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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service.	)	Case No. 11-3549-EL-SSO
In the Matter of the Application of Duke Energy Ohio for Authority to Amend its Certified Supplier Tariff, P.U.C.O. No. 20.	)	Case No. 11-3550-EL-ATA
In the Matter of the Application of Duke Energy Ohio for Authority to Amend its Corporate Separation Plan.	)	Case No. 11-3551-EL-UNC

APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT OF COLUMBUS SOUTHERN POWER COMPANY AND OHIO POWER COMPANY

Pursuant to §4903.10, Ohio Revised Code, and 4901:1-35 Ohio Admin. Code, Columbus Southern Power Company (CSP) and Ohio Power Company (OPCo) (collectively referred to as "AEP Ohio") file this application for rehearing of the Commission's November 22, 2012 Opinion and Order issued in these dockets, adopting the October 24, 2011 Stipulation and Recommendation that establishes a new Electric Security Plan (ESP) for Duke Energy Ohio (Duke). AEP Ohio respectfully requests rehearing on the disparate application of the Commission's review of the corporate separation elements filed with ESPs under R.C. 4928. As set forth below in more details, AEP Ohio is prejudiced by the inconsistency between the Commission's analysis and justification for fully approving corporate separation in the Duke

Stipulation as compared to its actions in modifying similar corporate separation provisions in the AEP Ohio ESP dockets.[1]

Specifically, AEP Ohio seeks rehearing on the following ground:

1. **The Commission Opinion and Order in these dockets is unlawful and unreasonable based on its failure to apply a consistent treatment of the factors to achieve corporate separation and the divestiture of generation assets under R.C. 4928.17 and O.A.C. 4901:1-37 as compared to its application of the same provisions in other Commission decisions. The Commission's actions also violate the state policy to ensure effective competition under R.C. 4928.17, 4928.06 and 4928.02(H).**

Attached is a memorandum in support of the application for rehearing further describing the grounds for rehearing on this issue. AEP Ohio prefers that the Commission issue rulings consistently and allow for the full approval of corporate separation as indicated in both similarly-designed Stipulations that were contemporaneously provided to the Commission for review. Curiously, the outcome even includes the potential to treat shared generating assets between the two utilities differently. AEP Ohio seeks rehearing to provide the Commission an opportunity to ensure its analysis and rationale behind its corporate separation decisions are made in a consistent manner. AEP Ohio urges the Commission to use this opportunity to align the corporate separation outcomes in the Duke Stipulation decision and the AEP Ohio Stipulation decisions, thus avoiding the potential of having the Supreme Court review two contemporaneous decisions that currently apply the same statutes differently.

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[1] See the December 14, 2011 Opinion and Order concerning a September 7, 2011 Stipulation and Recommendation in AEP Ohio Case Nos. 11-346-EL-SSO et al.

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MEMORANDUM IN SUPPORT

I. Introduction

On July 1, 2011, Columbus Southern Power Company (CSP) and Ohio Power Company (OPCo) (collectively referred to as "AEP Ohio") filed a motion to intervene in this case based on their position as a wholesale provider/bidder into Duke Energy Ohio's (Duke) competitive auction, the fact that CSP jointly owns generation facilities[2] with Duke that would be subject to transfer or corporate separation, and the impact on the energy market from Duke's expected realignment in regional transmission organizations. Intervention was granted by the Commission on July 22, 2011. AEP Ohio then played a cooperative role in Duke's ESP proceeding, monitored its interests, and ultimately took no position for or against the Stipulation during the evidentiary hearing.

AEP Ohio did not sign in support of the Stipulation in the proceedings, instead opting to represent its interests as a party that took no position with regard to the Stipulation. AEP Ohio seeks rehearing now to ensure a consistent application of the relevant statutes applied by the Commission to an Electric Security Plan application. The Commission's inconsistent application of its statutory duties of review and the resulting order leaves the assets of AEP Ohio, including the assets jointly owned by AEP Ohio and Duke, exposed to different treatment without a reasonable basis.

A settlement in an open case before the Commission is a recommendation for the Commission to consider, whether controversial or settled by unanimous agreement. The Commission recognized the three-part test it must apply in consideration of stipulations at page

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[2] Conesville Station Unit 4, the Walter C. Beckjord Station Unit 6 the William H. Zimmer Generating Station Unit l, and the J.M. Stuart Plant.

41 of the Opinion and Order. That test includes the duty to apply controlling statutes reasonably, lawfully, and consistently without preference or disadvantage in the adjudication of its proceedings. Yet the Commission has applied the same statutes and rules inconsistently in two contemporaneous decisions – the November 22 Opinion and Order in this proceeding and the December 14 Opinion and Order regarding AEP Ohio's Stipulation in Case Nos. 11-346-EL-SSO et al.[3]

AEP Ohio does not necessarily desire to alter the overall outcome of the November 22 Opinion and Order adopting Duke's Stipulation. AEP Ohio's goal is merely to ensure equal treatment by the Commission on key statutory matters that will affect the ongoing development of competitive markets for retail electric service in Ohio. AEP Ohio's concerns in this regard are particularly poignant given the confusing and potentially adverse impact on generation assets jointly-owned by AEP Ohio and Duke. Did the Commission actually intend to presently approve the transfer of Duke's ownership interest in Zimmer generating station at net book value while simultaneously creating a path that could result in withholding approval for AEP Ohio to transfer its interest in the same generating unit for years and possibly requiring the eventual transfer to be based on market valuation? AEP Ohio expects that was not the Commission's intention but that the present circumstances have developed through unintended outcomes – which fortunately can be modified and harmonized in a timely manner. To be clear, however, AEP Ohio seeks rehearing in this case to ensure that it receives equal treatment regarding the crucial matter of corporate separation and to ensure that the pertinent statutory provisions are applied in a consistent and lawful manner.

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3 A copy of the Commission's December 14, 2011 Opinion and Order in these cases is attached to this application for rehearing.

Thus, the Commission must either modify the order in the AEP Ohio Stipulation case to conform with the existing decision in this case or modify what it has done here to be consistent with the AEP Ohio case. AEP Ohio recommends the former option and has pursued rehearing here in order to preserve the right to appeal -- if neither the current outcome of the Duke Stipulation or the AEP Ohio Stipulation changes, it may become necessary for AEP Ohio to ask the Supreme Court to review two irreconcilable interpretations of the same statutory provisions.[4]

II. Argument

A. AEP Ohio has a Statutory Right to Seek Rehearing in These Proceedings

AEP Ohio is not among the Signatory Parties to the Duke Stipulation approved by the Commission in these proceedings. Signatory Parties is a defined term under the DEP Stipulation and each is listed on page 3 – this list does not include AEP Ohio. Moreover, AEP Ohio signed a different section of the Stipulation representing that they "take no position with regard to the Stipulation." The Commission recognized AEP Ohio's indication on the Stipulation[5] that it took no position. (Duke Opinion and Order at 5.) Consequently, AEP Ohio is not bound by section AA on page 41 of the Stipulation and Recommendation to support the terms of the Stipulation if approved by the Commission.

AEP Ohio has the right under R.C. 4903.10 and O.A.C. 4901-1-35 to seek rehearing in these proceedings. Specifically, R.C. 4903.10 states:

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[4] AEP Ohio also plans to raise and pursue these concerns in its reply comments in Case No. 11-5333-EL-UNC (corporate separation application) and through rehearing in Case Nos. 11-346-EL-SSO (AEP Ohio Stipulation cases). AEP Ohio urges the Commission to coordinate its decision in all three proceedings to ensure consistency.

[5] See Duke Stipulation at page 48, attached to Opinion and Order.

> After any order has been made by the public utilities commission, any party who has entered an appearance in person or by counsel in the proceeding may apply for a rehearing in respect to any matters determined in the proceeding. *Such application shall be filed within thirty days after the entry* of the order upon the journal of the commission.

O.A.C. 4901-1-35 states:

> Any party or any affected person, firm, or corporation may file an application for rehearing, within thirty days after the issuance of a commission order, in the form and manner and under the circumstances set forth in section 4903.10 of the Revised Code. An application for rehearing must set forth the specific ground or grounds upon which the applicant considers the commission order to be unreasonable or unlawful. An application for rehearing must be accompanied by a memorandum in support, which sets forth an explanation of the basis for each ground for rehearing identified in the application for rehearing and which shall be filed no later than the application for rehearing.

As indicated above, AEP Ohio was granted intervention on July 22, 2011, as a party to the proceeding. The Opinion and Order in these proceedings was issued on November 22, 2011. That provides AEP Ohio until December 22, 2011 to file a timely Application for Rehearing. The present filing includes the Application for Rehearing and the Memorandum in Support setting forth the explanation of the basis for the ground upon which the AEP Ohio considers the commission order to be unreasonable or unlawful. This filing is within the proper timeframe and compliant with the requirements of the statute and rules, making this a valid Application for Rehearing. Accordingly, AEP Ohio's Application for Rehearing is proper and timely filed.

The indication by AEP Ohio that it took no position on the actual Stipulation and Recommendation signed by other parties provided the Commission with an indication of how to manage the evidentiary hearing required *before* it considered the matter on the record and made its ultimate decision. AEP Ohio's Application for Rehearing does not challenge the agreement of the Signatory Parties to the Stipulation, the rehearing challenges that Commission consideration and ultimate decision in light of other decisions. In particular the rehearing request addresses how the Commission's decision is inconsistent when compared to other Commission decisions involving the same generation assets involved in the Duke Stipulation decision.

While AEP Ohio took no position with respect to adoption of the Duke Stipulation, the reality was that AEP Ohio did not oppose adoption of the Stipulation because the corporate separation provisions of Duke's October 24, 2011 Stipulation mirrored AEP Ohio's September 7, 2011 Stipulation. AEP Ohio now incurs prejudice, however, in light of the Commission's December 14, 2011 Opinion and Order modifying the corporate separation provisions of the AEP Ohio Stipulation as compared to the decision to adopt without modification the highly similar Duke Stipulation provisions. Thus, AEP Ohio is exercising its statutory right to rehearing and appeal concerning these matters that are applied inconsistently in these proceedings. Any argument that AEP Ohio is in any way barred from seeking rehearing on the Commission's determinations denies the Companies their statutory and administrative rights.

