti-competitive roots, it should come as no surprise that the Appendix C procedures will further inhibit shopping and do not reflect Ohio's fully competitive market.

a. The queue process is arbitrary and confusing.

The Appendix C procedure generally describes AEP Ohio's assignment of shopping customers to one of five groups, from which AEP Ohio will establish a queue for customers to line up to be lucky enough to receive RPM-priced capacity.⁴⁶³ The Groups are defined based on the arbitrary date on which the customer takes action to save money by shopping for electric generation service. The preeminent Group 1 customers, for example, are those who have been shopping "continuously" since July 1, 2011 – a date that has no meaning independent of the fact that it was agreed to.⁴⁶⁴ Group 2 customers are those who started shopping after July 1, 2011 and before September 7, 2011.⁴⁶⁵ Then, the last in line would be customers in Group 5, who did not decide to shop until after September 7, 2011.⁴⁶⁶ Customers who move into AEP Ohio's service territory should expect to be at the back of a very long line. FES witness Banks summarized additional problems with the Appendix C procedure:

⁴⁶¹ Tr. Vol. III, p. 391; Tr. Vol VI, pp. 973-974.

⁴⁶² Tr. Vol. III, p. 390; Tr. Vol. IV, p. 545; Tr. Vol. VI, pp. 973-974 (all acknowledging lack of a similar statutory basis for the rules in Ohio). Constellation, in fact, opposed the Michigan legislation and took the position there that such caps are inappropriate – although it somehow supports a similar approach for AEP Ohio's customers. Tr. Vol. VI, pp. 985-986.

⁴⁶³ See Stip., Appx. C.

⁴⁶⁴ See Stip., Appx. C, pp. 1-2; see also Banks Direct, p. 24. Indeed, no Signatory Party witness even bothered to explain why that date should be used as a cut-off between Groups 1 and 2.

⁴⁶⁵ See Stip., Appx. C, p. 2.

⁴⁶⁶ See Stip., Appx. C, p. 2.

- *Customers can join the queue only after they have signed a contract with a CRES provider, but before they know if they fall under the cap and will receive RPM market capacity prices, or instead will receive the four times higher \$255 price.*⁴⁶⁷

The uncertainty associated with a significant price component of retail electric service will have a chilling effect on competition. “[C]ontracts would likely require contingencies, risk premiums, and language providing for different outcomes. All of this would instill significant confusion and uncertainty in shopping, reduce the price benefits of open competition, and could dissuade customers from shopping, even before the caps are reached.”⁴⁶⁸

- *[I]f a customer does not end up falling under the cap and seeks to return to the SSO without ever having taken service from a CRES provider, AEP Ohio will deem the customer subject to the 12-month minimum stay. Therefore, the customer could be blocked from getting back into the queue when the caps incrementally increase the following year.*⁴⁶⁹

The 12-month minimum stay is one of the anti-competitive rules that AEP Ohio imposes today and that would continue under the Partial Stipulation until June 2015.⁴⁷⁰ The minimum stay provision is anti-competitive because the minimum stay would preclude the customer from getting back in the queue to receive any of the increased cap space in a subsequent year.⁴⁷¹ Customers seeking to take advantage of the competitive market required by law should not thereafter be chained to AEP Ohio’s generation service.

⁴⁶⁷ Banks Direct, p. 25.

⁴⁶⁸ Banks Direct, p. 27.

⁴⁶⁹ Banks Direct, p. 25.

⁴⁷⁰ See Stip., § IV.1(s)(3); Banks Direct, pp. 53-54; Tr. Vol. IV, p. 556 (RESA witness Ringenbach acknowledged that the 12-month stay requirement is a barrier to competition).

⁴⁷¹ Tr. XI, p. 2084 (AEP Ohio witness Allen explaining that the 12-month minimum stay prevents returning customers from obtaining RPM set-aside capacity in future years).

- *Certain customers that are already shopping (and thus would likely fall under the cap) could lose their cap allotment if they expand their service by more than 10% – creating uncertainty for the customers and a disincentive for development.*⁴⁷²

Based on the language of Appendix C, any customer in any Group other than Group 1 could be shifted to Group 3 if they seek to expand their service by more than 10%.⁴⁷³ Appendix C says nothing of the impact of that switch, but customers could lose RPM pricing if no additional cap space was available when the expansion occurred. On cross-examination, AEP Ohio witness Allen testified that “for that increased load [the customer] would have to wait until January of the subsequent year to gain an allotment.”⁴⁷⁴ Thus, the capacity for the customer’s load could be priced at two different prices in a subsequent year, unless or until the customer received an additional allotment. Regardless, the idea that a customer who was lucky enough to receive RPM-priced capacity could at some point lose that status and be subject to a capacity price that is four times higher – for all of the customer’s load or part – would have a chilling effect on customers’ interest in shopping.⁴⁷⁵ Simply put, “if customers don’t know [what price they would receive], they are less likely to shop.”⁴⁷⁶ It also could be an avenue for customers or suppliers to game the system by moving from Group 4 or 5 up to Group 3 based on the announcement of a planned expansion.⁴⁷⁷

⁴⁷² Banks Direct, p. 26.

⁴⁷³ See Stip., Appx. C at p. 2.

⁴⁷⁴ Tr. Vol. III, p. 406.

⁴⁷⁵ See Banks Direct, pp. 28-29.

⁴⁷⁶ Banks Direct, p. 29.

⁴⁷⁷ See Banks Direct, p. 28; Tr. Vol. IV, p. 552 (RESA witness Ringenbach).

- *The proposed “Cap Tracking System” will likely not be operational until 2012, which means that while the caps are being filled, CRES providers and customers will have no ready means of knowing where the caps stand and whether there is any likelihood that they will fall under the cap.*⁴⁷⁸

Appendix C proposes that AEP Ohio would inform CRES providers and customers regarding the status of the queue process through the Cap Tracking System (“CTS”).⁴⁷⁹ As Appendix C states and AEP Ohio has confirmed, the CTS will not be operational until after 2012.⁴⁸⁰ Thus, there will be no clear or reliable way to get information about the queue for months during the confusing and uncertain time when suppliers and customers will be hurriedly looking to position themselves to be able to offer and receive the same price for capacity as is offered today.⁴⁸¹

Since the Stipulation was filed, AEP Ohio has provided just two updates on the amount of load available under the initial pro rata allocations, the second of which was released after direct testimony in this proceeding.⁴⁸² Although the numbers have changed significantly, AEP Ohio witness Allen could not effectively describe the basis for the change in numbers. For example, the October 14th data specifically states that it only includes customers in Groups 1, 2 and 4. But Mr. Allen tried to blame the decreased cap space on additional Group 5 customers, as well as “data validation.”^{483,484} In any event, the most recent data announcement includes a disclaimer that “the above values may change as a result of final data validation.”⁴⁸⁵

⁴⁷⁸ Banks Direct, p. 26.

⁴⁷⁹ Stip., Appx. C at pp. 4-5.

⁴⁸⁰ See Stip., Appx. C at p. 5 (“The CTS shall be fully operational within 60 days of the issuance of this order” on the Partial Stipulation).

⁴⁸¹ See Banks Direct, p. 30.

⁴⁸² See Banks Direct, Ex. TCB-1 (Sept. 23, 2011 data); FES Ex. 18 (Oct. 14, 2011 data).

⁴⁸³ See FES Ex. 18; Tr. Vol. XII, pp. 2073-2074 (“I’m trying to recall if there are any Group 5 customers in the data that was presented on September 23, but the difference is increased levels of Group 5

In short, no one knows what's going on with the queue other than AEP Ohio – and it's not clear that even AEP Ohio knows. Certainly CRES providers, who need this information to try to compete and prepare offers for potential customers, have little information. As FES witness Banks testified, “FES has filed affidavits to switch customers, and to date we have got no feedback as to whether they're in the queue or out of the queue, and if they are in the queue, where they stand.”⁴⁸⁶ The lack of information puts competitive suppliers on an uneven playing field with AEP Ohio, and injects further confusion into the already anti-competitive caps and queue procedure. “The convoluted nature of the RPM set-aside procedures will undoubtedly result in some shopping customers avoiding shopping or paying more for generation service simply because they were unable to successfully navigate the RPM set-aside maze or were shut-out from receiving market-based capacity.”⁴⁸⁷

b. The queue process remains uncertain.

In addition to the lack of information-sharing (and confusion) with the Cap Tracking System, numerous other questions remain unanswered by Appendix C and AEP Ohio. During discovery, AEP Ohio deferred answering many questions, promising answers with the completion of the “Detailed Implementation Plan” called for by Appendix C.⁴⁸⁸ A “Detailed

customers between September 7 and October 14. That's one of the differences. There is additionally a difference related to some data validation that occurred.”).

⁴⁸⁴ This suggestion that the queue has already begun to form also contradicts the testimony of Signatory Party witness Ringenbach, who just 10 days prior testified that she did not believe that the queue had yet begun. *See* Tr. Vol. IV, p. 546.

⁴⁸⁵ FES Ex. 18.

⁴⁸⁶ Tr. Vol. VII, p. 1214.

⁴⁸⁷ Banks Direct, p. 18.

⁴⁸⁸ *See* Stip., Appx. C at p. 5; FES Ex. 16.

Implementation Plan” was docketed during the pendency of the hearing,⁴⁸⁹ but it provided little additional information and, more accurately, reflects a modest redline of Appendix C. For example, in discovery, FES asked what information would be required for a customer to notify AEP Ohio of an expansion justifying a transition to Group 3, or how AEP Ohio will validate that information. AEP Ohio stated that this information “will be addressed during the development of the more detailed implementation plan discussed in Appendix C.”⁴⁹⁰ But the “Detailed Implementation Plan” provides no such information.⁴⁹¹ Similarly, in discovery, FES asked AEP Ohio to explain how AEP Ohio will order in the queue if a CRES provider submits multiple affidavits for customers at the same time. AEP Ohio stated that this information “will be determined as part of [the] detailed implementation plan discussed on page 5 of the Appendix.”⁴⁹² The “Detailed Implementation Plan” provides no such information.

The uncertainty associated with the already cumbersome Appendix C procedures means that neither CRES providers nor the Commission can fully gauge the extent of the chaos that will result in the competitive market in AEP Ohio’s territory. What is certain is that the Partial Stipulation’s shopping caps preclude any shopping above the cap percentages, and the Appendix C procedure and associated uncertainty will inhibit shopping even before the percentages are reached.

⁴⁸⁹ AEP Ohio marked this docket as an exhibit, but it was not admitted into the record. *See* Tr. Vol. VI, pp. 893, 953.

⁴⁹⁰ FES Ex. 16(b), (i); FES Ex. 16(e).

⁴⁹¹ *See* Tr. Vol. IV, p. 548 (RESA witness Ringenbach acknowledging same).

⁴⁹² FES Ex. 16(d).

c. AEP Ohio would maintain sole control over the allocation of RPM-priced capacity.

As noted, AEP Ohio has publicly expressed its antagonism to competition in its service territory. It has accordingly devised a Partial Stipulation that will allow it to limit retail competition to specified percentages for three and a half more years. Given the Companies' antipathy to competition, the Partial Stipulation is further troubling because it places unbridled control over the RPM and set-aside process in AEP Ohio's hands. Specifically, the Partial Stipulation would allow AEP Ohio to control who gets RPM-priced capacity. Appendix C provides that "AEP Ohio shall assign" the energy allotments and that "AEP Ohio shall calculate the Cap," and AEP Ohio "shall award and allocate allotments on a first-come, first-served basis."⁴⁹³ It also provides that AEP Ohio will be the one to "measure[] . . . the date and time when a CRES provider submits an Affidavit" to get its customer in the queue.⁴⁹⁴ Further, AEP Ohio's calculation of the initial cap "is not subject to challenge."⁴⁹⁵ Signatory CRES Party witnesses Ringenbach and Fein acknowledged that there is no requirement or contemplated process for the Commission's review or approval of the "detailed" implementation plan for carrying out the Appendix C procedures.⁴⁹⁶ AEP Ohio also responded in discovery that Staff's ability to review AEP Ohio's cap calculation and whether its estimates of annual energy allotments would be subject to audit or verification would "be addressed during the development of the more detailed implementation plan." But no such information has been provided in that plan.⁴⁹⁷

⁴⁹³ Stip., Appx. C at pp. 2-3.

⁴⁹⁴ Stip., Appx. C at p. 3.

⁴⁹⁵ Stip., Appx. C at p. 3.

⁴⁹⁶ Tr. Vol. IV, p. 545 (Ringenbach); Tr. Vol. VI, p. 976 (Fein).

⁴⁹⁷ FES Ex. 16(c).