B. The Commission's decision to fully adopt the Duke Stipulation's corporate separation provisions cannot be harmonized with its decision to modify the AEP Ohio Stipulation's highly similar provisions.

The Commission's November 22, 2011 decision concerning the Duke Stipulation treats corporate separation of utility generation assets differently as compared to its December 14, 2011 decision concerning the AEP Ohio Stipulation and, as such, is unlawful and unreasonable. Rehearing is appropriate because the Commission is applying the relevant corporate separation statue R.C. 4929.17 and rules O.A.C. 4901:1-37 O.A.C. inconsistently to similar provisions in the Duke and AEP Ohio stipulations. Specifically, both stipulations contain provisions which clarify that by adopting the respective stipulation the Commission is (1) giving final Commission approval to transfer title of all generation assets out of the Electric Distribution Utility (EDU); (2) approving full legal separation and the related corporate separation plan; and (3) providing a waiver of certain subsections of Rule 4901:1-37-09, O.A.C, regarding the transfer of generation assets. In each instance, despite the fact that Duke and AEP Ohio provide similar record support for each element, the Commission approves Duke's provision (Order at p. 32) but, inconsistently defers the same issues for AEP Ohio to be determined at a later date in a different proceeding (AEP Ohio Order at 60-61).[6] The following are two examples that illustrate how the Commission applied the same rules to similar provisions in these stipulations but arrived at conflicting– unreasonable and unlawful – results that merit rehearing.

A critical component of each stipulation is to transfer the generation assets out of the EDU at net book value. To that end, both Duke and AEP Ohio sought a waiver of rule 4901:1-37-09 (C)(4), O.A.C.[7] In the Duke decision, the Commission waives the rule and provides final approval for Duke to transfer its generation assets at net book value. For AEP Ohio, however, the Commission defers not only the substantive approval but also AEP Ohio's identical waiver request for decision in a different proceeding (Case No. 11-5333-EL-UNC); Staff's initial comments in that proceeding opine that AEP Ohio should provide a market study of the generating assets and pro-forma financial information, apparently contemplating that full

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[6] Duke and AEP Ohio both provide testimony summarizing the effect of stipulation and provide a list of the generation assets. For Duke see Charles Whitlock Direct (attachment CRW 1-2 is a list of generation assets indicating Duke's percentage of ownership in each) and Julie Janson Supplemental Direct at page 7, which provides a brief overview of the transfer. For AEP see Exhibit PJN-1 to the testimony of Philip J. Nelson in Case No. 11-346-EL-SSO, et al., which also contains an internal reference to Exhibit WAA-1 from the testimony of William A. Allen. Both Exhibit PJN-1 and WAA-1 are included in AEP's Application in Case No. 11-5333-EL-UNC.

[7] Rule 4901:1-37-09 (C)(4), O.A.C., requires that an electric utility "state the fair market value and book value of all property to be transferred from the electric utility, and state how the fair market value was determined."

Commission approval of AEP Ohio's generation divestiture would not be complete until after FERC proceedings for Generation Pool amendment or termination – which could be months or even over a year away.

There is no basis for this conflicting treatment when reviewing whether these stipulations are in the public interest. It is either in the public interest to permit the transfer of the generation assets at net book value or it is not. To decide one way for Duke and another for AEP Ohio is unreasonable and unlawful and leads to illogical and irreconcilably conflicting results. For example, as indicated above Duke and AEP Ohio share ownership in generation units at Wm. H. Zimmer Generating Station, Conesville Generating Station, W.C. Beckjord Generation Station, and J.M Stuart Generating Station. The Commission cannot intend for Duke's ownership interest to be transferred at net book value but require AEP Ohio to submit a market study and potentially be ordered to transfer its ownership interest in that same asset at fair market value. To AEP Ohio's knowledge, it is unprecedented for the Commission to even require such a market analysis in the first place.

Duke is clearly not required to conduct a market valuation study, since the Commission summarily waived Rules 4901:1-37-09(B) through (D), OAC which rules the Commission explicitly acknowledged "set forth the filing requirements and the procedures to be followed for an application requesting approval of the sale or transfer of generating assets." (Duke Opinion and Order at 46.) In doing so, the Commission found that the outcome sought by Duke provides "the necessary safeguards to ensure that the statutory mandates pertaining to Duke's sale of generation assets and corporate separation are adhered to and the policy of the state is carried out." (*Id.*) These are the same rules being enforced against AEP Ohio, even though a waiver was requested and supported by the Signatory Parties to the AEP Ohio Stipulation. The Commission should ensure its decisions are consistent and correct this unequal treatment by permitting AEP Ohio to transfer its generation assets at net book value and grant AEP Ohio's similar waiver request. The fact is that there are no differences in the underlying facts between Duke and AEP Ohio's agreements that justifies a completely different outcome when applying the same rules to the same situation at the same time.

In addition to the asset valuation issue, there is the important matter of getting final approval for the transfers upfront. Both the Duke Stipulation and the AEP Ohio Stipulation contain provisions which make it clear that adoption by the Commission provides final approval regarding the transfer of generation assets – neither party will need to come back to the Commission for additional subsequent approval. Duke and AEP Ohio provide similar detail regarding the transfer of their generation assets.[8] With Duke, Staff finds the level of detail to be sufficient,[9] and the Commission grants "final approval for the transfer of generation assets" (Duke Opinion and Order at 32) without the need for additional proceedings and information. In fact, for Duke, it appears as if the Commission concluded that the public interest is satisfied by reviewing the terms and conditions *after* the assets are transferred.[10]

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[8] *See supra* footnote 5.

[9] *See* Turkenton testimony in support of stipulation at page 7.

[10] Section VIII.A of the Duke stipulation states, "Staff, or an independent auditor at Commission discretion and with costs to be recovered through Rider SCR, shall audit the terms and conditions of the transfer to ensure compliance with R.C. 4928.17 and 4901:1-37 corporate separation rules." Aside from the list of generation assets attached to Duke Ex. 24 (Whitlock), the terms and conditions are not specified in the application, stipulation, or the opinion and order adopting the stipulation. At hearing, Examiner Stenman asked Duke witness Whitlock, "Assuming that

But with AEP Ohio, reviewing a similar provision and supporting information, the Commission concludes that it "needs additional time to determine and understand the terms and conditions relating to the sale/or transfer of generation assets from EDU to AEP subsidiary." (AEP Ohio Order at p. 60). Staff states in its initial comments in Case No. 11-5333-EL-UNC that, unlike Duke, AEP Ohio needs to (a) provide additional details regarding the asset transfer, (b) provide supporting rationale as to why a waiver of the fair market value rule is necessary, (c) provide evidence reflecting the net book value of the generating assets, (d) provide a market study of the generating assets, (e) collaborate with Staff in FERC proceedings related to corporate separation and power pool dissolution or amendments, and (f) provide pro-forma financial information and other related information to Staff as they are developed. Even more troubling, unlike Duke where the Commission provided final approval in its opinion and order adopting the stipulation and determined it to be in the public interest for Staff or an independent auditor to merely confirm that the transfer occurred in a manner consistent with the stipulation and the relevant Commission rules, Staff envisions "several state level proceedings" for AEP Ohio to achieve the same result.[11] As noted above, it is unreasonable and unlawful for the Commission to apply the same rules to these stipulation provisions and arrive at two completely different results. If it is in the public interest to provide final approval for the transfer of Duke's

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the stipulation is approved and not modified, are there any elements of Duke's transfer of its legacy generation assets or its corporate separation that would be subject to any further Commission review?" Mr. Whitlock replied, "I think the stipulation serves as final approval for the transfer of the assets. There is a provision in the stipulation for an audit to make sure that we basically transferred the assets in a manner that's consistent with the stipulation. . . ." Tr. Vol. I at 51.

[11] Staff initial comments at page 8 in Case No. 11-5333-EL-UNC.

generation assets based on the information provided, then it is in the public interest for AEP Ohio to do the same in some instances on the very same assets.

C. The Commission's disparate application of the controlling statutes to the Duke Stipulation and the AEP Ohio Stipulation is unlawful and unreasonable.

As a threshold matter, R.C. 4928.17 – the controlling statute regarding corporate separation matters – requires the Commission to ensure that an approved corporate separation plan does not extend an undue advantage or preference in the provision of competitive electric services. *See* R.C. 4928.17(A)(3). Granting Duke's affiliate full and final approval for generation divestiture up front and waiving the filing and process rules, while simultaneously deferring approval of AEP Ohio's GenCo and possibly subjecting it to market valuation studies and protracted litigation, serves to extend Duke an undue preference and advantage in violation of this statute. The better approach is to grant AEP Ohio the same relief afforded to Duke. Full approval of AEP Ohio's structural corporate separation proposal is particularly appropriate given that functional separation has occurred for more than a decade even though R.C. 4928.17(C) only permits functional separation "for an interim period" and otherwise mandates structural separation.

The Commission's inconsistent application of its corporate separation efforts concerning utility generation assets also violates the state policy provision of R.C. 4928.02. The Commission's decision to treat the corporate separation of the two utilities differently results in a competitive disadvantage in violation of the state policy provisions of R.C. 4928.02. Specifically, R.C. 4928.02(H) instructs the Commission to ensure effective competition in the provision of retail electric service. More specifically the policy provisions require the avoidance of subsidies between competitive and noncompetitive interests.

An inconsistent application of the corporate separation provisions and rules is anticompetitive and provides one entity subsidies and a competitive advantage in violation of R.C. 4928.02. If Duke is able transfer assets as outlined by the Commission in the Opinion in these proceedings at the net book value and AEP Ohio is subject to greater scrutiny and different valuations levels, then Duke is receiving an unfair benefit or subsidy from the truncated process and avoiding the different costs associated with complying with O.A.C. 4901:1-37-09(C)(4), and potentially the transfer of assets at fair market value. Nowhere is the direct difference more obvious than in the jointly owned utility assets. If Duke is able to transfer those assets at the net book value but AEP Ohio is required to incur a greater cost, over a greater period of time and transfer the same assets under a different methodology, then Duke and its new competitive generation company are receiving an advantage over the entities involved in the AEP Ohio corporate separation.

Similarly, the General Assembly enacted R.C. 4928.06 entitled "Commission to ensure competitive retail electric service" - originally as part of SB 3 and retained by SB 221. The enactment of this provision provides multiple directives to the Commission concerning retail choice and placed a duty on the Commission to address and resolve any decline or loss of effective competition. Among other things, the Commission is to consider specific factors in determining whether effective competition exists:

> (1) The number and size of alternative providers of that service;
> (2) The extent to which the service is available from alternative suppliers in the relevant market;
> (3) The ability of alternative suppliers to make functionally equivalent or substitute services readily available at competitive prices, terms, and conditions;

(4) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of suppliers of services.

The unequal competitive playing field created by the disparate treatment of Duke's new GenCo affiliate versus AEP Ohio's new GenCo affiliate cannot survive scrutiny under these factors and operates to stifle the development of a competitive retail electric generation market.

In sum, with both Duke and AEP Ohio, the Commission is reviewing the stipulations to determine if the relevant provisions are in the public interest. It is unreasonable and unlawful for the Commission to apply the same rules to each stipulation and determine based on similar record support that (a) final approval to transfer title of all generation assets out of the EDU, (b) approval of full legal separation and related corporate separation plan, and (c) waiver of relevant rules so that the assets can be transferred at net book value without a hearing is in the public interest for Duke but not in the public interest for AEP Ohio. For the forgoing reasons, the Commission should grant rehearing on these items.

III. Conclusion

AEP Ohio respectfully requests that the Commission grant rehearing for the reasons provided in this filing to ensure consistent application of the Commission's responsibilities in Ohio.

Respectfully submitted,

Matthew J. Satterwhite, Counsel of Record
Erin C. Miller
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Telephone: (614) 716-1915
Fax: (614) 716-2950
Email: mjsatterwhite@aep.com
ecmiller1@aep.com

Counsel for Columbus Southern Power Company and Ohio Power Company

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals.	)	Case No. 10-2376-EL-UNC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised 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 and Ohio Power Company to Amend their Emergency Curtailment Service Riders.	)	Case No. 10-343-EL-ATA 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 and Ohio Power Company for Approval of Mechanisms to Recover Deferred Fuel Costs Ordered Under Section 4928.144, Ohio Revised Code.	)	Case No. 11-4920-EL-RDR Case No. 11-4921-EL-RDR

OPINION AND ORDER

The Commission, considering the above-entitled applications, the Stipulation and Recommendation, and the record in these proceedings, hereby issues its opinion and order in these matters.

APPEARANCES:

Steven T. Nourse, Mathew J. Satterwhite, and Anne M. Vogel, American Electric Power Service Corporation, One Riverside Plaza, 29th Floor, Columbus, Ohio 43215-2373, and Porter, Wright, Morris & Arthur, LLP, by Daniel R. Conway, 41 South High Street, Columbus, Ohio 43215, on behalf of Columbus Southern Power Company and Ohio Power Company.

Mike DeWine, Attorney General of the State of Ohio, by Werner L. Margard III, John H. Jones, and Steven L. Beeler, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215-3793, on behalf of the Staff of the Public Utilities Commission of Ohio.

Bruce J. Weston, Interim Ohio Consumers' Counsel, Office of the Ohio Consumers' Counsel, by Maureen R. Grady and Terry L. Etter, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215-3485, on behalf of the residential utility consumers of Columbus Southern Power Company and Ohio Power Company.

Boehm, Kurtz & Lowry, by David F. Boehm, Michael L. Kurtz, and Kurt Boehm, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202, on behalf of Ohio Energy Group.

Chester, Wilcox & Saxbe, LLP, by Zachary D. Kravitz, Mark S. Yurick, and John W. Bentine, 65 East State Street, Suite 1000, Columbus, Ohio 43215-4213, on behalf of The Kroger Company.

McNees, Wallace & Nurick, LLC, by Samuel C. Randazzo, Frank P. Darr, and Joseph E. Oliker, 21 East State Street, Suite 1700, Columbus, Ohio 43215-4228, on behalf of Industrial Energy Users-Ohio.

David C. Rinebolt and Colleen L. Mooney, 231 West Lima Street, P.O. Box 1793, Findlay, Ohio 45840, on behalf of Ohio Partners for Affordable Energy.

Bell & Royer Co., LPA, by Barth E. Royer, 33 South Grant Avenue, Columbus, Ohio 43215-3927, on behalf of Dominion Retail, Inc.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff and Lija Kaleps-Clark, 52 East Gay Street, Columbus, Ohio 43216-1008, and Covington & Burling, by William

Massey, 1201 Pennsylvania Avenue, Washington, D.C. 20004, on behalf of The COMPETE Coalition.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff and Stephen M. Howard, 52 East Gay Street, Columbus, Ohio 43216-1008, on behalf of PJM Power Providers.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff and Lija Kaleps-Clark, 52 East Gay Street, Columbus, Ohio 43216-1008, on behalf of Constellation NewEnergy, Inc., and Constellation Energy Commodities Group, Inc.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff and Mike Settineri, 52 East Gay Street, Columbus, Ohio 43216-1008, on behalf of Retail Energy Supply Association.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff and Lija Kaleps-Clark, 52 East Gay Street, Columbus, Ohio 43216-1008, and Eimer, Stahl, Klevorn & Solberg LLP, by David Stahl and Arin Aragonaon, 224 South Michigan Avenue, Chicago, Illinois 60604, on behalf of and Sandy Grace, 101 Constitution Avenue NW, Washington, D.C. 20001, on behalf of Exelon Generation Company.

Schottenstein, Zox & Dunn Co., LPA, by Christopher L. Miller, Gregory J. Dunn, and Asim Z. Haque, 250 West Street, Columbus, Ohio 43215, on behalf of the Association of Independent Colleges and Universities of Ohio, the city of Hilliard and the city of Grove City.

Bricker & Eckler, LLP, by Lisa Gatchell McAlister and Matthew W. Warnock, 100 South Third Street, Columbus, Ohio, 43215-4291, on behalf of Ohio Manufacturers Association- Energy Group.

Bricker & Eckler, LLP, by Thomas J. O'Brien, 100 South Third Street, Columbus, Ohio 43215-4291, and Richard L. Sites, 155 East Broad Street, 15th Floor, Columbus, Ohio 43215-3620, on behalf of Ohio Hospital Association.

Nolan Moser and Trent A. Dougherty, 1207 Grandview Avenue, Suite 201, Columbus, Ohio 43212-3449, on behalf of the Ohio Environmental Council.

FirstEnergy Service Company by Mark A. Hayden, 76 South Main Street, Akron, Ohio 44308; Calfee, Halter & Griswold, LLP, by James F. Lang, Laura C. McBride, and N. Trevor Alexander, 1400 KeyBank Center, 800 Superior Avenue, Cleveland, Ohio 44114; and Jones Day, by David A. Kutik and Allison E. Haedt, 901 Lakeside Avenue, Cleveland, Ohio 44114-1190, on behalf of FirstEnergy Solutions Corporation.

Thompson Hine, LLP, by Philip B. Sineneng, 41 South High Street, Suite 1700, Columbus, Ohio 43215, on behalf of Duke Energy Retail.

Joseph V. Maskovyak and Michael Smalz, Ohio Poverty Law Center, 555 Buttles Avenue, Columbus, Ohio 43215, on behalf of Appalachian Peace and Justice Network.

Keating, Muething & Klekamp PLL, by Kenneth P. Kreider, One East Fourth Street, Suite 1400, Cincinnati, Ohio 45202 and Holly Rachel Smith, HITT Business Center, 3803 Rectortown Road, Marshall, Virginia 20115, on behalf of Wal-Mart Stores East, LP, and Sam's East, Inc.

SNR Denton US, LLP, by Emma F. Hand and Douglas G. Bonner, 1301 K Street NW, Suite 600 East Tower, Washington, D.C. 20005, on behalf of Ormet Primary Aluminum Corporation.

Bricker & Eckler, by Christopher L. Montgomery and Terrence O'Donnell, 100 South Third Street, Columbus, Ohio 43215-4291, and Richard L. Sites, 155 East Broad Street, 15th Floor, Columbus, Ohio 43215-3620, on behalf of Paulding Wind Farm II.

Henry W. Eckhart, 1200 Chambers Road, Suite 106, Columbus, Ohio 43212, on behalf of the Sierra Club and Natural Resources Defense Council.

Gregory J. Poulos, 101 Federal Street, Suite 1100, Boston, Massachusetts 02110, on behalf of EnerNOC Inc.

Tara C. Santarelli, 1207 Grandview Avenue, Suite 201, Columbus, Ohio 43212-3449, on behalf of the Environmental Law and Policy Center.

Vorys, Sater, Seymour & Pease, LLP, by Lija Kaleps-Clark and Benita A. Kahn, 52 East Gay Street, Columbus, Ohio 43216-1008, on behalf of the Ohio Cable Telecommunications Association.

OPINION:

I. HISTORY OF THE PROCEEDINGS

A. Prior Electric Security Plan

On March 18, 2009, the Commission issued its opinion and order regarding Columbus Southern Power Company's (CSP) and Ohio Power Company's (OP) (jointly, AEP Ohio or the Companies) application for an electric security plan (ESP 1 Order) in Case Nos. 08-917-EL-SSO and 08-918-EL-SSO. By entries on rehearing issued July 23, 2009 (First ESP EOR) and November 4, 2009, the Commission affirmed and clarified certain issues raised in the ESP 1 Order. As ultimately modified and adopted by the Commission, AEP-Ohio's ESP 1 decisions directed, among other things, that AEP-Ohio be permitted to recover the incremental capital carrying costs that would be incurred after January 1, 2009, on past environmental investments (2001-2008) and approved a provider of last resort (POLR) charge for the ESP period.[1]

The Commission's ESP 1 decision was appealed to the Supreme Court of Ohio (Court). On April 19, 2011, the Court affirmed the ESP Order in numerous respects, but remanded the proceedings to the Commission with regard to two aspects of the Commission's decision. The Court determined that Section 4928.143(B)(2), Revised Code, does not authorize the Commission to allow recovery of items not enumerated in the section. The Court remanded the cases to the Commission for further proceedings in which the Commission may determine whether any of the listed categories set forth in Section 4928.143(B)(2), Revised Code, authorize recovery of environmental investment carrying charges.[2] Regarding the POLR charge, the Court concluded that the Commission's decision that the POLR charge is cost-based was against the manifest weight of the evidence, an abuse of the Commission's discretion, and reversible error. The Court noted two methods by which the Commission may consider the POLR charge on remand, specifically, as either a non-cost-based POLR charge or by way of evidence of AEP-Ohio's actual POLR costs.[3]

By entry issued May 25, 2011, the Commission directed AEP-Ohio to file revised tariffs by May 27, 2011, making the POLR and environmental investment carrying charges subject to refund, as of the first billing cycle of June 2011, until the Commission specifically ordered otherwise on remand. The Commission issued its order on remand on October 3, 2011. In the order on remand, the Commission found that AEP-Ohio should be authorized to continue its recovery of incremental capital carrying costs that are incurred after January 1, 2009, on past environmental investments (2001-2008) that were not previously

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1 AEP-Ohio ESP Order at 24-28, 38-40; First ESP EOR at 10-13, 24-27.