AEP Ohio's unfettered control over the allotment of RPM-capacity that is essential to a CRES providers' ability to make competitive offers conflicts with the Commission's mandate to promote competition. As its executives have admitted, AEP Ohio has a vested interest in preventing customers from shopping so that these customers remain as SSO customers supplied by AEP Ohio's own generation. AEP Ohio also has an interest through its affiliated competitive supplier, AEP Retail, which stands to gain in the competitive market if it receives allotments of RPM-priced capacity. Allowing AEP Ohio to control who gets the little RPM-priced capacity cap space available when it has conflicts of interest in that process and a history of anti-competitive policies is like having the fox guard the hen-house during a shortage of hens.

7. The Partial Stipulation would also maintain existing barriers to competition in AEP Ohio's service territory.

AEP Ohio has in place today a number of policies that are barriers to competition and that would continue for another three and a half years under the Partial Stipulation. All of those policies "contradict the state's policies of ensuring the availability of nondiscriminatory electric service, encouraging cost-effective and efficient access to information regarding the operation of distribution systems to promote effective customer choice of retail electric service, and ensuring retail electric service consumers protection against unreasonable sales practices, market deficiencies and market power."⁴⁹⁸ These barriers include: (1) minimum stay requirements applicable to customers who are interested in shopping or who have shopped; (2) the absence of certain rate schedules from the shopping tariff, which causes shopping customers to lose certain

⁴⁹⁸ Banks Direct, p. 53.

distribution discounts; and (3) the failure to offer billing options that provide important information and flexibility.⁴⁹⁹

None of these would be rectified by the Partial Stipulation, until at least June 2015. For example, Signatory CRES Party witnesses acknowledged that, while the 12-month minimum stay is a barrier to shopping, that barrier would remain until 2015.⁵⁰⁰ “By implementing these minimum stays [including the 12-month minimum stay and the summer-stay requirements], AEP Ohio makes it more difficult for customers to switch, and thereby hinders effective competition and favors its own generation service.”⁵⁰¹ AEP Ohio witness Roush could offer no explanation as to why the 12-month minimum stay requirement even exists and, thus, it lacks any evidentiary support.⁵⁰²

RESA witness Ringenbach also identified the \$10 switching fee as a barrier to competition.⁵⁰³ FES witness Banks further explained that AEP Ohio’s current switching fee is higher than other Ohio EDUs. It also is charged directly to customers, which precludes suppliers from paying the fee as other Ohio EDUs allow.⁵⁰⁴ Ms. Ringenbach acknowledged that the Partial Stipulation may not reduce the switching fee at all.⁵⁰⁵ AEP Ohio confirmed that under the Partial Stipulation, AEP Ohio would only “discuss if a reduction in the switching fee is

⁴⁹⁹ See Banks Direct, p. 53; Tr. Vol. VI, pp. 978-980 (Constellation witness Fein testified, “[t]here are a number of items that have been on the books in [AEP Ohio’s] tariffs since the opening on [sic] the marketplace” that are barriers to shopping – including no rate-ready billing and the lack of certain information sharing).

⁵⁰⁰ Tr. Vol. IV, pp. 556-557 (RESA witness Ringenbach); *see also* Tr. Vol. VI, pp. 980 (Constellation witness Fein).

⁵⁰¹ Banks Direct, pp. 53-54.

⁵⁰² See Tr. Vol. I, pp. 103-104.

⁵⁰³ Tr. Vol. IV, p. 557.

⁵⁰⁴ Banks Direct, p. 54.

⁵⁰⁵ Tr. Vol. IV, p. 557.

appropriate” and that “the outcome of those discussions is not known.”⁵⁰⁶ AEP Ohio witness Roush confirmed that AEP Ohio had agreed only to talk about the fee and that the Partial Stipulation “does not require a reduction in the fee.”⁵⁰⁷

In addition, AEP Ohio is the only utility in the state that does not offer rate-ready consolidated billing.⁵⁰⁸ “A utility’s offer of both rate-ready and bill-ready consolidated billing facilitates competition, including allowing flexibility for competitive offers,” and provides more clarity for customers through more consistent, complete and timely bills.⁵⁰⁹ There is no proposal to offer rate-ready billing in the Partial Stipulation.⁵¹⁰

8. The Proposed ESP’s rate design is anti-competitive and unreasonable.

The Proposed ESP moves all base generation charges from AEP Ohio’s Standard Service Offer tariffs to the Standard Offer Generation Service Rider (“GSR”), which will apply to all non-shopping customers.⁵¹¹ The GSR is the non-fuel base generation rate or “g” which, when combined with the FAC, produces the price-to-compare for each customer class.⁵¹² While the FAC is cost-based, the GSR is neither cost-based nor market-based. *Id.* To the contrary, the average rate for non-fuel base generation is simply a negotiated term of the Partial Stipulation, and the GSR simply allocates this revenue requirement to each customer class.⁵¹³

⁵⁰⁶ FES Ex. 16(a); *see also* Stip., § IV.1(s).

⁵⁰⁷ Tr. Vol. I, p. 104.

⁵⁰⁸ Banks Direct, pp. 55-56.

⁵⁰⁹ Banks Direct, p. 56.

⁵¹⁰ *See* Tr. Vol. VI, p. 978 (Constellation witness Fein acknowledging same).

⁵¹¹ Roush Direct, p. 5.

⁵¹² Lesser Direct, pp. 33-34.

⁵¹³ *See* Stip., § IV.1(f); Roush Direct, p. 8; Lesser Direct, p. 33.

The GSR should be set for each customer class so as not to unfairly harm market competition.⁵¹⁴ However, the GSR as proposed by AEP Ohio has no regulatory basis and is discriminatory.⁵¹⁵ It should not be surprising given that the Stipulating Parties are heavily weighted toward commercial and industrial customers and lack any residential customer representation. AEP Ohio's proposal is to increase rates the most on residential customers who are less likely to take service from CRES providers, while decreasing rates on commercial and industrial customers who are most likely to take service from CRES providers.⁵¹⁶ The proposed allocation of base generation revenues to the different rate classes lacks any cost basis and is an attempt to foreclose market competition.⁵¹⁷ AEP Ohio justifies this rate making approach using what it claims are "market based" relationships, but those relationships are arbitrary and do not represent actual market prices.⁵¹⁸

AEP Ohio admitted that it has not attempted to allocate the costs of the GSR to the different rate classes using traditional ratemaking principles.⁵¹⁹ Instead, AEP Ohio witness Roush attempted to "rationalize" rate relationships by using the same methodology that AEP Ohio witness Thomas used to develop her competitive benchmark price and apply it to class load shapes.⁵²⁰ Thus, because Ms. Thomas determined that a competitive benchmark price using a capacity price of \$255/MW-day would result in an average residential price in 2012 that was 11% higher than the average commercial price and 22% greater than the average industrial price,

⁵¹⁴ Lesser Direct, p. 34.

⁵¹⁵ Lesser Direct, pp. 5, 34-38.

⁵¹⁶ Lesser Direct, pp. 5, 34.

⁵¹⁷ Lesser Direct, pp. 39-40.

⁵¹⁸ Lesser Direct, p. 34, 38-42; Tr. Vol. XIII, pp. 2302-03 (AEP Ohio witness Roush admitting that he does not know what market price levels are).

⁵¹⁹ See Roush Direct, p. 9; Lesser Direct, p. 40.

⁵²⁰ Roush Direct, p. 9; Lesser Direct, p. 40.

Mr. Roush used equivalent percentages to allocate base generation revenues to each customer class through the GSR.⁵²¹ Mr. Roush's allocation was based on an assumption that market prices would include a capacity price of \$255/MW-day.⁵²²

Obviously, actual market prices are not based on an arbitrary capacity price that exists only on the pages of the Partial Stipulation. And, if market prices are based on actual market prices for capacity, any allocation based thereon would change materially.⁵²³ Thus, the "market price" relationships relied upon by Mr. Roush are arbitrary and "make no economic sense."⁵²⁴ As a result, the allocation performed by AEP Ohio lacks any cost basis or market basis and is unreasonable.⁵²⁵

AEP Ohio attempts to use the Market Transition Rider or MTR to "smooth out" the impacts of the "market price" relationships. This rider also is unreasonable and unfairly subsidizes certain customer classes.⁵²⁶ Because the MTR is nonbypassable, it would be paid in part by shopping customers. Yet shopping customers are paying market prices. Thus, there is no justification for transitioning shopping customers to market pricing through the MTR.⁵²⁷ By

⁵²¹ Lesser Direct, p. 40; Tr. Vol. I, pp. 69-70 and FES Ex. 6. Mr. Roush did not actually perform this calculation, but relied instead on the work of an unknown AEP Ohio employee. Tr. Vol. I, p. 70. The calculation he relied upon included a mixture of price components drawn from Ms. Thomas' competitive benchmark price calculated in January and other price components estimated in August in early September. Tr. Vol. I, pp. 70-72. Mr. Roush could only profess knowledge of some of the price components. Tr. Vol. I, p. 72. All in all, Mr. Roush's calculation lacked credibility.

⁵²² Tr. Vol. I, p. 70 and FES Ex. 6.

⁵²³ Lesser Direct, p. 40.

⁵²⁴ Lesser Direct, pp. 40-41.

⁵²⁵ Lesser Direct, pp. 41-42.

⁵²⁶ Lesser Direct, pp. 42-44.

⁵²⁷ Lesser Direct, pp. 42-43.

imposing the MTR on shopping customers, AEP Ohio distorts market price comparisons and damages the “transition” to market that AEP Ohio professes to be encouraging.⁵²⁸

The \$10/MWh shopping credit for GS1 and GS2 schools and all GS2 customers shopping on or after September 7, 2011 also lacks a reasonable basis.⁵²⁹ This provision of the Partial Stipulation appears to be intended to provide an incentive for these customers to migrate to CRES providers so that AEP Ohio can focus on more profitable customers.⁵³⁰ However, this shopping credit is an anti-competitive cross-subsidy that lacks any justification.⁵³¹ As Dr. Lesser explained, “[f]orcing one set of ratepayers to subsidize shopping by another set of ratepayers is completely incompatible with developing a competitive market.”⁵³²

C. The Partial Stipulation Would Specifically And Unduly Burden Governmental Aggregation.

Ohio law specifically favors a community’s ability to serve as a governmental aggregator for retail electric service.⁵³³ The procedures and parameters for governmental aggregation are set forth across several sections of Chapter 4928. Indeed, the General Assembly has mandated that “[t]he commission shall adopt rules to *encourage and promote* large-scale governmental aggregation in this state.”⁵³⁴ To that end, the Commission’s rules also require that EDUs seeking approval of an ESP must include a “description of how the electric utility proposes to address

⁵²⁸ Lesser Direct, p. 43; *see also* Tr. Vol. IV, pp. 552-553 (RESA witness Ringenbach also acknowledged that the MTR has the effect of distorting price signals sent to retail customers).

⁵²⁹ *See* Stip., § IV.1(c).

⁵³⁰ Lesser Direct, p. 43.

⁵³¹ Lesser Direct, p. 44.

⁵³² Lesser Direct, p. 44.

⁵³³ *See* R.C. § 4928.20.

⁵³⁴ R.C. § 4928.02(K) (emphasis added); *see* Tr. Vol. IV, p. 557 (RESA witness Ringenbach acknowledged the state’s policy to promote governmental aggregation).

governmental aggregation programs and implementation of divisions (I), (J), and (K) of section 4928.20 of the Revised Code.”⁵³⁵

Governmental aggregation provides significant benefits for residential and smaller commercial customers, who without the aggregation of their interests may not be able to secure such benefits in the competitive market. Grove City witness Honsey acknowledged that governmental aggregation could provide a savings opportunity for its eligible residents.⁵³⁶ In fact, the only two communities in AEP Ohio’s service territory to have completed the process are enjoying such savings off of AEP Ohio’s current price-to-compare, including a 5-6% discount for residential customers and a 15% discount for small commercial customers.⁵³⁷ The Proposed ESP does not include any description of how AEP Ohio will address governmental aggregation. If it did, it would simply state: “The Partial Stipulation will delay or prevent any new communities from receiving the benefits of governmental aggregation.”

1. Any new governmental aggregation customers will receive the lowest priority for RPM-priced capacity and, thus, likely will receive none.

Under Appendix C, customers cannot be eligible to receive RPM-priced capacity until they join the queue and reach the front of the queue. However, AEP Ohio has declared that a governmental aggregation customer will not be placed in the queue to receive RPM-priced capacity until the customer enrolls in the aggregation program; the contract between a municipal aggregator and a CRES provider is not sufficient to establish the customers’ place in the queue.⁵³⁸ As Signatory CRES Party witnesses admit, the effect of this edict is that customers in

⁵³⁵ O.A.C. 4901:1-35-03(C)(6); *see also* 4901:1-35-03(C)(7) (requiring a “description of the effect on large-scale governmental aggregation of any unavoidable generation charge proposed to be established in the ESP”).

⁵³⁶ Tr. Vol. IV, pp. 514-515.

⁵³⁷ Banks Direct, p. 32; *see also* AEP Ex. 10 (City of Reynoldsburg ordinance).

⁵³⁸ Tr. Vol. III, p. 399.

communities considering governmental aggregation on this November's ballot would receive the lowest priority for the limited cap space.⁵³⁹ Customers in communities that already have passed enabling legislation would also be disadvantaged because of the time required to certify the aggregation program and enroll customers. FES witness Banks described the process:

It takes months to enroll with governmental aggregation customers after authorizing legislation is passed. The process involves public hearings that take 1-2 weeks, 30 days for the mandatory certification for a new community, 14 days for getting a potential customer list from AEP, 14 days to process, prepare and file mailing at the Commission, a 21-day mandatory opt out, a 5-day cushion for return mail and a 7-day rescission period. As a result, it takes three to four months at best to enroll customers in a governmental aggregation program.⁵⁴⁰

Constellation witness Fein acknowledged the numerous steps that a municipality has to go through to enroll customers in governmental aggregation.⁵⁴¹ The timeline “could be compressed by maybe one or two days, perhaps as long as a week, but it doesn’t change the point . . . which is it takes three to four months to get a customer enrolled under a governmental aggregation program.”⁵⁴² Therefore, for those 50 communities who have opt-out aggregation questions on the November 2011 ballot, the earliest their customers could hope to join the queue if the ballot passed is approximately February or March 2012.⁵⁴³ At that point, the (already reduced) pro rata allocation for residential customers would no longer exist – and those 1,500 commercial and industrial customers who are already in the queue, according to AEP Ohio witness Allen, and

⁵³⁹ See Tr. Vol. VII, pp. 975-976 (Constellation witness Fein); Tr. Vol. IV, pp. 560-561 (RESA witness Ringenbach).

⁵⁴⁰ Banks Direct, p. 33.

⁵⁴¹ Tr. Vol. VI, pp. 994-995 (also estimating that it would be a 2-4 month process to enroll customers after passage of the enabling legislation).

⁵⁴² Tr. Vol. VII, p. 1265.

⁵⁴³ Banks Direct, p. 34.

any other customers that shop before February 2012 would stand ahead of the governmental aggregation customers in the queue for the limited remaining RPM-priced capacity.⁵⁴⁴

AEP Ohio's interpretation of the Appendix C language regarding the need for a CRES contract to enter the queue contradicts the communities' role as a contracting body on behalf of its residents, as recognized by other Signatory Parties. For example, the aggregation contract between the City of Reynoldsburg and FES requires FES to provide "Full Requirements Retail Electric Supply sufficient to serve the total electric generation needs of the commercial and residential Aggregation Program Customer" in Reynoldsburg. The contract confirms that Reynoldsburg "has the authority to designate . . . FES as its Full Requirements Retail Electric Supply provider for the Eligible Customers for the Term of this Agreement."⁵⁴⁵ RESA witness Ringenbach acknowledged that a contract between a CRES provider and an aggregation community is a contract on behalf of the customer to establish a price.⁵⁴⁶

AEP Ohio's interpretation also conflicts with its position that an affidavit of a contract that is contingent on receiving an RPM-allotment is sufficient for a customer to get in the queue.⁵⁴⁷ Both types of contracts create contractual obligations that are subject to contingencies. Both should be promoted under state law and policy. Both should be honored to award places in the queue for RPM-priced capacity.

⁵⁴⁴ See Banks Direct, pp. 25-26, 34-35; Tr. Vol. XII, pp. 2082-2083, 2086; *see also* Tr. Vol. III, pp. 336-337, 356-357 (any unallocated pro rata allotments as of January 1, 2012 will be opened up to "the first customers, be they residential, commercial, or industrial").

⁵⁴⁵ AEP Ex. 10, §§ 1.1.1, 2.1.1. Reynoldsburg residents were fortunate enough to get their program up and running before the Partial Stipulation was executed. See AEP Ex. 10 (City of Reynoldsburg, Ordinance No. 108-10, passed Dec. 13, 2010). As a result, its residents are guaranteed to receive a 5% discount off of the SSO price-to-compare. See AEP Ex. 10 at Att. A.

⁵⁴⁶ Tr. Vol. IV, p. 560.

⁵⁴⁷ Tr. Vol. III, pp. 417-418.

2. The impact on governmental aggregation in AEP Ohio's territory would be significant.

Twenty-eight communities in AEP Ohio's territory have passed enabling legislation to implement governmental aggregation, but have not yet completed the process.⁵⁴⁸ Fifty additional communities in AEP Ohio's territory have proposed enabling legislation for the November 2011 ballot – representing approximately 300,000 households and over 6,000 small commercial establishments.⁵⁴⁹ Over fourteen more communities, representing 65,000 more households and 3,000 more small commercial establishments, are considering governmental aggregation for the May 2012 ballot.⁵⁵⁰ None of the residential or small commercial customers in these communities should be expected to receive an allotment for RPM-priced capacity based on AEP Ohio's interpretation of Appendix C. As FES witness Banks noted:

Elected officials throughout AEP Ohio's service territory, who worked to bring the benefits of governmental aggregation to their constituents, will be forced to go back and explain that the benefits of governmental aggregation – and the significant savings to customers – will not be realized because AEP Ohio was authorized by this Commission to: (a) set arbitrary limits on market-priced capacity; and (b) implement procedures that harm governmental aggregation.⁵⁵¹

Given the potential benefits of governmental aggregation and the Proposed ESP's impact on those opportunities, it is not surprising that numerous communities in AEP Ohio's service territory have submitted resolutions and correspondence in opposition to the Proposed ESP.⁵⁵² In fact, the Cities of Findlay, Delphos, Fremont, Bucyrus, and Toronto; the Townships of Paris and Yellow Creek; and the Counties of Allen and Van Wert are among those to have stated their

⁵⁴⁸ Banks Direct, p. 32.

⁵⁴⁹ Banks Direct, p. 32.

⁵⁵⁰ Banks Direct, p. 32.

⁵⁵¹ Banks Direct, pp. 34-35.

⁵⁵² See Tr. Vol. XII, pp. 2135-2136; FES Ex. 22.

opposition to the Proposed ESP, generally, and its impact on governmental aggregation, specifically.⁵⁵³

AEP Ohio offered Mr. Allen’s rebuttal testimony to try to minimize the effects of the Proposed ESP on governmental aggregation. But this testimony lacks any credibility. In that testimony, he suggested that there has been “additional governmental aggregation” since the Stipulation was signed, going so far as to say the “the pace of governmental aggregation in the AEP Ohio service territory has increased.”⁵⁵⁴ But this testimony appears to be based on the additional communities that already had pending November 2011 ballot initiatives.⁵⁵⁵ Mr. Allen acknowledged that he is not an expert on election law and, therefore, his misunderstood attempts to link November 2011 ballot initiatives with interest subsequent to the September 7th Partial Stipulation can be excused.⁵⁵⁶ Communities were required to identify and submit ballots for the November 2011 election in or before early August 2011 – a month before the Partial Stipulation was signed and filed.⁵⁵⁷ Thus, all such issues were approved at a time when AEP Ohio was required to provide RPM market-based capacity pricing.

Further, the information Mr. Allen provided was flawed and incomplete. For example, he prepared a list of only 25 communities that AEP Ohio identified as having governmental aggregation on the November 2011 ballot.⁵⁵⁸ But, he acknowledged that AEP Ohio’s list failed

⁵⁵³ See FES Ex. 22.

⁵⁵⁴ Allen Rebuttal, pp. 11-12.

⁵⁵⁵ See Tr. Vol. XII pp. 2122-2124 (or else it is based on hearsay testimony about one city’s consideration of opt-in aggregation).

⁵⁵⁶ See Tr. Vol. XII, p. 2132.

⁵⁵⁷ See R.C. § 3501.02 (requiring ballots be certified 90 days before general election).

⁵⁵⁸ See Tr. Vol. XII, p. 2125; FES Ex. 20.

to recognize numerous other communities which have governmental aggregation on the November 2011 ballot.⁵⁵⁹

AEP Ohio's lack of consideration regarding the impact of the Partial Stipulation on governmental aggregation – despite the Commission's rules requiring that consideration – is not surprising given AEP Ohio's antipathy toward governmental aggregation. AEP Ohio witness Hamrock admitted that “[a]s a matter of negotiating the settlement there was no special consideration given to governmental aggregation”⁵⁶⁰ AEP Ohio witness Allen also acknowledged that he described governmental aggregation as “slamming” during a meeting to explain the Appendix C procedure to CRES providers.⁵⁶¹ He tried to explain that it was the “best word [he] had available at the time.”⁵⁶² Nor is it surprising that other unaffiliated Signatory CRES Parties would agree to these provisions given that none of the companies has governmental aggregation contracts in AEP Ohio's service territory.⁵⁶³ In sum, governmental aggregation in AEP Ohio's service territory follows a familiar pattern: state law and policy encourage it, AEP Ohio disfavors it, and the Partial Stipulation precludes it. The Partial Stipulation and the Proposed ESP should be rejected.

⁵⁵⁹ See Tr. Vol. XII, pp. 2126-2129 (identifying several townships in Hardin County, as identified by Hardin County's Board of Elections). Mr. Allen also purported to describe the potential load that would be represented by the communities considering government aggregation ordinance ballot initiatives. See Allen Rebuttal, p. 12. But, as indicated by data provided for the City of Canton, the load data appears very much understated. See Tr. Vol. XII, pp. 2130-2132.

⁵⁶⁰ Tr. Vol. VI, p. 846.

⁵⁶¹ See Tr. Vol. III, pp. 398-399.

⁵⁶² Tr. Vol. III, p. 398. Mr. Allen also acknowledged he did not consider any of the letters or resolutions submitted by communities considering governmental aggregation in preparing his rebuttal testimony. Tr. Vol. XII, p. 2138.

⁵⁶³ See Tr. Vol. VII, p. 975 (no Constellation aggregation contracts); Tr. Vol. VI, p. 1041 (no Exelon aggregation contracts); Tr. Vol. IV, p. 558 (no Direct Energy aggregation contracts); Tr. Vol. IV, p. 558 (no aggregation contracts involving any RESA members); Tr. Vol. VI, p. 1041 (no Exelon aggregation contracts). Indeed, it is not surprising that Exelon would agree to an AEP Ohio-favorable deal given that, as Exelon witness Dominquez admitted, Exelon was one of AEP Ohio's largest counterparties in power transactions. See Tr. Vol. VI, pp. 1055-1056.

D. The Partial Stipulation And Its Proposed ESP Do Not Promote Ohio's Economy.

“It [also] is the policy of this state to . . . facilitate the state’s effectiveness in the global economy.”⁵⁶⁴ The Partial Stipulation and the Proposed ESP violate this important policy because under both, the vast majority of AEP Ohio’s distribution customers are required to pay above-market prices for retail electric service. The above-market prices are imposed on non-SSO customers through the proposed capacity prices to CRES providers, which are four times higher than market prices. FES witness Lesser calculated that the impact of this provision of the Partial Stipulation alone, if all AEP Ohio customers shopped, would “impose an additional cost of \$1.27 billion on ratepayers over the 41-month period of the ESP through May 2015.”⁵⁶⁵ As a result, Dr. Lesser calculated that these additional costs would have a trickle effect through the economy, resulting in the loss of over 4,500 jobs annually: “Thus, rather than promoting economic growth and job creation in Ohio, the Stipulation will destroy jobs.”⁵⁶⁶

SSO customers are also exposed to above-market prices through the Proposed ESP’s overall rates, including the uneconomic generation investments incentivized through Rider GRR. FES witness Schnitzer determined that the Proposed ESP would impose approximately \$1 billion more than a modified ESP that relies fully on a CBP to procure wholesale supply.⁵⁶⁷ Thus, the impact of the Proposed ESP price is on the order of magnitude in terms of impact on the state’s economy as is the Partial Stipulation’s above-market capacity prices. Another component of those prices is the costs that could be recovered through Rider GRR, as discussed further in Section VII below, which would subject AEP Ohio’s customers with tens of millions of dollars

⁵⁶⁴ R.C. § 4928.02(N).

⁵⁶⁵ Lesser Direct, p. 61.

⁵⁶⁶ Lesser Direct, p. 62.