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

3 *In re Application of Columbus S. Power Co.* (2011), 128 Ohio St.3d 512, 519.

reflected in the Companies' existing rates prior to the ESP 1 Order. In addition, the Commission found that the POLR charges authorized by the ESP 1 Order were not supported by the record on remand, and directed the Companies to eliminate the amount of the POLR charges authorized in the ESP Order and file revised tariffs, consistent with the order on remand.

B. Pending Electric Security Plan

On January 27, 2011, AEP-Ohio filed the instant application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code. This application is for approval of an electric security plan (ESP 2) in accordance with Section 4928.143, Revised Code. As filed, AEP-Ohio's SSO application for ESP 2 would commence on January 1, 2012, and continue through May 31, 2014.

By entry issued February 9, 2011, a procedural schedule was established, including the scheduling of a technical conference, prehearing conference and the evidentiary hearing. The technical conference was held on AEP-Ohio's ESP application on March 8, 2011. The Commission also scheduled five local public hearings throughout AEP-Ohio's service territory. As a result of the Court's remand of AEP-Ohio's ESP 1 Order, the evidentiary hearing was rescheduled. Prehearing conferences were held on July 6, 2011 and August 9, 2011. Initially, the evidentiary hearing was called on August 15, 2011, and continued until September 7, 2011, to allow for settlement negotiations.

On September 7, 2011, numerous parties (Signatory Parties) to the proceedings filed a Joint Stipulation and Recommendation (Stipulation). A new procedural schedule was adopted at the September 7, 2011 hearing, which rescheduled the evidentiary hearing to October 4, 2011. At the Commission's request, the Companies made a presentation to the Commissioners on the Stipulation on September 19, 2011.

The following parties were granted intervention by entries dated March 23, 2011, and July 8, 2011: Industrial Energy Users-Ohio (IEU), Duke Energy Retail Sales, LLC (Duke Retail), Ohio Energy Group (OEG), Ohio Hospital Association (OHA), Ohio Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAE),[4] The Kroger Company (Kroger), FirstEnergy Solutions Corporation (FES), Paulding Wind Farm II LLC (Paulding), Appalachian Peace and Justice Network (APJN), Ohio Manufacturers' Association Energy Group (OMAEG), AEP Retail Energy Partners LLC (AEP Retail), Distributed Wind Energy Association (DWEA),[5] PJM Power Providers Group (P3), Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (Constellation), COMPETE Coalition (Compete), Natural Resources Defense Council

4 On November 17, 2011, OPAE filed a motion to withdraw from the consolidated Stipulation proceedings.

5 On August 4, 2011, DWEA filed a motion to withdraw from the ESP 2 proceedings.

(NRDC), The Sierra Club (Sierra), city of Hilliard, Ohio (Hilliard), Retail Energy Supply Association (RESA), Exelon Generation Company, LLC (Exelon), city of Grove City, Ohio (Grove City), Association of Independent Colleges and Universities of Ohio (AICUO), Wal-Mart Stores East, LP and Sam's East, Inc., (Wal-Mart), Dominion Retail, Inc. (Dominion Retail), Environmental Law and Policy Center (ELPC), Ohio Environmental Council (OEC), Ormet Primary Aluminum Corporation (Ormet) and EnerNOC, Inc. (Enernoc).

Pursuant to entry issued September 16, 2011, the hearing in the ESP 2 case was consolidated with a number of other related matters for purposes of considering the Stipulation. The consolidated cases include: an emergency curtailment proceeding in Case Nos. 10-343-EL-ATA and 10-344-EL-ATA (Emergency Curtailment Cases); a request for the merger of Columbus Southern Power Company with Ohio Power Company in Case No. 10-2376-EL-UNC (Merger Case); a determination of the capacity charge that the Companies will assess on competitive retail electric service (CRES) providers in Case No. 10-2929-EL-UNC (Capacity Charges Case); and a request for approval of a mechanism to recover deferred fuel costs and accounting treatment in Case Nos. 11-4920-EL-RDR and 11-4921-EL-RDR (Fuel Deferral Cases).

At the hearing on the Stipulation, the Signatory Parties offered the testimony of 23 witnesses in support of the Stipulation and seven witnesses provided testimony in opposition to the Stipulation. Initial briefs were filed by the Signatory Parties, Ormet, IEU, FES, OCC and APJN,[6] Staff, Exelon, Constellation, and RESA, on November 10, 2011, and reply briefs were filed on November 18, 2011.

C. Summary of the Local Public Hearings

Five local public hearings were held in order to allow CSP's and OP's customers the opportunity to express their opinions regarding the issues raised in the Companies' ESP 2 application. Two local public hearings were held in Columbus, and hearings were also held in Canton, Lima, and Marietta. At the local hearings, a total of 61 witnesses offered testimony. In addition to the public testimony, numerous letters were filed in the docket regarding the proposed ESP applications.

A principal concern of many customers in opposition of the proposed ESP 2 both at the public hearings and in letters was the impact the proposed rate increase would have on unemployed, low-income, and fixed income customers who are already having difficulty paying their utility bills. Witnesses also argued that the proposed nonbypassable riders would prevent customers from being able to reduce or control their electric bill through the selection of a CRES provider. Several witnesses at the public

[6] OPAE was included as a party to the joint brief at the time the initial brief was filed but subsequently withdrew from the consolidated Stipulation proceedings.

hearings also emphasized that an increase in the cost of electric service may further strain the community resources available to assist unemployed and low-income customers.

However, the vast majority of the testimony offered at the public hearings was to endorse the proposed ESP 2 and establish support for AEP-Ohio based on its charitable corporate citizenship and economic development endeavors in Ohio. Numerous witnesses praised AEP-Ohio as a good corporate citizen that supported a cross-section of community and charitable organizations through the AEP Foundation, volunteerism and grants, including but not limited to youth organizations, food banks, hunger prevention programs, homelessness prevention assistance programs, utility assistance, and educational programs. A number of witnesses also endorsed the Companies' Turning Point solar project. The witnesses stated that the Turning Point solar project will bring 325 permanent jobs to Noble County. Witnesses also explained that the project is reusing land previously mined for the facility, and provisions of the project require the manufacturer to produce the solar panels in Ohio and to support in-state commerce. Several witnesses also praised AEP-Ohio for their commitment to economic development. Testimony was repeatedly offered expressing the importance of reasonable electric rates and rate stability to attract and retain investments in Ohio. Witnesses stated that AEP-Ohio willingly participates and supports local community councils and organizations to attract new businesses to Ohio.

D. Procedural Matters

1. Motions to Withdraw

On September 1, 2011, DWEA filed a notice requesting to withdraw as an intervenor from the ESP 2 case. After initial briefs were filed, on November 17, 2011, OPAE filed a notice requesting to withdraw from the consolidated Stipulation proceedings and further states it no longer takes a position for or against the Stipulation. The Commission finds DWEA's and OPAE's requests to withdraw from the applicable proceedings to be reasonable and that the requests be granted.

2. IEU's Motion to Dismiss

On October 12, 2011, IEU made an oral motion to dismiss this proceeding and raised it again in its initial brief filed on November 10, 2011. In support of its motion, IEU argues: (1) only an electric distribution utility (EDU) may file an application for an ESP can apply for an ESP; (2) the ESP must relate to the terms, charges or services of the EDU; (3) that the record evidence does not support the provisions of the original application that were incorporated into the Stipulation since the original application is not part of the record. IEU asserts the Companies have failed to comply with the statutory and administrative requirements to file an application for an ESP and therefore the application and the Stipulation should be dismissed. The Commission lacks subject matter jurisdiction to consider either the original application or the Stipulation. The Attorney Examiners took the motion under advisement. (Tr. VI at 956-958, Tr. XI at 1944-1945, IEU Br. at 7-17.)

First we note, as IEU asserts, AEP-Ohio, is not in and of itself an EDU. AEP-Ohio is a notation referring to both CSP and OP, and CSP and OP are the EDUs. The Commission commonly uses the AEP-Ohio notation and interprets applications and pleadings using the reference to refer to both CSP and OP. For this reason, we recognize that the application and the Stipulation to affect CSP and OP. The ESP proposed in the Stipulation relates to the terms, charges, and services of CSP and OP, in addition to negotiated items which the Commission could not have required, pursuant to the statutes, be included in an ESP and are a benefit to the public and the Companies ratepayers. The Commission finds that sufficient and adequate evidence has been provided in the record by the Companies and the Signatory Parties that indicates that this matter is within the Commission's jurisdiction, and should be further considered by the Commission. Accordingly, IEU's motion to dismiss is denied.

3. Signatory Parties' Motion to Admit Stipulation

On October 12, 2011, the Signatory Parties moved to admit the Stipulation as Signatory Parties' Exhibit 1, and the implementation plan as Signatory Parties' Exhibit 2. IEU, FES, and OCC objected to the admission of the Stipulation, arguing that no witness sponsored the exhibits, making it improper to admit the exhibits. The Attorney Examiners took the motion under advisement. (Tr. VI at 952-953, 1941-1942.)

The Commission finds that witnesses for the Companies and other Signatory Parties submitted testimony and were subject to cross examination on the various provisions of the Stipulation, including its appendices and the detailed implementation plan. Further, AEP-Ohio's witness Hamrock was the Companies' witness offering testimony that the Stipulation complies with the three-part test for adoption by the Commission. Accordingly, we find that the Stipulation, including the appendices, Signatory Parties Exs. 1 and 2, should be admitted into the record.

4. Interstate Gas Supply, Inc.'s Application for Interlocutory Appeal

On October 11, 2011, Interstate Gas Supply, Inc. (IGS) filed a motion to intervene in these proceedings. AEP-Ohio filed a memorandum contra on October 13, 2011. IGS filed a response on October 14, 2011. On October 26, 2011, the Attorney Examiners' denied IGS's motion to intervene, stating that IGS's motion was filed a week after the hearing had begun (Tr. XII at 1968). On October 31, 2011, IGS filed an application for interlocutory appeal. AEP-Ohio filed a memorandum contra IGS's application for interlocutory appeal on November 2, 2011.

In its interlocutory appeal and motion to intervene IGS asserts that the Commission has been directed to liberally construe the statutes and rules governing intervention in favor of granting intervention, including late request for intervention. *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St. 3d 384. IGS notes that it filed its CRES application with the Commission on September 29, 2011,[7] and argues that extraordinary circumstances exist, as the Stipulation includes provisions not contemplated by the ESP 2 application. Specifically, IGS points to provisions within the Stipulation that provide that AEP-Ohio will conduct stakeholder meetings to discuss and address implementation issues with interested Signatory Parties. Further, IGS notes that the Commission has granted late intervention requests in AEP-Ohio's previous ESP proceeding[8] and in AEP-Ohio's significantly excessive earnings test (SEET) case.[9]

In its memorandum contra, AEP-Ohio and the argues that, pursuant to Rule 4901-1-11(F), Ohio Administrative Code (O.A.C.), untimely motions for intervention will only be granted under extraordinary circumstances. AEP-Ohio asserts neither that merely because IGS had recently applied for authority to be a certified CRES provider, or the provisions of the Stipulation constitute extraordinary circumstances that justify granting IGS's motion for intervention.

The Commission notes that IGS's motion was untimely. IGS's motion to intervene was filed seven months after the deadline for intervention. Further, at the time the motion was filed, the hearing on the Stipulation had been in progress for one week. We do not find that IGS presents any extraordinary circumstances which justify granting its untimely motion. While IGS cites to two cases in which intervention was granted after the deadline, the two intervenors were granted intervention after the intervention deadline, both were granted well before the hearing began.

In AEP-Ohio's SEET proceeding, as IGS states, Kroger's untimely request for intervention was granted. Kroger filed its motion for limited intervention after the hearing ended. Initially AEP-Ohio, and other intervenors opposed Kroger's motion for limited intervention, however, AEP-Ohio subsequently withdrew its opposition to Kroger's intervention as part of a Stipulation resolving the issues raised in the SEET case and another proceeding pending before the Commission at the time.[10] Ultimately, the SEET Stipulation was withdrawn and the SEET case for 2009 earnings was ultimately decided by the Commission as a litigated matter.

IGS's application for CRES certification and the Stipulation's proposed stakeholder processes do not constitute extraordinary circumstances sufficient to justify IGS's request

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7 In Case No. 11-5326-EL-CRS, IGS was granted a certificate effective October 30, 2011.

8 *In re AEP-Ohio*, Case Nos. 08-917-EL-SSO and 08-917-EL-SSO, Entry (October 29, 2008) at Finding (4).

9 *In re AEP-Ohio*, Case No. 10-1261-EL-UNC, Entry (December 1, 2010) at Finding (14).

10 *In re AEP-Ohio*, Case Nos. 09-872-EL-UNC and 09-873-EL-UNC.

for untimely intervention in the middle of the hearing. Further, numerous CRES providers have been granted intervention in these matters, some in support of the Stipulation, and others in opposition, such that the Commission believes the interest of CRES providers, like IGS, are adequately represented in these matters and the subsequent stakeholder processes. Accordingly, the Commission affirms the ruling to deny IGS's untimely motion to intervene.

5. FES' Motion for a Protective Order

Along with its initial brief, FES filed a motion for a protective order pursuant to Rule 4901-1-24(D), O.A.C. The information for which FES seeks protective treatment, as produced by AEP-Ohio pursuant to a confidentiality agreement, relates to forecasted fuel expenditures and related analyses.

AEP-Ohio has consistently asserted that the redacted forecasted fuel expenditures and related information constitutes competitively sensitive, proprietary and confidential, trade secret information pursuant to Section 1333.61, Revised Code, that requires protection from public disclosure. Pursuant to a confidentiality agreement between AEP-Ohio and FES, FES states that it is obligated to seek confidential treatment of the designated information. AEP-Ohio asserts that redacted projected forecast for fuel expenditures information and related analyses has been kept confidential and as a result retains substantial economic value to the Companies. Public access to the information, according to AEP-Ohio, would significantly reduce the value of the information causing harm to AEP-Ohio. Thus, AEP-Ohio requests that the confidentiality of the information be maintained consistent with Section 149.43, Revised Code, and Rule 4901-1-24, O.A.C.

The Commission finds that the forecasted fuel information and related analyses for which AEP-Ohio and FES requests a protective order constitutes confidential, proprietary, competitively sensitive and trade secret information. Accordingly, the request for a protective order is reasonable and should be granted. Further, pursuant to Rule 4901-1-24(F), O.A.C, the forecasted fuel expenditures information and related analyses, filed under seal in this matter, shall be granted protective treatment for 18 months from the date this Order is issued. Any request to extend a protective order must be filed at least 45 days before the order expires.

6. OCC/APJN's Request for Review of Procedural Rulings

(a) Motion to Strike Rebuttal of Hamrock and Baker

In its initial brief, OCC/APJN explains that the rebuttal testimony of AEP-Ohio witness Hamrock and Staff witness Baker includes references to Case No. 09-756-EL-ESS (Reliability Standards Case), wherein the customer average interruption duration index (CAIDI) and the system average interruption frequency index (SAIFI) were established pursuant to a Stipulation. While OCC objected to the use of the Stipulation during the rebuttal testimony of AEP Ohio witness Hamrock, only the CAIDI and SAIFI indices established in the Reliability Standards Case were recognized in the proceeding (Tr. XII at 1991).

OCC/APJN allege that the Reliability Standards Case Stipulation specifically includes language which precludes the use of the Stipulation for certain purposes (OCC/APJN Br. at 15-16). The Reliability Standards Case Stipulation specifically states:

> Except for purposes of enforcement of *the terms of this Stipulation, this Stipulation, the information and data contained therein or attached, and any Commission rulings adopting it, shall not be cited as precedent in any future proceeding for or against any party* or the Commission itself. The Parties' agreement to this Stipulation in its entirety shall not be interpreted in a future proceeding before the Commission as agreement to any isolated provision of this stipulation. More specifically, no specific element or item contained in or supporting this Stipulation shall be construed or applied to attribute the results set forth in the Stipulation as the results that any party might support or seek but for this Stipulation. (Emphasis added)

OCC/APJN argues that the denial of its motion to strike the rebuttal testimony of Mr. Hamrock and Mr. Baker was unreasonable and unjustifiable, as the ruling breaches the settlement.

In their reply brief, the Signatory Parties argue that OCC's participation in the Reliability Standards Case and Stipulation are already matters of fact in the public record. Further, the Signatory Parties contend that neither Mr. Hamrock nor Mr. Baker testified to the content or any provisions of the Reliability Standards Case Stipulation. As such, the Signatory Parties argue that neither AEP-Ohio nor Staff violated the boilerplate language in the Reliability Standards Case Stipulation prohibiting citing to the Stipulation as precedent of the terms, information, and data contained in the stipulation. The Signatory Parties explain that the information provided was not cited against OCC, nor did the Companies or Staff seek to use any term of that stipulation as precedent. AEP-Ohio and Staff simply offered the proceeding and its resolution to demonstrate that Staff and OCC have actively participated in monitoring each company's reliability and service quality (Signatory Parties Reply Br. at 109-110).

We disagree with OCC and APJN that the acknowledgement that the reliability indices applicable to CSP and OP is an attempt to use the indices as precedent, or to use the terms, information, and data contained in the Reliability Standards Case stipulation as precedent or against a party to the proceeding. The reliability indices are not a basis for answering a similar issue of law in the ESP 2 Stipulation cases. We find OCC/APJN's claim, that recognizing the mere establishment of the indices developed as part of a Stipulation, will have a chilling effect on future settlements, to be without merit, as there was no discussion towards the content of the Reliability Standards Stipulation, nor was there an attempt to establish it as precedent. Accordingly, the Commission affirms that Attorney Examiner's ruling.

(b) Motion to strike statutory reference in the rebuttal of Hamrock

In AEP-Ohio witness Hamrock's rebuttal testimony he indicated, upon the advice of counsel, that certain statutory provisions support the distribution investment rider (DIR) (AEP-Ohio Ex. 19 at 3). At the hearing, OCC made a motion to strike that the above-referenced portion of Mr. Hamrock's rebuttal testimony. In support of its motion, OCC argued that: (1) As a non-attorney, Mr. Hamrock was not qualified to give a legal opinion; (2) The advice of counsel was hearsay; and, (3) In an earlier discovery request propounded to the Companies by OCC, the Companies had cited only one provision of the statute to support the authority for the DIR, Section 4928.143(B)(2)(h), Revised Code, and the Companies had failed to supplement their response to the interrogatory. OCC's motion was denied (Tr. XII at 1990-1991). OCC/APJN request that denial of OCC's motion to strike be reversed (OCC/APJN Br. at 15-18).

In response, the Signatory Parties state that numerous other parties to these matters noted that their respective understanding of the statutory basis for certain provisions was based on "the advice of counsel" including the testimony of OCC witness Duann. Next, the Signatory Parties retort that OCC/APJN's request to reverse the Attorney Examiners' ruling on the basis that it was hearsay, should also be denied, noting that the Commission and the Supreme Court of Ohio have consistently recognized that Commission hearings are not strictly bound by the Ohio Rules of Evidence. Finally, the Companies submit that its reliance on Section 4928.143(B)(2)(d), Revised Code, did not arise until October 3, 2011, when the Entry on Remand Order was issued in the ESP 1 case. AEP-Ohio reasons that its failure to supplement its discovery response should not be held against the Companies in light of the extraordinary number of discovery requests propounded by OCC, coupled with the fact that the additional basis for statutory support of the DIR was offered during rebuttal in the course of the hearing (Signatory Parties Reply Br. at 112-114).