⁵⁶⁷ Schnitzer Direct, p. 29.

for years to come.⁵⁶⁸ Simply put, “businesses paying increased electric bills must either reduce their output, increase their prices, or both. These impacts will, in turn, lead to job loss, which will in turn further reduce consumer spending, causing even greater economic losses.”⁵⁶⁹

The significant adverse effects of the Partial Stipulation and its Proposed ESP on Ohio’s economy is particularly burdensome at this time, when the national economy is struggling to rebound. As FES witness Banks testified, AEP Ohio seeks to “prevent open, effective wholesale and retail competition in AEP Ohio’s service territory for more than three years – at a time when Ohio’s economy would most benefit from the lower prices and increased jobs promoted through competition.”⁵⁷⁰

VI. THE PARTIAL STIPULATION WOULD PROVIDE AN IMPROPER REVENUE STREAM FOR AEP OHIO AND WOULD NOT ADEQUATELY ENSURE AEP OHIO’S CORPORATE SEPARATION.

A. Corporate Separation Is Overdue, And The Commission Should Maintain Its Oversight Of The Process.

Over ten years ago, the General Assembly mandated corporate separation of generation and distribution services:

[N]o electric utility shall engage in this state, either directly or through an affiliate, in the businesses of supplying a noncompetitive retail electric service and supplying a competitive retail electric service . . . unless the utility implements and operates under a corporate separation plan that is approved by the public utilities commission under this section, is consistent with the policy specified in section 4928.02 of the Revised Code, and achieves all of the following:

(1) The plan provides, at minimum, for the provision of the competitive retail electric service or the nonelectric product or

⁵⁶⁸ See Schnitzer Direct, pp. 38-39.

⁵⁶⁹ Lesser Direct, p. 55.

⁵⁷⁰ Banks Direct, p. 17.

service through a fully separated affiliate of the utility, and the plan includes separate accounting requirements. . . .⁵⁷¹

Corporate separation is necessary to promote competition, as acknowledged by Constellation witness Fein.⁵⁷² As explained by FES witness Banks, AEP Ohio's failure to achieve corporate separation has allowed it to favor its own generation:

[I]t affects both wholesale and retail competition. If AEP Ohio had achieved structural separation . . . , there would no opportunity for AEP Ohio to favor its own generation in the provision of SSO service. AEP Ohio would . . . have to procure its SSO generation requirements through a process that provided no favoritism to its own generation and instead evaluated all generation (affiliated or not) on an equal footing. Such a process, which would likely be a competitive auction or RFP process, would be inherently more competitively and objectively priced. There also would be no need to seek above-market revenues or nonbypassable cost recovery for generation investments because AEP Ohio would not be (and does not need to be) making any such investments. In turn, without any self-interest in the SSO price, AEP Ohio would have no incentive or need to institute burdensome shopping rules or discriminatory prices for shopping customers.⁵⁷³

As exemplified by AEP Ohio's executives' recent statements to AEP investors, AEP is none too shy about using its access to distribution customers on behalf of its competitive generation service:

[I]t's almost like the old telephone game of customers call and say they're leaving and we offer them an equally attractive rate, or something even a bit higher than the competitor. Because over the years we've treated these customers pretty well and they know that, so we're seeing some success in our retail operation and we continue to be aggressive in other jurisdictions other than our own.⁵⁷⁴

⁵⁷¹ R.C. § 4928.17 (emphases added).

⁵⁷² See Tr. Vol. VI, p. 977.

⁵⁷³ Banks Direct, pp. 40-41.

⁵⁷⁴ Banks Direct, pp. 56-57 (providing CEO Mike Morris' statement on AEP's First Quarter 2011 earnings call).

Despite the fact that corporate separation was required by law over ten years ago and would benefit its customers, AEP Ohio has not yet legally separated its competitive generation service from its noncompetitive distribution service.

Against this background, the Partial Stipulation's provisions for AEP Ohio's corporate separation are inadequate. The Partial Stipulation includes commitments for AEP Ohio to only do what it already is required to do under Ohio law. Yet, the Partial Stipulation also would provide AEP Ohio several avenues through which it could avoid corporate separation.⁵⁷⁵ For example, the Partial Stipulation would make corporate separation contingent on pool termination.⁵⁷⁶ Moreover, there are no material remedies if AEP Ohio did not meet the separation timeline set forth in the Partial Stipulation.⁵⁷⁷

The Partial Stipulation further does not appear to provide sufficient Commission oversight of any separation of AEP Ohio. The Commission must retain proper oversight of the separation process because many questions remain and AEP Ohio may seek to structure the transition to its own (or an affiliate's) benefit. AEP Ohio has, thus far, simply stated that the transfer of its generation assets to another entity would be at book value, but also says we should not "get hung up too much on net book value."⁵⁷⁸ AEP Ohio has requested – in a separate proceeding not consolidated with or resolved by the Partial Stipulation – a waiver of the Commission's rule requiring filing of market value information.⁵⁷⁹ But, AEP Ohio has no recent appraisals of its units or estimates of market value, which would aid a review of whether AEP

⁵⁷⁵ See, generally, Stip., § IV; see also Tr. Vol. VI, p. 978; Tr. Vol. VII, pp. 1191-1120 (FES witness Banks).

⁵⁷⁶ Stip. § IV.1(t).

⁵⁷⁷ See Tr. Vol. VI, p. 977 (Constellation witness Fein acknowledging same).

⁵⁷⁸ Tr. Vol. V, pp. 703-704.

⁵⁷⁹ See Tr. Vol. V, p. 707 (requesting waiver of O.A.C. 4901:1-37-09(C)(1)).

Ohio's proposal is reasonable.⁵⁸⁰ The transfer or sale of generation assets at book or market value could have significant consequences. For example, Mr. Nelson acknowledged that AEP Ohio, "once we've separated the generation out, [could] . . . for example, transfer a plant, say, to Appalachian Power Company to shore up their reserve margin, et cetera."⁵⁸¹ Such a transfer could allow AEP Ohio's separate GenCo to receive the difference between the market value of any transfer to Appalachian Power above the book value recorded in the initial separation. It would also provide AEP Ohio's new GenCo with improper additional revenues in the competitive market.

There is no record evidence that establishes that AEP Ohio could not immediately separate its generation and distribution services.⁵⁸² In fact, AEP Ohio witness Nelson acknowledged that the Commission already approved corporate separation in AEP Ohio's Electric Transition Plan proceeding.⁵⁸³ AEP Ohio should be immediately required to abide by Ohio law and to separate its competitive generation assets from its noncompetitive distribution assets – with Commission oversight to ensure that the new AEP GenCo does not receive a windfall at the expense of AEP Ohio's customers.

B. The Partial Stipulation Would Provide Improper And Unnecessary Above-Market Revenues To AEP Ohio.

Because it remains only "functionally" separate, AEP Ohio is able to request above-market revenues through the Proposed ESP's SSO. FES witness Schnitzer demonstrated that the

⁵⁸⁰ See Tr. Vol. V, p. 705.

⁵⁸¹ Tr. Vol. V, p. 698; see also p. 699, 702-703 (also acknowledging that AEP Ohio does not know which assets will be transferred).

⁵⁸² To the extent AEP Ohio points to other EDUs' failure to yet achieve corporate separation, such an excuse would be meaningless. Two wrongs don't make a right, and nothing in Ohio law requires EDUs to walk hand-in-hand through separation. (If there was, AEP Ohio would have achieved it years ago.)

⁵⁸³ Tr. Vol. XIII, p. 2180-2181.

Proposed ESP would require AEP Ohio's customers to pay AEP Ohio approximately \$1 billion more than if the SSO supply was procured through a fully competitive solicitation.⁵⁸⁴ That also means that AEP Ohio would receive \$1 billion more than competitive suppliers would otherwise receive for providing a supposedly competitive generation service to its own distribution customers. The Signatory Parties' explanation for providing AEP Ohio with a guaranteed generation customer base (through the capacity price/shopping caps) and above-market revenue is that it serves as a "glide-path" to market.⁵⁸⁵

But the "glide-path" for Ohio EDUs' transition to competitive markets occurred years ago. Constellation witness Fein acknowledged that the transition schedule provided by Senate Bill 3 would have required the completion of EDUs' transition period prior to the filing of the Partial Stipulation.⁵⁸⁶ And, as described in Section III.C.1 above, AEP Ohio waived its right to recover generation transition charges as a part of that transition process.⁵⁸⁷ As a result of the transition, generation service was to be exclusively market-based – whether the EDUs were fully separated or whether they continued to stay integrated via an "interim" waiver for functional separation.

AEP Ohio is not disadvantaged by requiring separation. As Mr. Banks observed:

[AEP Ohio has] the option of serving the market in general. It can commit that capacity to PJM. It can sell on the spot market. It could enter into bilateral contracts. It could participate in the bid for the wholesale side of the SSO service. It could participate on

⁵⁸⁴ Schnitzer Direct, p. 29.

⁵⁸⁵ See Direct Testimony of Teresa L. Ringenbach on behalf of the Retail Energy Supply Association, RESA Ex. 1 ("Ringenbach Direct") at p. 8; Direct Testimony of David I. Fein on behalf of Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc., Constellation ex. 1 ("Fein Direct") at p. 9.

⁵⁸⁶ Tr. Vol. VI, p. 985.

⁵⁸⁷ See also Tr. Vol. XIII, p. 2192 (AEP Ohio witness Nelson admitted that AEP Ohio waived its right to recover stranded generation costs as a part of its stipulation in the ETP case).

the retail side. . . . AEP has every opportunity to sell all of its load whether they go to a hundred percent competitive bid or not.⁵⁸⁸

Indeed, AEP Ohio affiliate AEPSC successfully bid into the FirstEnergy Ohio utilities' recent auctions – and, in fact, committed to serve up to 13 million MWh of generation to FirstEnergy Ohio utility customers for the first year, without the benefit of a fuel adjustment or an above-market capacity charge.⁵⁸⁹ Exelon witness Dominguez also acknowledged that “there has been an effort by [AEP Ohio] to use its own resources to supply capacity in the zone and that the company might have looked at cheaper alternatives to do that and has failed to do so.”⁵⁹⁰ Ohio law does not permit an above-market, forty-one month “transition” to competition. An ESP must be superior to the market option, not training wheels that prevent customer access to the benefits of the competitive market.

Any suggestion that the Proposed ESP's terms are necessary to support AEP Ohio's financial health and/or service reliability are totally unfounded and contradictory to AEP Ohio's own representations. There is no record evidence whatsoever that AEP Ohio “needs” \$1 billion (or even \$1) of above-market revenue for its stability or for certainty regarding retail electric service. To the contrary, AEP Ohio has publicly stated that it would remain viable even if the current ESP continued in place: “we'll just continue on with where we are and that's not a bad news story for us at all.”⁵⁹¹ AEP Ohio's comfort under the current ESP is not surprising given that the Commission determined that the current ESP provided significantly excessive earnings to CSP. CSP earned an ROE of 20.84% in 2009 under the current ESP, with significantly excessive earnings totaling \$46.683 million, which led the Commission to order CSP to provide

⁵⁸⁸ Tr. Vol. VII, pp. 1202-1203 (testimony of FES witness Banks).

⁵⁸⁹ See Banks Direct, pp. 39-40.

⁵⁹⁰ Tr. Vol. VI, p. 1056.

⁵⁹¹ Banks Direct, p. 10-11 (quoting AEP Ohio CEO Mike Morris in a July 2011 investor earnings call).

refunds to customers through reductions in fuel deferrals and other credits.⁵⁹² AEP Ohio has also acknowledged that the proposed above-market capacity prices serve to subsidize its generation service, which would allow it to artificially lower its wholesale and retail pricing in its own and other markets: “We have shopping exposure, that we have just losing that retail margin, but then of course Todd is making up a significant component, once he’s able to get in term of off system sales. And we’re also able to mitigate it, in terms of some of the CRES capacity sales that we’re able to make to the CRES who supply the customers who shop. So there is some mitigation on to that”⁵⁹³

AEP Ohio has numerous options to remain competitive in the market, and there is no basis on which to suggest that AEP Ohio “needs” the Proposed ESP’s above-market revenue to do so. Its ability and incentive to seek such above-market revenue stems only from its continued status as an integrated utility. AEP Ohio should not be needlessly and improperly rewarded for avoiding its statutory obligation to legally separate its competitive and non-competitive services.

VII. THE PROPOSED ESP WOULD ALLOW AEP OHIO TO SEEK RECOVERY OF GENERATION COSTS THAT ARE UNNECESSARY AND UNAUTHORIZED.

The Proposed ESP includes three riders designed to create revenue related to AEP Ohio’s generation assets that AEP Ohio cannot obtain in the competitive market:⁵⁹⁴ the Generation Resource Rider (GRR), the Pool Modification Rider (PMR), and the Market Transition Rider

⁵⁹² See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code.*, Case No. 10-1261-EL-UNC, Entry on Rehearing (Mar. 9, 2011), ¶ 5.