First, we find OCC/APJN's arguments, that the testimony of a non-attorney witness who admits that his legal understanding is based on the advice of counsel should be struck, are without merit. Numerous parties in this proceeding were permitted to acknowledge that their understanding of the various statutory provisions was based on the advice of counsel. The Companies were afforded the same treatment. The Commission and its Attorney Examiners recognize that non-attorneys are not qualified to offer a legal opinion. However, we do not find it necessary to strike the testimony but to accord the testimony its proper weight.

The Signatory Parties state that the Commission is not strictly bound by the Ohio Rules of Evidence. *Greater Cleveland Welfare Rights Org., Inc., v. Pub. Util. Comm.*, 2 Ohio St.3d 62 (1982). When the Commission has deemed it appropriate, it has allowed the admission of hearsay testimony. We note that hearsay rules are designed, in part, to exclude evidence, not because it is not relevant or probative, but because of concerns regarding jurors' inability to weigh evidence appropriately. These concerns are inapplicable to administrative proceedings before the Commission, as the Commission has the expertise to give the appropriate weight to testimony and evidence. Thus, the Commission will not overturn the Attorney Examiners' ruling in this instance on the basis that it is hearsay.

Finally, the Commission will not overturn the Attorney Examiners' ruling on the basis that the Companies failed to supplement their discovery response. In reaching this decision, we find that OCC/APJN have not been prejudiced by additional statutory support. Mr. Hamrock's rebuttal testimony was filed October 21, 2011, and he was cross-examined on his rebuttal testimony on October 26, 2011. OCC and APJN were afforded an opportunity to challenge the Companies' claim that Section 4928.143(B)(2)(d), Revised Code, supports the DIR in its cross examination of Mr. Hamrock, as well as in its briefs.

(c) Motion to Strike Customer Survey Results

At the hearing, OCC made a motion to strike portions of the rebuttal testimony of Mr. Hamrock (Companies Ex. 19 at 4) and Mr. Baker (Staff Ex. 5 at 4) on the grounds that each witness's discussion of customer survey results was inadmissible hearsay under the Ohio Rules of Evidence. OCC's motions to strike were denied (Tr. XII at 1986; Tr. XIII at 2367-2368).

OCC/APJN contend that the testimony relating to customer survey results was improperly permitted into the record and was prejudicial to OCC. OCC/APJN argue that Mr. Hamrock's discussion of the survey results do not meet the business records exception under Ohio Rule of Evidence 803(6). Regarding Staff's use of the survey results, OCC/APJN state the survey results do not meet the requirements of the public records exception under Ohio Rule of Evidence 803(8). Further, OCC/APJN alleges that the customer survey results were prepared in anticipation of this litigation and thus cannot be within the scope of the hearsay business records exception (OCC/APJN Br. at 18-21).

The Signatory Parties reiterate that the hearsay provision of the Ohio Rules of Evidence are not strictly applicable to Commission proceedings and that the survey results should not be stricken from the testimony for that reason. Further, the Signatory Parties reason that the customer survey results are, as was argued at hearing, a business record and public record. In addition, Mr. Baker's testimony as to AEP-Ohio's compliance with the reliability standards for 2010 is not hearsay, but rather, is Mr. Baker's expert opinion.

For these reasons, the Signatory Parties believe the Attorney Examiners' ruling should be affirmed (Signatory Parties Reply Br. at 110-112).

For the same reasons offered in response to OCC/APJN's claim of hearsay as to the other motions to strike Mr. Hamrock and Mr. Baker's testimony, we reject the claim in this instance. The Commission notes that Rule 4901:1-10-10(B)(4)(b), O.A.C., provides that the customer surveys "shall be conducted under staff oversight." We find that Mr. Baker, as the section chief of the Reliability and Service Analysis Division of the Commission, is vested with the responsibility and has the experience to offer an expert opinion on the customer survey results as well as to offer an opinion regarding the Companies compliance with Rule 4901:1-10-10, O.A.C. Accordingly, we affirm the Attorney Examiners' ruling on this issue.

(d) Motion to strike references to 2009, 2010, and 2011 customer reliability surveys

Staff witness Baker testified that AEP-Ohio had met the Companies applicable reliability standards established for the year 2010 (Staff Ex. 5 at 5). OCC moved to strike the testimony arguing that it was hearsay and the motion to strike was denied (Tr. XIII at 2370). In its brief, OCC/APJN reiterates the arguments of OCC: that the cited portion of Mr. Baker's testimony is hearsay; that statements made by AEP-Ohio customers in the survey cannot be a business record as it relates to the Commission Staff; and the survey results were prepared in anticipation of litigation, and is not a business record created or retained as a regular operation of the Commission's business. OCC/APJN also claim that because the reliability standards were established as a part of the Reliability Standards Case Stipulation, the testimony is improper. OCC/APJN requests that the decision to deny the motion to strike be overturned.

RESA and the Signatory Parties assert that no harm or prejudice has been demonstrated by OCC/APJN. RESA states that unlike cases tried to a jury, Commission proceedings are tried and considered to Attorney Examiners with the knowledge and experience to give the contested evidence the appropriate weight. Accordingly, RESA and the Joint Signatories argue the motion to overturn the Attorney Examiners' ruling should be denied. (RESA Brief at 2; Signatory Parties Reply Br. at 107-108, 110-112.)

As previously noted, the Commission is not strictly bound by the Ohio Rules of Evidence and, in this instance, no prejudice has been demonstrated by OCC and APJN regarding the admission of the customer reliability surveys. These concerns are inapplicable to administrative proceedings before the Commission, as the Commission has the expertise to give the appropriate weight to testimony and evidence. Further, we note that with the implementation of Rule 4901:1-10-10, O.A.C., Staff was actively involved in the development of the survey. Thus, the Commission will not overturn the Attorney Examiners' ruling in this instance on the basis that it is hearsay.

7. Ormet's Motions to Strike

On November 15, 2011, and November 22, 2011, Ormet filed motions to strike portions of the Signatory Parties' brief and reply brief. Ormet requests that portions of pages 47-48 and pages 43-46 of the initial brief and portions of pages 22-23 and the last full sentence on page 24 of the Signatory Parties' reply brief be stricken.

The cited portions of the initial and reply briefs relate to Ormet's kilowatt hour (kWh) tax exemption and Ormet's contractual history with AEP-Ohio and another electric cooperative. Ormet asserts that the cited portions of the Signatory Parties' initial brief were not supported by evidence in the record and are irrelevant to this proceeding. Ormet notes that the bench sustained its objection on redirect regarding testimony sought on the kWh tax exemption (Tr. Vol. III at 267-268). Ormet asserts that its electric service history is irrelevant to whether the load factor provision (LFP) is unduly discriminatory going forward. Ormet contends that Signatory Parties did not request that administrative notice be taken of its prior applications for reasonable service arrangements filed with the Commission. As such, Ormet requests that the information be stricken from the brief or given no weight by the Commission.

The Signatory Parties filed memoranda contra Ormet's motions on November 21, 2011, and November 28, 2011. In their memoranda contra, the Signatory Parties argue that Ormet's history as an AEP-Ohio customer and its exemption from the kWh tax demonstrate that Ormet has frequently been treated as unique in relation to other AEP-Ohio customers. The Signatory Parties offer that the issue is not, as Ormet alleges, whether there is a difference in the services furnished to Ormet, but whether the LFP of the Stipulation is unduly discriminatory to Ormet. The Signatory Parties retort that, although the rates determined as a part of the prior unique arrangements may not be applicable, the prior unique arrangements demonstrate that Ormet has historically been treated differently from than customers. The Signatory Parties calculation of Ormet's kWh tax exemption is based on Ormet's peak demand of 520 MW, as offered by Ormet in its brief and in testimony (Tr. I at 263). The Signatory Parties reason that the information presented in the statute, Section 5727.81, Revised Code, need not be entered into the record and, together with the record evidence, provide sufficient information for the Signatory Parties to make the arguments on the kWh tax. The Signatory Parties note that the Attorney Examiners' ruling did not go to whether the kWh tax exemption was irrelevant or unsupported. The Signatory Parties note that it is not necessary that administrative notice be taken for a Commission order to be cited on brief. Finally, the Signatory Parties opine that the petitions and one of the applications which Ormet request be stricken, were actually filed by Ormet, and presumably contained information that was accurate and reliable. Thus, the Signatory Parties recommend that the Commission reject Ormet's motion to strike any portion of the briefs and assign the arguments their appropriate weight.

Ormet filed replies reiterating its requests to strike. Further, Ormet submits that any rate differential in the service to similarly situated customers must be based on some actual and measurable differences in the furnishing of services. Ormet asserts that the Signatory Parties have not presented a nexus in this proceeding to justify excluding Ormet from the LFP. *Mahoning Cnty. Township*, 388 N.E.2d at 742.

The Commission denies Ormet's motions to strike the Signatory Parties' briefs regarding the kWh tax exemption. The kWh tax exemption is clearly set forth in Section 5727.81, Revised Code, and the Signatory Parties have cited sufficient information to make claims as to Ormet's kWh tax status. Accordingly, we deny Ormet's motion to strike the first full paragraph on page 47 through the end of the second paragraph on page 48 of the Signatory Parties' initial brief and references in the reply brief as to the kWh tax exemption.

In addition, we deny Ormet's motion to strike the portion of the Signatory Parties' initial brief which discusses Ormet's electric service history. As the Signatory Parties point out, it is not necessary that a party request administrative notice of a Commission order to use the order in its brief. As such, we reject Ormet's request to strike. We recognize that, often at Ormet's request, Ormet has historically been treated differently than other OP customers. Prior to the filing of this ESP 2 case, Ormet had requested and been approved to receive a special rate based on the London Metal Exchange (Ormet 2009 Unique Arrangement). However, most persuasive to the Commission in this proceeding is Ormet's current unique arrangement for electric service effective through 2018, which covers the term of the proposed ESP Stipulation and beyond. The fact that Ormet is currently provided service pursuant to a unique arrangement effectively puts Ormet in a service class by itself. As such, the Commission finds it inappropriate to strike that portion of the initial brief discussing Ormet's electric service history.

8. <u>FES's Request to Strike</u>

In its reply brief, FES requests that two portions of Staff's brief, which reference transmission cost savings, be stricken and disregarded. FES asserts that claims in the brief of transmission cost savings are not supported by evidence within the record, are refuted by Staff's own testimony, and are not supported by any witness to the Stipulation proceedings. Further, FES notes that Staff's brief offers no citations to support the claimed transmission cost savings. Accordingly, FES reasons that the Commission should disregard Staff's assertion. (Staff Brief at 8, 10; FES Reply Brief at 30.)

Staff did not file a memorandum contra FES's motion to strike. In light of the fact that Staff did not support its claim with any record evidence nor refute FES's assertions, the Commission finds it is improper to rely on claims in the brief which are unsupported by evidence within the record. As such, the references in Staff's initial brief to any transmission cost savings shall be stricken.

II. DISCUSSION

A. Applicable Law

Chapter 4928 of the Revised Code provides an integrated system of regulation in which specific provisions were designed to advance state policies of ensuring access to adequate, reliable, and reasonably priced electric service in the context of significant economic and environmental challenges. In reviewing AEP-Ohio's application and the Signatory Parties' Stipulation, the Commission is cognizant of the challenges facing Ohioans and the electric industry and will be guided by the policies of the state as established by the General Assembly in Section 4928.02, Revised Code, which was amended by Senate Bill 221 (SB 221).

Section 4928.02, Revised Code, states that it is the policy of the state, *inter alia*, to:

(1) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service.

(2) Ensure the availability of unbundled and comparable retail electric service.

(3) Ensure diversity of electric supplies and suppliers.

(4) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management (DSM), time-differentiated pricing, and implementation of advanced metering infrastructure (AMI).

(5) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems in order to promote both effective customer choice and the development of performance standards and targets for service quality.

(6) Ensure effective retail competition by avoiding anticompetitive subsidies.

(7) Ensure retail consumers protection against unreasonable sales practices, market deficiencies, and market power.

(8) Provide a means of giving incentives to technologies that can adapt to potential environmental mandates.

(9) Encourage implementation of distributed generation across customer classes by reviewing and updating rules governing issues such as interconnection, standby charges, and net metering.

(10) Protect at-risk populations including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource.

In addition, SB 221 enacted Section 4928.141, Revised Code, which provides that effective January 1, 2009, electric utilities must provide consumers with an SSO, consisting of either a market rate offer (MRO) or an ESP. The SSO is to serve as the electric utility's default SSO.

AEP-Ohio's application in this proceeding proposes an ESP, pursuant to Section 4928.141, Revised Code. Paragraph (B) of Section 4928.141, Revised Code, requires the Commission to hold a hearing on an application filed under Section 4928.143, Revised Code, to send notice of the hearing to the electric utility, and to publish notice in a newspaper of general circulation in each county in the electric utility's certified territory.

Section 4928.143, Revised Code, sets out the requirements for an ESP. Under paragraph (B) of Section 4928.143, Revised Code, an ESP must include provisions relating to the supply and pricing of generation service. The ESP, according to paragraph (B)(2) of Section 4928.143, Revised Code, may also provide for the automatic recovery of certain costs, a reasonable allowance for certain construction work in progress (CWIP), an unavoidable surcharge for the cost of certain new generation facilities, conditions or charges relating to customer shopping, automatic increases or decreases, provisions to allow securitization of any phase-in of the SSO price, provisions relating to transmission-related costs, provisions related to distribution service, and provisions regarding economic development.

The statute provides that the Commission is required to approve, or modify and approve the ESP, if the ESP, including its pricing and all other terms and conditions, including deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply in an MRO under Section 4928.142, Revised Code. In addition, the Commission must reject an ESP that contains a surcharge for CWIP or for new generation facilities if the benefits derived for any purpose for which the surcharge is established are not reserved or made available to those that bear the surcharge.

B. Summary of the Stipulation

Pursuant to an Attorney Examiner entry issued August 30, 2011, the hearing in the ESP 2 case reconvened on September 7, 2011. Immediately prior to the commencement of the hearing, AEP-Ohio and certain parties to the proceedings filed the Stipulation (Joint Ex. 1) asserting to resolve all the issues raised in the ESP 2 case and several other AEP-Ohio cases pending before the Commission. The Signatory Parties to the Stipulation are: AEP-Ohio, Staff, OEG, Constellation, OHA, OMAEG, Kroger, Hilliard, Grove City, AICUO, Exelon, Duke Retail, AEP Retail, Wal-Mart, RESA, Paulding, OEC, ELPC, Enernoc, NRDC, and P3.[11]

The remaining parties in the proceedings include: OCC, OPAE, FES, APJN, Compete, Sierra, Dominion, and Ormet (jointly Non-Signatory Parties).

The Stipulation consists of numerous provisions and three appendices', as well as a detailed implementation plan. Pursuant to the terms of the Stipulation, the ESP would establish SSO rates commencing on January 1, 2012 through May 31, 2016. The Companies would file their next SSO application no later than February 1, 2015 (Signatory Parties' Jt. Ex. 1 at 4). The Stipulation includes, *inter alia*, the following provisions:

1. AEP-Ohio agrees to drop its proposals for the Facilities Closure Cost Recovery Rider, NERC Compliance Cost Recovery Rider, Carbon Capture and Sequestration Rider, Provider of Last Resort Rider, Environmental Investment Carrying Charge Rider, and Rate Security Rider. The nonbypassable environmental unit conversion/re-dedication structure is also being eliminated. (Stipulation at IV.1.a.)

2. The Stipulation contains a market transition rider (MTR) which establishes for demand metered customer classes on a revenue neutral basis, a nonbypassable energy credit. The energy credit, known as the load factor provision (LFP), is designed to stabilize electric service during the transition to deregulation of generation services by retaining some of the benefits associated with high load factor customers under current rates. There will be a nonbypassable demand charge of \$3.29/kW-month and an initial energy credit of \$0.00228/kWh to be adjusted quarterly to produce a net charge of \$0 per quarter for GS-2 customers. The LFP only applies to customers whose monthly peak demand is less than 250 MW. In addition, AEP-Ohio shall

[11] By letter filed September 9, 2011, as supplemented on September 15, 2011, P3 expressed its intent to be a Signatory Party to the Stipulation.

maintain an interruptible credit of $8.21/kw/month through the term of proposed ESP 2 for existing IRP-D customers, with the incremental costs of approximately $5 million to be collected through the economic development rider. (Stipulation at IV.1.b.)

3. All GS-1 and GS-2 schools that are currently shopping, as well as GS-2 customers that switch to a CRES provider after September 6, 2011, will receive a shopping credit of $10/MWh for the first one million MWh of usage per calendar year. Customers that obtain this shopping credit retain it for the entire term of the ESP. This credit will be included in the MTR over/under recovery calculation. Further, the MTR shall be modified so that only 50 percent is phased out by May 31, 2015, with the MTR ceasing to existing beginning with the June 1, 2015 billing cycle. (Stipulation at IV.1.c.)

4. AEP-Ohio shall establish a nonbypassable Generation Resource Rider (GRR), which will act as a placeholder for any project specific costs that the Commission may approve at a later date. If and when AEP- Ohio seeks recovery through the GRR, AEP-Ohio will be required to demonstrate how the proposed project complies with Section 4928.143(B)(2), Revised Code. AEP-Ohio states that the only projects that it will seek approval for under the GRR are Turning Point and the Muskingum River 6 (MR6) project. The Signatory Parties reserve their right to contest or otherwise take positions in the separate future cases that will determine whether to establish a nonbypassable charge and the appropriate level of the charge through the GRR. (Stipulation at IV.1.d.)

5. Customers that have waived POLR charges who return from shopping during the ESP term will be served at the applicable SSO rate and Case No. 11-531-EL-ATA shall be dismissed upon approval of the Stipulation. (Stipulation at IV.1.e.)

6. The Stipulation provides for automatic increases or decreases to the non-fuel bypassable base generation rate. Adjustments will be made as necessary in order to achieve an average rate of $.0245/kWh starting in January of 2012, $.0272/kWh in January 2013, and finally $.0274/kWh in January 2014, which would be in effect through May 31, 2015. (Stipulation at IV.1.f.)

7. The SEET return on equity (ROE) threshold will be 13.5 percent, as calculated in a manner consistent with the 2009 Commission order. (Stipulation at IV.1.g.)

8. AEP-Ohio will not file a separate application to initiate Phase 2 and beyond for the gridSMART project until completion and review of Phase 1. (Stipulation at IV.1.h.)

9. AEP-Ohio may establish its proposed Plug-in Electric Vehicle (PEV) tariff and absorb through shareholder funds the $2,500 allowance proposal provided that the costs associated with this offering shall not be collected from customers. (Stipulation at IV.1.i.)

10. The Stipulation provides for a one-time up front approval for the Timber Road Renewable Energy Purchase Agreement (REPA). This would allow for automatic recovery of costs through the fuel adjustment clause (FAC) and/or the alternative energy rider (AER) subject to financial audit. (Stipulation at IV.1.j.)

11. The revenue received pursuant to AEP-Ohio's Green Power Portfolio Rider (GPPR) will not be credited against REC expense or otherwise used to reduce the rate charged to customers that do not participate in the GPPR. The GPPR revenue will be used to procure and retire RECs solely on behalf of the participants in the GPPR rider. (Stipulation at IV.1.k.)

12. The Alternative Energy Rider (AER) will be subject to annual review in the FAC proceeding, including review by the FAC auditors. The initial FAC proceeding under this ESP shall include a determination of the methodology for valuation of RECs for bundled purchases and for self-generation. AEP-Ohio will be entitled to full recovery of prudently-incurred compliance costs through the AER. (Stipulation at IV.1.l.)

13. The current FAC mechanism continues through May 31, 2015. Upon implementation of full legal corporate separation and pool modification/termination and until May 31, 2015, the FAC will accommodate pass through of bilateral contractual

arrangements between AEP-Ohio (or the successor electric distribution utility entity) and an AEP affiliate as needed to supply generation services. A modified FAC mechanism will continue after May 31, 2015, in connection with a nonbypassable charge, if any, that is authorized for inclusion in the GRR. (Stipulation at IV.1.m.)