⁵⁹³ Banks Direct, pp. 50-51 (setting forth AEP Ohio CFO Brian Tierney’s statements to AEP investors to announce the Partial Stipulation).

⁵⁹⁴ Numerous Signatory Party witnesses acknowledged that these riders are generation-related. See also Tr. Vol. VI, pp. 967-968 (Constellation witness Fein acknowledging same); Vol. VI, pp. 1038-1039 (Exelon witness Dominguez acknowledging same); see also Tr. Vol. IV, pp. 553-554 (RESA witness Ringenbach); Tr. Vol. III, pp. 369 (AEP Ohio witness Allen).

(MTR).⁵⁹⁵ These riders are not only unauthorized under R.C. § 4928.143(B)(2), but also violate the state’s policy to foster competition and to facilitate the state’s economy.

A. Neither The GRR, The PMR, Nor The MTR Are Authorized By Ohio Law For An ESP.

Every provision of the Proposed ESP must be authorized under R.C. § 4928.143(B)(2).⁵⁹⁶ “By its terms, R.C. 4928.143(B)(2) allows plans to include only ‘any of the following’ provisions. It does not allow plans to include ‘any provision.’ So if a given provision does not fit within one of the categories listed ‘following’ (B)(2), it is not authorized by statute.”⁵⁹⁷ Only three subsections could possibly authorize Riders PMR, MTR and GRR. Subsection (B)(2)(b) authorizes the nonbypassable recovery of costs associated with certain construction work-in-process and environmental investments on electric generating facilities. Subsection (B)(2)(c) authorizes the recovery of a nonbypassable surcharge for the life of certain new electric generating facilities. Section 4928.143(B)(2)(d) generally provides for “[t]erms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals . . . as would have the effect of stabilizing or providing certainty regarding retail electric service.” However, there is no record evidence that establishes that the GRR, PMR or MTR riders fall within any provision of (B)(2):

- Rider PMR: This Rider would allow AEP Ohio to recover hundreds of millions of dollars in generation-related “impact” imposed by its Pool Agreement.⁵⁹⁸ Rider PMR has

⁵⁹⁵ Stip. §§ IV.1(b), (d) and IV.5.

⁵⁹⁶ See *In re Application of Columbus Southern Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, ¶¶ 31-35.

⁵⁹⁷ *In re Application of Columbus Southern Power Co.*, 128 Ohio St.3d 512 at ¶ 32.

⁵⁹⁸ See Stip. § IV.5; Section II.B.2 *supra*. It is entirely unclear whether the Signatory Parties proposed Rider PMR as a nonbypassable or bypassable charge. The Stipulation is silent on this point, and in

nothing to do with the construction work-in-process costs, environmental investments, or a surcharge on a new generating facility. There also is no record evidence to suggest that PMR is necessary for “stabilizing or providing certainty” in AEP Ohio’s ability to provide retail electric service. As such, there is no statutory basis on which to approve Rider PMR.

- Rider MTR: This Rider would serve as a cross-subsidy to shift costs amongst customer classes that also authorizes AEP Ohio to recover \$24 million in unjustified (and unexplained) revenue for 2012 on a nonbypassable basis.⁵⁹⁹ Rider MTR also has nothing to do with the construction work-in-process costs, environmental investments, or a surcharge on a new generating facility. There also is no record evidence to suggest that MTR is necessary for “stabilizing or providing certainty” in AEP Ohio’s ability to provide retail electric service. As such, there is no statutory basis on which to approve Rider MTR.

- Rider GRR: This Rider would be used to recover the costs, on a nonbypassable basis, associated with two generating facilities: the Turning Point Solar project (“TPS”) and a new Muskingum River 6 gas-fired facility (“MR6”).⁶⁰⁰ The Signatory Parties state that AEP would have provided that AEP Ohio satisfies the requirements of R.C. § 4928.143(B)(2)(b) or (c).⁶⁰¹ However, AEP Ohio has provided no record evidence to establish that such costs meet the requirements of those subsections. Indeed, as described below, the record evidence establishes that AEP Ohio could *not* meet those requirements. There also is no record evidence to suggest that GRR is necessary for “stabilizing or providing certainty” in AEP Ohio’s ability to provide

discovery, AEP Ohio stated it did not know if the PMR would be bypassable. *See Schnitzer Direct*, p. 17, n.34 (citing AEP Ohio’s discovery response). Regardless, no subsection of (B)(2) authorizes such a provision in an ESP.

⁵⁹⁹ *See Stip.*, § IV.1(c); *Lesser Direct*, pp. 42-43.

⁶⁰⁰ *See Stip.* § IV.1(d).

⁶⁰¹ *Stip.*, § IV.1(d); *see also Lesser Direct*, pp. 45-46.

retail electric service. Moreover, the TPS project is a renewable energy facility the costs of which must be bypassable in accordance with R.C. § 4928.64 – as Constellation witness Fein acknowledged.⁶⁰² As such, there is no statutory basis on which to approve Rider GRR.⁶⁰³

Moreover, the fact that Riders GRR and PMR are “placeholders” does not somehow excuse the need for the riders to comply with Section 4928.143(B)(2). Indeed, in subsections (B)(2)(b) and (c), the statute explicitly requires AEP Ohio to provide evidence of the costs of those riders in this proceeding in order to approve such a rider. Under subsection (B)(2)(b), the Commission must determine whether the requested recovery represents a “reasonable allowance.” Under subsection (B)(2)(c), the “surcharge shall cover all costs of the utility specified in the application, excluding costs recovered through a surcharge under division (B)(2)(b) of this section.”⁶⁰⁴ AEP Ohio has provided no documentation of the potential costs, allowance, or surcharge that would be recovered through Riders GRR and PMR. Accordingly, they must be rejected along with Rider MTR.

⁶⁰² R.C. § 4928.64(E) (“All costs incurred by an electric distribution utility in complying with the requirements of this section shall be bypassable by any consumer that has exercised choice of supplier under section 4928.03 of the Revised Code.”); *see also* Tr. Vol. VI, p. 984 (“[A]s I understand the statute they should be bypassable for a customer taking service from a CRES provider.”).

⁶⁰³ Rider GRR also cannot be approved because many questions about the process remain. AEP Ohio witness Allen acknowledged that AEP Ohio has provided little information regarding the potential projects to be recovered under the GRR. Mr. Allen testified that: he didn’t know the size of the MR6 project; he was unaware of any cost estimate prepared for the project; and he was unable to identify who would own the MR6. Tr. Vol. III, p. 376. AEP Ohio has also testified that it believes it is entitled to seek recovery through the GRR for the closure costs of the MR5 unit. *See* Tr. Vol. III, pp. 377-378. On the other hand, Signatory Party witnesses Fein testified that it would not be appropriate to recover those closure costs through the GRR. Tr. Vol. VI, p. 970. AEP Ohio witness Allen also didn’t know whether AEP intended to seek the recovery of costs associated with developing 350 MW of customer-sited generation through the GRR. Tr. Vol. III, p. 382.

⁶⁰⁴ Emphasis added.

B. The Nonbypassable Generation-Related Riders Are Anti-Competitive And Uneconomic, Even As A “Placeholder.”

Riders GRR, MTR and PMR provide AEP Ohio with additional revenue sources that are anti-competitive. At a general level, under nonbypassable generation-related riders such as GRR, MTR and perhaps PMR, shopping customers who do not take generation service from AEP Ohio remain obligated to pay for generation services of AEP Ohio. As Signatory Party witness Fein acknowledged, such riders “would subject customers to kind of an anticompetitive subsidy, if you will, or paying more than they need to for generation service” and, as a result, customers are less likely to shop.⁶⁰⁵ Rider MTR also has an anti-competitive impact beyond its additional revenue recovery. RESA witness Ringenbach acknowledged that Rider MTR was simply a way for AEP Ohio to make shopping customers pay for a transition to rates that would otherwise be too high and, thus, would otherwise encourage customers to shop.⁶⁰⁶

Further, generation investments provided outside of the competitive market – and instead supported with guaranteed cost-recovery, as proposed under Rider GRR – can have disastrous consequences for AEP Ohio’s customers and Ohio’s economy, while improperly subsidizing AEP Ohio’s own generation service. As FES witness Schnitzer testified, Rider GRR could incentivize unnecessary and costly generation:

The electricity supply business is inherently risky, because the future is uncertain with respect to those things that will determine the future market price of electricity: load growth, fuel prices, environmental costs, new technology, and so forth. The proposed GRR would improperly allocate risk (including the risk associated with technological choices, excess supply problems, and cost overruns) to consumers rather than to investors. Not surprisingly, the regulatory process significantly underestimates these risks when making long-term resource commitments because customers, and not investors, largely bear these risks. In these risky electricity

⁶⁰⁵ Tr. Vol. VI, pp. 966-967.

⁶⁰⁶ Tr. Vol. IV, p. 553.

markets, unfavorable and unforeseen investment outcomes are common. Unfortunately, in regulated markets, retail customers bear the responsibility of paying for those mistakes.⁶⁰⁷

Mr. Schnitzer also warned that customers would be responsible for the above-market costs associated with such uneconomic investments – estimated at \$60 million in the first year alone – which could extend well beyond the term of the Proposed ESP and saddle “Ohio businesses that are struggling to compete with out-of-state competitors.”⁶⁰⁸ FES witness Lesser also testified regarding the negative impact on Ohio’s economy and jobs that would result from the facilitation of uneconomic generation investments:

The effects of AEP Ohio’s shopping restrictions and nonbypassable riders will have widespread impacts on the Ohio economy, extending far beyond simply raising customers’ monthly electric bills. For example, households forced to spend more money on subsidized generation will reduce their spending on other goods and services, affecting businesses that cater to those consumers. Similarly, businesses paying increased electric bills must either reduce their output, increase their prices, or both. These impacts will, in turn, lead to job loss, which will in turn further reduce consumer spending, causing even greater economic losses.⁶⁰⁹

The fact that Riders PMR and GRR are “placeholders” does not alleviate the adverse effects of these riders. “Approving the GRR as a place-holder, as requested by AEP Ohio, would not itself transfer those risks to ratepayers but would cast a cloud of uncertainty over competitive markets.”⁶¹⁰ Accordingly, these three riders violate state policy and represent a dangerous, unsupported precedent that could impose significant, unnecessary costs on AEP Ohio’s customers.

⁶⁰⁷ Schnitzer Direct, pp. 37-38.

⁶⁰⁸ Schnitzer Direct, pp. 38-39.

⁶⁰⁹ Lesser Direct, p. 55.

⁶¹⁰ Lesser Direct, p. 63.

C. The Record Evidence Establishes That Rider GRR Cannot Be Approved.

As noted above, the Signatory Parties suggest that Rider GRR should be approved to “act as a place-holder” until AEP Ohio demonstrates “how the proposed project satisfies all applicable requirements set forth in R.C. 4928.143(B)(2).”⁶¹¹ Rider GRR could only be authorized under (B)(2)(b) or (c). The Signatory Parties have provided no record evidence to support that the GRR could meet those requirements now – and it cannot. Therefore, Rider GRR must be eliminated.

The General Assembly’s limitations on the approval of nonbypassable generation-related riders reflect the significant potential impact of uneconomic generation investments testified to by FES witnesses Schnitzer and Lesser. Subsections (B)(2)(b) and (B)(2)(c) both require, among other things, that riders cannot be approved “unless the commission first determines *in the proceeding that there is need for the facility* based on resource planning projects submitted by the electric distribution utility.”⁶¹² There is no such evidence in the record. In fact, FES witness Schnitzer demonstrated that AEP Ohio’s capacity “exceeds its peak load both now and in the foreseeable future.”⁶¹³ He also demonstrated that “PJM has already procured more than enough capacity for all of the load-serving entities in PJM, including AEP Ohio, for the entire ESP period and has a reserve margin that exceeds its target.”⁶¹⁴ The Signatory Parties acknowledged as much. RESA witness Ringenbach testified that there is no evidence that either the Turning Point Solar Project or the MR6 facility are necessary to meet the resource planning needs of AEP

⁶¹¹ Stip., § IV.1(d).

⁶¹² Emphasis added.

⁶¹³ Schnitzer Direct, pp. 42-43 (also concluding that “AEP Ohio has significant reserve margins and does not need new generation dedicated to serve its AEP Ohio load.”).

⁶¹⁴ Schnitzer Direct, pp. 41-42.

Ohio.⁶¹⁵ Constellation witness Fein testified that both Ohio, generally, and AEP Ohio, specifically, have an oversupply of generation.⁶¹⁶ Mr. Dominguez also testified that “the entire market is long on capacity right now, so from a gross capacity standpoint I think there’s a surplus. . . . [B]ut in terms of the amount of generation we have, we’ve got more than enough generation to satisfy the reliability criteria currently.”⁶¹⁷ To the extent that any Signatory Parties suggest some need for Ohio to avoid serving as an “importer” of energy, that idea was squarely dismissed by several Signatory Party CRES witnesses. In fact, RESA witness Ringenbach rejected the whole idea that Ohio should be looked at as an importer or exporter of generation.⁶¹⁸ Exelon witness Dominguez testified that, if anything, Ohio is a net exporter of power.⁶¹⁹ Mr. Dominguez also testified that, despite Exelon’s position as a Signatory Party, Exelon “would oppose the construction of any additional power plants as unnecessary and not being able to satisfy the statutory criteria.”⁶²⁰

Both subsection (B)(2)(b) and (c) also require that any facility that is the subject of such nonbypassable riders must be “sourced through a competitive bid process.” The record includes no evidence that either facility was or will be competitively bid.⁶²¹ To the contrary, AEP Ohio

⁶¹⁵ Tr. Vol. IV, p. 556.

⁶¹⁶ Tr. Vol. VI, p. 968.

⁶¹⁷ Tr. Vol. VI, p. 1037.

⁶¹⁸ Tr. Vol. IV, p. 555.

⁶¹⁹ Tr. Vol. VI, pp. 1036-1037 (also testifying that Ohio generation will do well in a competitive environment).

⁶²⁰ Tr. Vol. VI., p. 1039.

⁶²¹ *See* Tr. Vol. VI, p. 969 (Constellation witness Fein acknowledging that he is unaware of any evidence regarding a competitive bid); *see also* Tr. Vol. III, p. 377 (AEP Ohio witness Allen was unable to identify whether AEP Ohio intends to competitively bid MR6); Tr. Vol. IV, p. 556 (RESA witness Ringenbach was not aware of any evidence that either Turning Point or MR6 would be competitively bid).

acknowledged in discovery that the Turning Point project was *not* sourced through a competitive bid process.⁶²²

Therefore, Rider GRR represents an egregious attempt by AEP Ohio to seek another unsupported avenue for obtaining an undue advantage in the competitive market for retail electric generation service, which would unnecessarily burden customers and harm Ohio's economy.

VIII. THE PARTIAL STIPULATION SHOULD BE REJECTED BECAUSE IT IS THE RESULT OF EXCLUSIONARY SETTLEMENT NEGOTIATIONS AND LIMITED ANALYSIS.

The first prong of the Commission's test for the reasonableness of a settlement stipulation requires an analysis of whether the settlement is a product of serious bargaining among capable, knowledgeable parties.⁶²³ Here, parties with significant interests in this proceeding were intentionally excluded from the final rounds of negotiations leading up to the Partial Stipulation. Further, the settlement process involved little meaningful analysis of the impact of Partial Stipulation's terms.

A. The Proposed ESP's Adverse Impacts On Residential Customers Should Not Be Surprising Given AEP Ohio's Exclusion of FES and Residential Customer Groups From Final Negotiations.

In *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 233 fn.2 (1996), the Supreme Court of Ohio issued a warning regarding the Commission's adoption of partial stipulations arising from negotiations that intentionally excluded certain interested parties:

[W]e feel compelled to note our grave concern regarding the partial stipulation adopted in the case at bar. The partial stipulation

⁶²² See Lesser Direct, p. 46, Ex. JAL-5.

⁶²³ See *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of the Establishment of Rider BTR and Associated Tariff Approval*, Case No. 11-2641-EL-RDR et al., Opinion and Order (May 25, 2011) at p. 9; see also *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561 (1994).

arose from settlement talks from which an entire customer class was intentionally excluded. This was contrary to the commission's negotiations standard . . . and the [three-prong] partial settlement standard

Here, the entities that have traditionally and consistently represented residential customers – the Office of Ohio Consumers' Counsel (which has a statutory obligation to represent residential customers) and Ohio Partners for Affordable Energy (which has a specific interest in representing low-income residential customers) – were excluded from negotiations.⁶²⁴ FES, which is the only CRES provider in this proceeding with a substantial interest in governmental aggregation also was excluded.⁶²⁵

The Signatory Parties may attempt to pass off the two municipal Signatory Parties as serious bargainers with the capability and knowledge to represent residential customer interests. If so, those attempts must fail. The two municipalities – Grove City and Hilliard – have never been involved in prior utility rate proceedings.⁶²⁶ Grove City was the only one of the two to submit testimony in support of the Partial Stipulation, and its witness admitted that he did not recall whether he saw the Stipulation or Appendix C before the Partial Stipulation was signed on Grove City's behalf.⁶²⁷ He admitted he had no knowledge of Rider GRR, Rider PMR, or the existence of different rate schedules.⁶²⁸ He also did not know how many Grove City residents or businesses were shopping for retail electric service. He had no understanding of any shopping limits in the Partial Stipulation. He did not know what "RPM" stood for. He had no understanding of the set-aside process. He said that he was simply "informed" that the Partial

⁶²⁴ Banks Direct, p. 57.

⁶²⁵ Banks Direct, pp 57-58.

⁶²⁶ See Commission docket; see also Tr. Vol. IV, p. 512 (Grove City witness Honsey acknowledges that Grove City has not participated in any Commission proceeding during his tenure).

⁶²⁷ Tr. Vol. IV, pp. 523-524.

⁶²⁸ Tr. Vol. IV, pp. 492-493, 499.

Stipulation would result in more shopping.⁶²⁹ Further, he did not know whether the residential rates proposed in the Proposed ESP are any better than the residential rates in place today. He did “not necessarily” need to know that before signing on to support the Proposed ESP. He said that the only information Grove City relied on in testifying that the Proposed ESP’s residential rates are favorable was provided to Grove City by AEP Ohio.⁶³⁰ It is obvious that the two municipalities’ support for the Partial Stipulation has nothing to do with residential customer interest, and everything to do with the \$100,000 each will receive from AEP Ohio for a pilot program to establish municipally-owned LED street lighting and LED traffic signal conversion.⁶³¹ In sum, there is no basis on which the Commission could find that the municipalities, represented residential customers’ interests, adequately, if at all.

Unfortunately, but not surprisingly, the Partial Stipulation’s terms reflect the lack of participation and agreement by any real representative of residential customers. The Partial Stipulation would prevent AEP Ohio’s customers from receiving the benefits of wholesale or retail competition for at least another three and a half years.⁶³² Residential customers would be particularly harmed by the Partial Stipulation’s negative impacts on governmental aggregation, whose beneficiaries are primarily residential customers. As described in Section V.C, the over 300,000 households represented by those communities in AEP Ohio’s service territory that are considering governmental aggregation on the November 2011 ballots will have no opportunity to receive the benefits that aggregation has brought to other utilities’ communities. The Proposed ESP also reflects that, based on a comparison of the average customer class rate increases,

⁶²⁹ Tr. Vol. IV, pp. 493, 500-501, 503-504, 507.

⁶³⁰ Tr. Vol. IV, pp. 520-521, 522 (also referencing a “chart” that he reviewed regarding residential rates, but acknowledging that he did not see that until after the Partial Stipulation was filed).

⁶³¹ See Stip., § IV.1(w).

⁶³² See Section V.B.7.

residential customers would be subsidizing industrial customers.⁶³³ More flagrant still is the decrease in funding for low-income customers provided by the Proposed ESP. AEP Ohio witness Hamrock acknowledged that funding for low-income customers will decrease under the Proposed ESP and that the Proposed ESP includes no provisions directed at PIPP customers.⁶³⁴

The Partial Stipulation's significant adverse effects on, and the lack of benefits provided to, residential and low-income customers combined with the exclusion of their representatives from settlement negotiations requires rejection of the Partial Stipulation because AEP Ohio has not satisfied the first prong of the Commission's test for settlements.

B. Although Other CRES Providers Are Signatory Parties, Their Interests Are Materially Distinct From FES' Interests.

FES was excluded from settlement negotiations after August 30th – the week leading up to the formation and execution of the Partial Stipulation.⁶³⁵ AEP Ohio did not distribute the proposed stipulation until 10 pm on the night before the hearing of this matter was scheduled to begin.⁶³⁶ As FES witness Banks observed, “Needless to say, on AEP Ohio's timeframe, FES had no real or effective opportunity to review, respond to, or negotiate regarding the Partial Stipulation – which spans approximately 30 pages, and involves completely new provisions and different numbers than were discussed when FES was included in settlement negotiations.”⁶³⁷ AEP Ohio admitted that no drafts of Appendix C were shared with FES prior to September 6.⁶³⁸

⁶³³ Banks Direct, pp. 18-19.

⁶³⁴ Tr. Vol. VI, pp. 934-935.

⁶³⁵ Banks Direct, p. 58.

⁶³⁶ See Banks Direct, p. 58.

⁶³⁷ Banks Direct, p. 58.

⁶³⁸ Tr. Vol. III, p. 394. Despite FES's extensive experience and participation in post-Stipulation settlement discussions, AEP Ohio also did not share the draft final implementation plan with FES prior to filing it, despite the fact that FES asked more questions than the other parties in previous sessions regarding Appendix C. Tr. Vol. III, pp. 412-416.

AEP Ohio attempted to suggest that FES removed itself from negotiations are flatly false and were rebutted by Mr. Banks and AEP's own testimony.⁶³⁹ In response to questions on redirect examination, Mr. Hamrock claimed that at a meeting with all parties in the afternoon of August 26, FES "specifically walked out of that session and said that they were no longer interested in that framework [being discussed]."⁶⁴⁰ But Mr. Hamrock had previously acknowledged that he did not see any communication from FES that stated that FES was choosing to stop participating in settlement negotiations.⁶⁴¹ Mr. Hamrock also previously testified that AEP Ohio continued to reach out to parties that were not participating after August 30th, but he did not recall any such communications with FES.⁶⁴²

Mr. Banks (who was at the August 26th meeting) squarely rebutted Mr. Hamrock's belated attempts to mischaracterize FES' position. Mr. Banks testified that FES never indicated it was no longer interested in talking settlement during the meeting and that FES "left the meeting with all the other parties when it was over, so unless the meeting was re-called to order without notifying [FES], we were at the complete meeting."⁶⁴³

FES' exclusion is significant, despite other CRES providers' support of the Partial Stipulation. FES represents the most likely and imminent competition for AEP Ohio on the retail level and, as such, represents the same competitive perspective the exclusion of which raised the Supreme Court's concerns in *Time Warner*:

The partial stipulation arose from settlement talks from which an entire customer class was intentionally excluded. . . . The benefits of alternative rate treatment and deregulation for the local

⁶³⁹ Tr. Vol. VI, pp. 940-941.

⁶⁴⁰ Tr. Vol. VI, p. 941.

⁶⁴¹ Tr. Vol. VI, p. 872.

⁶⁴² Hamrock Direct, p. 9; Tr. Vol. VI, pp. 872-874.

⁶⁴³ Tr. Vol. VII, p. 1186.

exchange company . . . are to be balanced by an equal offset of increased competition, infrastructure commitments, and other benefits to the ratepayers. . . . This balancing did not occur. Ameritech managed either to settle its competitive issues or defer them until a later date, all without having its competitors at the settlement table. Under these circumstances, we question whether the stipulation, even assuming the commission's authority to approve it, promotes competition in the telephone industry as intended by the General Assembly. We would not create a requirement that all parties participate in all settlement meetings. However, given the facts in this case, we have grave concerns regarding the commission's adoption of a partial stipulation which arose from the exclusionary settlement meetings.⁶⁴⁴

FES is the leading CRES provider in Ohio, including customers in AEP Ohio's service territory and the only two active governmental aggregation programs in AEP Ohio's service territory.⁶⁴⁵ On the other hand, the record establishes that none of the Signatory CRES Parties who provided testimony in support of the Partial Stipulation are a significant or imminent competitive force in AEP Ohio's service territory. As explained by FES witness Banks, "none of the unaffiliated Signatory Party CRES providers are based in Ohio or are currently active in AEP Ohio's service territory."⁶⁴⁶ For example, Exelon acknowledged that it has no present interest in retail competition. Its witness, Mr. Dominguez acknowledged that Exelon Generation (the signatory entity) is a wholesale supplier, and he did not know whether its retail affiliate has even filed an application for certification as a CRES in Ohio.⁶⁴⁷ Moreover, Mr. Dominguez admitted that "AEP is one of our biggest wholesale trading partners" and Exelon has "made offers to [AEP], substantial offers, for capacity that weren't within the originally filed ESP period but would be within the extended ESP period that is reflected in the stipulation" – which

⁶⁴⁴ *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 233 fn.2 (1996) (emphasis added).

⁶⁴⁵ Banks Direct, p. 59.

⁶⁴⁶ Banks Direct, p. 59.

⁶⁴⁷ Tr. Vol. VI, pp. 1046-1047.

demonstrates a basis for Exelon's support of the Partial Stipulation, separate from whether the Proposed ESP indeed satisfies the statutory test or whether the Partial Stipulation satisfies the Commission's criteria.⁶⁴⁸ Exelon does not have any contract in the Ohio AEP zone "period, of any kind" and it has no governmental aggregation contracts anywhere in Ohio.⁶⁴⁹ "So far [governmental aggregation] hasn't been" a focus of Exelon's business.⁶⁵⁰ Similarly, Constellation witness Fein was unaware of any Constellation contract for governmental aggregation in AEP Ohio's territory.⁶⁵¹ Neither Direct Energy nor any member of RESA has a governmental aggregation contract either.⁶⁵²

It is not surprising, therefore, that other CRES providers would not be as concerned about AEP Ohio's customers receiving unrestricted access to the benefits of retail competition for another 3+ years. (And, in fact, such a delay may benefit these other CRES providers that are not yet established here.) As FES witness Banks concluded, "FES is more acutely affected by and aware of the ongoing barriers to competition in AEP Ohio's service territory, the impact of the future barriers proposed in the Proposed ESP, and the benefits that can be received by Ohio customers through an open and full competitive market."⁶⁵³ Thus, the natural consequence of FES' exclusion from the negotiations leading up to the Partial Stipulation was that the Partial Stipulation ended up including significant provisions that hinder competition and governmental aggregation.

⁶⁴⁸ Tr. Vol. VI, pp. 1055-1056.

⁶⁴⁹ Tr. Vol. VI, p. 1041.

⁶⁵⁰ Tr. Vol. VI, p. 1041.

⁶⁵¹ Tr. Vol. VI, p. 975.

⁶⁵² Tr. Vol. IV, p. 558.

⁶⁵³ Banks Direct, p. 59.

C. There Was Little To No Analysis Of The Partial Stipulation Before It Was Signed.

The Partial Stipulation also does not deserve to be afforded weight by the Commission because the meager analysis performed before it was executed does not reflect the serious bargaining required by the first prong of the Commission's test for settlements.⁶⁵⁴ Through discovery and cross-examination, it became clear that the Signatory Parties signed the Partial Stipulation with little evidence to support its terms:

- *There is no evidence that the Signatory Parties analyzed whether the Proposed ESP was quantitatively more favorable than an MRO before the Partial Stipulation was signed.*

To the contrary, witnesses for Constellation, RESA, and Exelon admitted that they did not perform any quantitative study of the Proposed ESP as compared the MRO.⁶⁵⁵ Exelon witness Dominguez also acknowledged that he had not performed any study of the Proposed ESP's generation rates or Rider DIR.⁶⁵⁶ IEU witness Murray provided a summary of the Signatory Parties' analyses – or lack thereof – of the Proposed ESP before it was signed.⁶⁵⁷ As Mr. Murray concluded, the vast majority of the 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 . . . are fundamentally defective and unreasonable. Thus, they lack direct

⁶⁵⁴ Indeed, there remains some confusion amongst the Signatory Parties as to the meaning of certain terms. For example, RESA witness Ringenbach believes that the Pool Modification Rider only allows AEP Ohio to recover \$1 million if the total costs to AEP Ohio are \$51 million, whereas AEP Ohio is confident it will be able to recover all \$51 million. Tr. Vol. IV, p. 554; Tr. Vol. V, pp. 708-709.

⁶⁵⁵ Tr. Vol. VI, p. 981 (Constellation); Tr. Vol. IV, p. 562 (RESA); Tr. Vol. VI, p. 1015 (Exelon).

⁶⁵⁶ Tr. Vol. VI, p. 1015, 1045.

⁶⁵⁷ See Direct Testimony of Kevin M. Murray on behalf of Industrial Energy Users-Ohio, IEU Exs. 9A and 9B (“Murray Direct”), pp. 4-8.

knowledge of whether the ESP, as modified by the Stipulation, is capable of satisfying statutory requirements.”⁶⁵⁸

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. [RESA, Paulding, OEC, NRDC, Exelon, EnerNOC, ELPC, DERS, AICUO and 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 [OMA, OHA, City of Hilliard and the City of 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.⁶⁵⁹

- *There is no evidence that any Signatory Party analyzed the effect of the RPM caps on shopping before the Partial Stipulation was signed.*

To the contrary, witnesses for AICUO⁶⁶⁰ and Exelon testified that they had not prepared any such analysis.⁶⁶¹ RESA witness Ringenbach acknowledged that she had not done any study of the likelihood of CRES providers being able to offer competitive rates if they have to pay AEP Ohio \$255/MW-day for capacity.⁶⁶² Staff witness Fortney also did not analyze the effect of

⁶⁵⁸ Murray Direct, p. 7.

⁶⁵⁹ Murray Direct, pp. 6-7 (emphasis added).

⁶⁶⁰ AICUO witness Jones also testified that he did not know how many member colleges are shopping; he had no independent information on how the Partial Stipulation will result in more shopping for AICUO members; and could not provide “specific information to explain” how the allocation of RPM capacity will affect its member colleges. Tr. Vol. IX, pp. 1636, 1638

⁶⁶¹ Tr. Vol. IX, p. 1632 (AICUO); Tr. Vol. VI, p. 1043 (Exelon).

⁶⁶² Tr. Vol. IV, p. 544.

Appendix C on shopping.⁶⁶³ In fact, AEP Ohio witness Hamrock “do[es]n’t recall” whether the near-final Stipulation sent out at 10 pm on the night before the Stipulation was signed included any of the three appendices.⁶⁶⁴ Exelon witness Dominguez acknowledged that he saw Appendix C, at the earliest, the day before the Partial Stipulation was filed.⁶⁶⁵ The Partial Stipulation’s description of the calculation of the set-aside percentage is different than the calculation set forth in Appendix C⁶⁶⁶ – and, so, if the Signatory Parties didn’t get Appendix C until the day it was signed, then they had no understanding of how the calculation would be made.

- *The Signatory Parties did not have or request updated shopping data from AEP Ohio to appreciate the impact of the Proposed ESP’s caps.*

The Signatory Parties could not have fully assessed the impact of the Proposed ESP on shopping in AEP Ohio’s territory because, as they admit, they did not receive information that showed that any customer class had already reached its pro rata Appendix C allocation.⁶⁶⁷ Staff witness Johnson acknowledged that neither he nor anyone else on Staff was aware that the commercial class had already exhausted its pro rata cap allocation.⁶⁶⁸

Only AEP Ohio knew that the commercial class already was oversubscribed (AEP Ohio witness Allen’s incredible denial notwithstanding) and it clearly did not tell anyone. AEP Ohio provided data in response to a request from Staff on August 23rd that did not provide a breakdown by customer class, but “the company had information available to perform such a

⁶⁶³ Tr. Vol. X, p. 1693.

⁶⁶⁴ Tr. Vol. VI, p. 906.

⁶⁶⁵ Tr. Vol. VI, p. 1041.

⁶⁶⁶ Tr. Vol. VI, pp. 906-907; *compare* Stip. § IV.2(b)(3) (initial cap based on “AEP Ohio’s total retail load in 2012 (based on total kWh retail sales)”) *with* Appx. C, p. 1 (cap based on percentage of “annual weather-adjusted retail sales, respectively from the preceding calendar year. For purposes of the Jan-Dec 2012 Cap, annual retail sales is based on AEP Ohio’s annual average kWh based on the 24 months ended July 31, 2011. . . .”).

⁶⁶⁷ *See* IEU Ex. 14 (admissions from all Signatory Parties).

⁶⁶⁸ Tr. Vol. X, pp. 1686-1687.

[class-by-class] calculation had it been requested.”⁶⁶⁹ AEP Ohio witness Allen acknowledged that AEP Ohio knows when a customer switches and it knows what customer class the customer is a part of.⁶⁷⁰ “The company does know how much of that -- does have information that would indicate how much of that was for residential, commercial, or industrial.”⁶⁷¹ And, of course, AEP Ohio witness Hamrock also admitted that “[a]s a matter of negotiating the settlement there was no special consideration given to governmental aggregation”⁶⁷²

The facts surrounding the negotiation and execution of the Partial Stipulation are materially distinct from the numerous other stipulations that the Commission has previously found to be the product of serious bargaining among knowledgeable and capable parties. Whether it was the rushed timing, the lack of information-sharing, or the exclusion of certain important interest groups, this Partial Stipulation does not deserve weight nor the Commission’s deference. Moreover, the Proposed ESP is less favorable in the aggregate than the expected results of an MRO, and the Partial Stipulation violates numerous state policies and regulatory practices. There is no basis on which to approve the Proposed ESP or the Partial Stipulation.

IX. IF THE COMMISSION DOES NOT REJECT THE PARTIAL STIPULATION AS A WHOLE, IT MUST BE MODIFIED SUBSTANTIALLY.

As AEP Ohio’s executives have admitted, their customers would be better off if the Proposed ESP was rejected as a whole, and AEP Ohio would be fine, too.⁶⁷³ Therefore, the Commission should not hesitate to reject the Partial Stipulation and its Proposed ESP, and to

⁶⁶⁹ Tr. Vol. XII, pp. 2069-2070.

⁶⁷⁰ Tr. Vol. XII, pp. 2066-2067.

⁶⁷¹ Tr. Vol. XII, pp. 2067-2068.

⁶⁷² Tr. Vol. VI, p. 846.

⁶⁷³ See Banks Direct, p. 11 (citing AEP Ohio CEO Mike Morris, who admitted that if the current ESP continues, “we’ll just continue on with where we are and that’s not a bad news story for us at all.”).

allow the current ESP to continue until AEP Ohio applies for another SSO.⁶⁷⁴ The continuation of the current ESP would avoid exposing AEP Ohio's customers to the arbitrary increases in base generation rates and discriminatory RPM capacity price caps in the Proposed ESP.⁶⁷⁵ When the Commission rejects the Partial Stipulation, it also can and should deny any further waivers for corporate separation and require AEP Ohio to legally separate its generation services.

However, to the extent the Commission determines that there is a basis on which to approve only parts of the Partial Stipulation and the Proposed ESP, it should incorporate the following modifications to ensure that they satisfy state law and policy:

1. *All capacity for shopping customers, including those participating in governmental aggregation, should be priced at RPM, market-based prices.*

AEP Ohio's customers could save \$1 billion over the January 2012 through May 2015 period as compared to the Proposed ESP if they could get access to competitive market prices, including through governmental aggregation programs. AEP Ohio's customers should not be precluded from enjoying the significant benefits of retail competition. These benefits could be made available to AEP Ohio's customers during the period prior to June 2015 if the Commission were to eliminate the RPM set-aside caps in the Partial Stipulation, thereby allowing more customers to shop and access lower market prices.⁶⁷⁶ Therefore, the Commission should continue to require AEP Ohio to charge RPM market prices for capacity in AEP Ohio's territory for all shopping customers. This would maintain current practice and be in accord with the state's competitive market for generation service.⁶⁷⁷ At minimum, governmental aggregation

⁶⁷⁴ See R.C. § 4928.143(C)(2)(a), (b).

⁶⁷⁵ See Banks Direct, pp. 10-11.

⁶⁷⁶ Schnitzer Direct, p. 30.

⁶⁷⁷ See Banks Direct, p. 12; Shanker Direct, pp. 23, 31-32.

customers should receive RPM-priced capacity and their load should not count toward any capacity set-aside caps.

2. *The Proposed ESP should incorporate wholesale competition now.*

There is no reason to preclude AEP Ohio's customers from receiving the benefits of wholesale competition for another three and a half years -- and for 15 years after the General Assembly determined that the market for electric generation service would be competitive. AEP has not shown that there is any reason that a CBP could not be used to procure SSO load beginning in 2012. The FirstEnergy Ohio utilities' recent successful auctions confirm that wholesale competition works for Ohio and for customers. At minimum, the Commission should incorporate a CBP for increasing percentages of AEP Ohio's SSO load starting in 2012 -- for example, 25% in 2012, 50% in 2013, and 75% for 2014-June 2015, leading to 100% as of June 2015.⁶⁷⁸

3. *Riders that are not authorized by Ohio law must be eliminated.*

There is no record evidence to support Riders GRR, PMR, or MTR under any provision of R.C. § 4928.143(B)(2). Further, as described above, Riders GRR and PMR could allow AEP Ohio to inappropriately recover hundreds of millions of dollars from AEP Ohio customers. Without any legal basis for their approval, these riders must be eliminated if the Proposed ESP is approved.

4. *Appendix C must be modified to minimize its impact on competition and governmental aggregation.*

If the Commission does not eliminate the caps on RPM-priced capacity, as it should, the Appendix C procedures should be revised. The caps should be increased to allow for material increases in the competitive market in AEP Ohio's service territory and to bring AEP Ohio's

⁶⁷⁸ See Banks Direct, pp. 11-13.

territory in line with other EDUs' territory. As noted above, governmental aggregation customers' capacity should be priced at RPM market prices and, thus, governmental aggregation customers should not be included in any queue process, if the Commission approves such a queue. To the extent governmental aggregation customers remain subject to the discriminatory and anti-competitive caps, a governmental aggregation contract between an aggregation community and a CRES provider should be sufficient to get aggregation customers into the queue. The Commission should also maintain oversight of, and the authority to audit, the Appendix C process and AEP Ohio's award of RPM-priced capacity. These modifications are necessary to promote governmental aggregation, as the Commission is required to do, and to provide AEP Ohio's customers with the opportunity to receive the discounts enjoyed by governmental aggregation customers in other EDUs' territories.

5. *The Proposed ESP should incorporate benefits for low-income customers.*

For example, the Commission should incorporate FES' offer to supply the SSO load for AEP Ohio's PIPP customers at 5% off of AEP Ohio's price-to-compare.⁶⁷⁹ Properly structured, such an offer could reduce the arrearage that PIPP customers could be subject to and could also, as even AEP Ohio witness Allen acknowledged, reduce the Universal Service Fund charge applied to all customers because it includes the difference between PIPP customers' bills and their payment amounts.⁶⁸⁰

⁶⁷⁹ Banks Direct, p. 14.

⁶⁸⁰ See Tr. Vol. XII, pp. 2121-2122. As set forth in Mr. Banks' testimony, FES offered to serve AEP Ohio's PIPP customers through a bilateral wholesale contract at 5% off the price-to-compare, if such customers received RPM-priced capacity and if this allotment of RPM-priced capacity does not count towards the RPM set-asides proposed in the Revised ESP. Banks Direct, pp. 13-14. Such an offer would benefit both AEP Ohio's PIPP and non-PIPP customers if the Commission authorized AEP Ohio to purchase the wholesale supply necessary to serve the full requirements load of the AEP Ohio PIPP customers via a bilateral wholesale contract with FES. FES would provide the separate supply for PIPP customers at a 5% discount off of the SSO price-to-compare, which could be provided through a separate PIPP generation tariff. See Banks Direct, p. 14. Accordingly, PIPP-related generation costs would be

6. *AEP Ohio's anti-competitive tariff provisions should be eliminated.*

AEP Ohio's policies regarding minimum stays should be eliminated because their only effect is to limit customers' ability to shop. AEP Ohio's switching fee should be reduced. The Commission should require AEP Ohio to provide rate-ready billing, as all other Ohio EDUs do. It should also ensure that AEP Ohio does not use separate rate books to confuse the process and eliminate distribution discounts for shopping customers.

7. *AEP Ohio should be immediately ordered to carry out full corporate separation.*

The competitive market in AEP Ohio's service territory will not be truly effective unless and until AEP Ohio separates its competitive generation assets from its distribution assets. The Commission has the authority to order that transition now and it should do so immediately and maintain appropriate oversight over the transition to ensure that AEP Ohio's customers do not lose in the process. Commission action is needed to make sure that AEP Ohio will never again be in the position to seek improper above-market revenues and self-serving limits on shopping. Such action is needed so that AEP Ohio's customers can finally enjoy the benefits of a fully competitive market for retail electric generation service.

X. CONCLUSION

As set forth above, the Proposed ESP is not more favorable in the aggregate than the expected results of an MRO. Further, neither the Proposed ESP nor the Partial Stipulation satisfies the Commission's three-prong test to assess the reasonableness of settlement stipulations. Accordingly, the Partial Stipulation and the Proposed ESP should be rejected.

separate from non-PIPP customers' generation costs. PIPP customers would benefit because if the customer is removed from the PIPP Plus program, the actual billed amount that the customer would otherwise be responsible for would be reduced because of the 5% discount. Non-PIPP customers would benefit because the resulting Universal Service Fund charge would be lower than what otherwise may have been charged.

Respectfully submitted,

s/ Laura C. McBride

Mark A. Hayden (0081077)
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
(330) 761-7735
(330) 384-3875 (fax)
haydenm@firstenergycorp.com

James F. Lang (0059668)
Laura C. McBride (0080059)
N. Trevor Alexander (0080713)
CALFEE, HALTER & GRISWOLD LLP
1400 KeyBank Center
800 Superior Ave.
Cleveland, OH 44114
(216) 622-8200
(216) 241-0816 (fax)
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com

David A. Kutik (0006418)
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114
(216) 586-3939
(216) 579-0212 (fax)
dakutik@jonesday.com

Allison E. Haedt (0082243)
JONES DAY
P.O. Box 165017
Columbus, OH 43216-5017
(614) 469-3939
(614) 461-4198 (fax)
aehaedt@jonesday.com

Attorneys for FirstEnergy Solutions Corp.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Post-Hearing Brief of FirstEnergy Solutions Corp.* was served this 10th day of November, 2011, via e-mail upon the parties below.

s/ Laura C. McBride
One of the Attorneys for FirstEnergy Solutions Corp.

Steven T. Nourse
Matthew J. Satterwhite
Anne M. Vogel
American Electric Power Corp.
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
stnourse@aep.com
mjsatterwhite@aep.com
amvogel@aep.com

Daniel R. Conway
Porter Wright Morris & Arthur
41 South High Street
Columbus, Ohio 43215
dconway@porterwright.com

Cynthia Fonner Brady
David I. Fein
550 W. Washington Street, Suite 300
Chicago, IL 60661
cynthia.a.fonner@constellation.com
david.fein@constellation.com

Richard L. Sites
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, Ohio 43215-3620
ricks@ohanet.org

Dorothy K. Corbett
Amy Spiller
Duke Energy Retail Sales
139 East Fourth Street
1303-Main
Cincinnati, Ohio 45202
dorothy.corbett@duke-energy.com
amy.spiller@duke-energy.com

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
dboehm@bklawfirm.com
mkurtz@bklawfirm.com

Terry L. Etter
Maureen R. Grady
Jeffrey L. Small
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
etter@occ.state.oh.us
grady@occ.state.oh.us
small@occ.state.oh.us

Thomas J. O'Brien
Bricker & Eckler
100 South Third Street
Columbus, Ohio 43215-4291
tobrien@bricker.com

Shannon Fisk
2 North Riverside Plaza, Suite 2250
Chicago, IL 60606
sfisk@nrdc.org

John W. Bentine
Mark S. Yurick
Zachary D. Kravitz
Chester Willcox & Saxbe, LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215
jbentine@cwsllaw.com
myurick@cwsllaw.com
zkravitz@cwsllaw.com

Terrence O'Donnell
Christopher Montgomery
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
todonnell@bricker.com
cmontgomery@bricker.com

Jesse A. Rodriguez
Exelon Generation Company, LLC
300 Exelon Way
Kennett Square, Pennsylvania 19348
jesse.rodriguez@exeloncorp.com

Glen Thomas
1060 First Avenue, Ste. 400
King of Prussia, Pennsylvania 19406
gthomas@gtpowergroup.com

Henry W. Eckhart
2100 Chambers Road, Suite 106
Columbus, Ohio 43212
henryeckhart@aol.com

Jay E. Jadwin
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
jejadwin@aep.com

Michael R. Smalz
Joseph V. Maskovyak
Ohio Poverty Law Center
555 Buttles Avenue
Columbus, Ohio 43215
msmalz@ohiopoveritylaw.org
jmaskovyak@ohiopoveritylaw.org

Lisa G. McAlister
Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
lmcaster@bricker.com
mwarnock@bricker.com

William L. Massey
Covington & Burling, LLP
1201 Pennsylvania Ave., NW
Washington, DC 20004
wmassey@cov.com

Laura Chappelle
4218 Jacob Meadows
Okemos, Michigan 48864
laurac@chappelleconsulting.net

Pamela A. Fox
Law Director
The City of Hilliard, Ohio
pfox@hilliardohio.gov

Christopher L. Miller
Gregory H. Dunn
Asim Z. Haque
Stephen J. Smith
Schottenstein Zox & Dunn Co., LPA
250 West Street
Columbus, Ohio 43215
cmiller@szd.com
ahaque@szd.com
ssmith@szd.com
gdunn@szd.com

Sandy Grace
Exelon Business Services Company
101 Constitution Avenue N.W., Suite 400 East
Washington, DC 20001
sandy.grace@exeloncorp.com

Kenneth P. Kreider
David A. Meyer
Keating Muething & Klekamp PLL
One East Fourth Street, Suite 1400
Cincinnati, Ohio 45202
kpkreider@kmklaw.com
dmeyer@kmklaw.com

Holly Rachel Smith
Holly Rachel Smith, PLLC
Hitt Business Center
3803 Rectortown Road
Marshall, Virginia 20115
holly@raysmithlaw.com

Gregory J. Poulos
EnerNOC, Inc.
101 Federal Street, Suite 1100
Boston, MA 02110
gpoulos@enernoc.com

M. Howard Petricoff
Stephen M. Howard
Michael J. Settineri
Lija Kaleps-Clark; Benita Kahn
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, Ohio 43215
mhpetricoff@vorys.com
smhoward@vorys.com
mjsettineri@vorys.com
lkalepsclark@vorys.com
bakahn@vorys.com

Gary A. Jeffries
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212-5817
gary.a.jeffries@aol.com

Steve W. Chriss
Wal-Mart Stores, Inc.
2001 SE 10th Street
Bentonville, Arkansas 72716
stephen.chriss@wal-mart.com

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
barthroyer@aol.com

Werner L. Margard III
John H. Jones
William Wright
Thomas Lindgren
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, OH 43215
werner.margard@puc.state.oh.us
john.jones@puc.state.oh.us
William.wright@puc.state.oh.us
Thomas.Lindgren@puc.state.oh.us

Philip B. Sineneng
Terrance A. Mebane
Carolyn S. Flahive
Thompson Hine LLP
41 S. High Street, Suite 1700
Columbus, Ohio 43215
philip.sineneng@thompsonhine.com
carolyn.flahive@thompsonhine.com
terrance.mebane@thompsonhine.com

Samuel C. Randazzo
Joseph E. Olier
Frank P. Darr
McNees Wallace & Nurick
21 East State Street, 17th Floor
Columbus, Ohio 43215
sam@mwncmh.com
joliker@mwncmh.com
fdarr@mwncmh.com

John N. Estes III
Paul F. Wight
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Ave., N.W.
Washington, DC 20005
jestes@skadden.com
paul.wight@skadden.com

Tara C. Santarelli
Environmental Law & Policy Center
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212
tsantarelli@elpc.org

Christopher J. Allwein
Williams, Allwein and Moser, LLC
1373 Grandview Avenue, Suite 212
Columbus, Ohio 43212
callwein@williamsandmoser.com

Emma F. Hand
Douglas G. Bonner
Keith C. Nusbaum
Clinton A. Vince
SNR Denton US LLP
1301 K Street, NW, Suite 600, East Tower
Washington, DC 20005-3364
emma.hand@snrdenton.com
doug.bonner@snrdenton.com
keith.nusbaum@snrdenton.com
Clinton.vince@snrdenton.com

Colleen L. Mooney
David C. Rinebolt
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohio 45840
cmooney2@columbus.rr.com
drinebolt@ohiopartners.org

Trent A. Dougherty
Cathryn Loucas (0073533)
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
trent@theoeg.org
cathy@theoec.org

Joel Malina
Executive Director
COMPLETE Coalition
1317 F Street, NW
Suite 600
Washington, DC 20004
malina@wexlerwalker.com

David M. Stahl
Arin C. Aragona
Scott C. Solberg
Eimer Stahl Klevorn & Solberg LLP
224 South Michigan Avenue, Suite 1100
Chicago, IL 60604
dstahl@eimerstahl.com
aaragona@eimerstahl.com
ssolberg@eimerstahl.com

Jay L. Kooper
Katherine Guerry
Hess Corporation
One Hess Plaza
Woodbridge, NJ 07095
jkooper@hess.com
kguerry@hess.com

Robert Korandovich
KOREnergy
P. O. Box 148
Sunbury, OH 43074
korenergy@insight.rr.com

Allen Freifeld
Samuel A. Wolfe
Viridity Energy, Inc.
100 West Elm Street, Suite 410
Conshohocken, PA 19428
afreifeld@viridityenergy.com
swolfe@viridityenergy.com

Mark A. Whitt
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
whitt@carpenterlipps.com

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