14. The Signatory Parties propose the establishment of the distribution investment rider (DIR) based on net capital additions made post-2000 as adjusted for accumulated depreciation. The associated carrying charge rate will include components to recover property taxes, commercial activity tax and income taxes, as well as a return on and a return of plant in service for net distribution investments on Federal Energy Regulatory Commission (FERC) accounts 360-374. The Stipulation provides that the return earned on distribution plants will be based on the cost of debt of 5.34 percent, a cost of preferred stock of 4.40 percent, and a return on common equity of 10.50 percent utilizing a 47.06 percent debt, 0.19 percent preferred stock, and 52.75 percent common equity capital structure. The net capital additions included for recognition under the DIR will reflect gross plant-in-service incurred post-2000, adjusted for growth in accumulated depreciation. As proposed, the DIR will be adjusted quarterly and audited on an annual basis for prudency. The annual DIR revenues collected will be capped at $86 million for 2012, $104 million for 2013, and $124 million for 2014 through May 2015. (Stipulation at IV.1.n.)

15. Continue the Enhanced Service Reliability Rider (ESR) as proposed. (Stipulation at IV.1.o.)

16. Establish the Storm Damage Recovery mechanism (deferral and liability accounting) with a baseline of $5 million per Staff's testimony beginning with calendar year 2011. (Stipulation at IV.1.p.)

17. Approval of the Stipulation will result in the Commission's approval of full legal corporate separation. This would result in the transmission and distribution assets of AEP-Ohio to be held by the electric distribution utility (EDU), while the GRR assets would remain with the EDU. Upon approval of full legal

corporate separation, AEP-Ohio will provide notice to PJM that it intends to participate in the Base Residual Auction for 2015-2016. In addition, the Stipulation notes that generation-related costs associated with the corporate separation will not be recoverable from customers. (Stipulation at IV.1.q.)

18. The Stipulation provides that AEP-Ohio will use a competitive bidding process (CBP) to meet its SSO obligation beginning June 1, 2015 through May 31, 2016. The CBP calls for an initial auction for the first 20 tranches of SSO load in 2013, the next 40 tranches in 2014, and the remainder of the SSO load no later than 2015. The auction-clearing prices shall be accepted by the Commission unless the Commission determines that one of the conditions set forth in the Stipulation was not met. Details relating to recovery of auction clearing prices through retail rates, as well as other matters such as the inclusion of GRR dedicated resources and procurement of renewables, are to be addressed in the stakeholder process. (Stipulation at IV.1.r.)

19. The Companies agree to make changes relating to competition and interaction with CRES providers. AEP-Ohio will add capacity and transmission information to the master customer list by or before January 1, 2012. The Companies will modify tariff switching rules and notice provisions, including the elimination of the 90-day notice requirement that certain customers must give before they can enroll with a CRES provider, the 12-month minimum stay requirements for industrial or large commercial customers by June 1, 2015, as well as the provision that residential and small commercial customers that return in summer must stay until April 15 of the following year. The Companies agree to discuss reducing the $10 switching fee associated with enrollment with a CRES provider. (Stipulation at IV.1.s.)

20. AEP-Ohio will collaborate with Staff to achieve FERC approval of the corporate separation and subsequent pool modification and termination prior to the first scheduled auction. Should FERC deny AEP-Ohio's application, then AEP-Ohio is relieved of its obligation to conduct auctions as provided for in the Stipulation. The Signatory Parties may file a motion to enforce the Stipulation in this docket, if they believe AEP-Ohio caused undue delay in the FERC proceedings. If the Commission finds

AEP-Ohio failed to appropriately handle matters within its control, AEP-Ohio shall conduct its auctions as provided for in the Stipulation. (Stipulation at IV.1.t.)

21. The Companies shall provide funding for the Partnership With Ohio (PWO) initiative of $3 million annually for the benefit of low-income customers during the term of the ESP, provided AEP-Ohio's return on equity exceeds ten percent for the prior calendar year. AEP-Ohio will collaborate with Staff todetermine the uses of the PWO fund. (Stipulation at IV.1.u.)[12]

22. The Companies will provide funding for the Ohio Growth Fund (OGF) initiative of $5 million annually for the benefit of economic development during the ESP term, provided AEP-Ohio's return on equity exceeds 10 percent for the prior calendar year, with funding not to be recoverable from customers. Further, an initial commitment of $50,000 annually over the next three years will be given to AICUO to utilize either for scholarships or alternative energy upgrades on its college campuses. (Stipulation at IV.1.v.)

23. The Signatory Parties and Companies will work to further develop opportunities for customer-sited resources and initiatives in exchange for incentive payments to the customers or exemptions from certain cost recovery mechanisms. The Companies commit incentives for LED traffic signals and street lighting to the cities of Grove City and Hilliard to develop pilot programs. The Companies commit to fund Grove City and Hilliard an amount not to exceed $100,000 for each municipality, pursuant to cost recovery that the Companies shall include in its 2012-2014 portfolio plan. (Stipulation at IV.1.w.)

24. AEP-Ohio shall commit to the acceleration of Ohio shale gas development through fleet transformation and fuel diversification. (Stipulation at IV.2.a.)

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[12] While the Stipulation does not provide that this provision shall not be recoverable from customers, the Commission notes that the Companies testified that this provision comes from shareholder funding (AEP-Ohio Presentation Tr. at 54-55).

25. The capacity charge for CRES providers will be set at an interim rate of $255 per megawatt-day (MW-day) effective January 1, 2012, for all shopping above 21 percent of AEP-Ohio's total retail load in 2012, 29 percent in 2013 until securitization is completed, 31 percent for all or the remaining portion of 2013, and 41 percent in 2014. The capacity charge below the established percentages will be the PJM RPM-based rate. After May 31, 2015, the state compensation mechanism will expire and the capacity charge will be the PJM RPM-based capacity rate. As of the date of the Stipulation, customers who receive their generation service from a CRES provider shall continue to be served under the RPM rate applicable for the remainder of the contract term, including renewals. The load of current CRES provider customers is included in the RPM set asides during the term of this ESP. (Stipulation at IV.2.b, Appendix C and Jt. Signatory Parties Ex. 2.)

26. AEP-Ohio agrees to pursue development of up to 350 MW of customer-sited combined heat and power (CHP), waste energy recovery (WER), and distributed generation resources in its service territory, with costs to be recovered under an appropriate rider. (Stipulation at IV.2.c.)

27. The Signatory Parties recommend that the Commission approve the merger, with the closing to occur after Commission approval of the Stipulation by the end of 2011. The Companies agree to maintain separate rate zones for distribution rates until the issue is subsequently addressed by the Commission in a separate proceeding. Effective January 1, 2012, CSP and OP transmission rates will be consolidated and CSP and OP generation rates (including the FAC rates) will also be consolidated. (Stipulation at IV.3.)

28. In Case Nos. 10-343-EL-ATA and 10-344-EL-ATA (Emergency Curtailment Service Riders), the current ECS and PCS, as well as the proposed ECS will be withdrawn, and AEP-Ohio shall permit retail customer participation in PJM demand response programs. Any customer already receiving an incentive from the applicable tariff rates, and is currently or would like to participate in PJM programs must agree to commit to the EDU, the peak demand response attributes that have cleared in the

PJM market, at no cost to the utility for the duration of the arrangement. (Stipulation at IV.4.)

29. The Signatory Parties agree to the pool termination/modification that will be filed with FERC. A pool modification rider (PMR) will be established with an initial rate of zero, and should the pool modification/termination's impact on AEP-Ohio exceed $50 million prior to May 31, 2015, AEP-Ohio may request cost recovery of the entire impact throughout the ESP term by a separate RDR application. The Signatory Parties reserve the right to challenge this recovery before the Commission and FERC. (Stipulation at IV.5.)

30. The Signatory Parties recommend the adoption of the Phase-In Recovery Rider (PIRR), a mechanism to recover accumulated deferred fuel costs, including carrying costs, to be effective with the first billing cycle of January 2012, as well as securitization of the PIRR regulatory asset.[13] The Stipulation includes a clause that, after securitization, should the Commission or the Court issue a decision that impacts the amount of PIRR regulatory assets, AEP-Ohio shall use a mechanism to make the appropriate adjustment ordered by the Commission or the Court that prospectively adjusts rates through a credit or charge. (Stipulation at IV.6.)

31. The Signatory Parties agree that the ESP package included as part of the Stipulation is more favorable in the aggregate than the expected results under an MRO (Stipulation at IV.7).

C. Standard of Review

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into Stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. See, *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, at 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978). This concept is particularly valid where the Stipulation is unopposed by any party and resolves almost all of the issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a Stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Cincinnati Gas &*

13 Although a signatory party to the Stipulation, Wal-Mart neither supports nor opposes this provision of the Stipulation.

Electric Co., Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR et al. (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the Signatory Parties, is reasonable and should be adopted. In considering the reasonableness of a Stipulation, the Commission has used the following criteria:

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

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

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

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 547 (1994) (citing *Consumers' Counsel*, supra, at 126). The Court stated in that case that the Commission may place substantial weight on the terms of a Stipulation, even though the Stipulation does not bind the Commission (*Id.*).

In addition to taking into consideration the advancement of state policies set forth in Section 4928.02, Revised Code, and determining the reasonableness of the Stipulation, because the proposed Stipulation includes the Companies' ESP 2 application, the Commission must determine whether the ESP is more favorable in the aggregate than MRO, pursuant to Section 4928.143(C)(1), Revised Code. The Commission has thoroughly reviewed the Stipulation, as well as the issues raised by the Non-Signatory parties, and we believe that, with the modifications set forth herein, we have appropriately reached a conclusion advancing the public's interest.

III. IS THE PROPOSED ESP MORE FAVORABLE IN THE AGGREGATE AS COMPARED TO THE RESULTS THAT WOULD OTHERWISE APPLY UNDER SECTION 4928.142, REVISED CODE.

Section 4928.143(C)(1), Revised Code, provides that the Commission should approve, or modify and approve, an application for an ESP if it finds that the ESP, including its pricing and all other terms and conditions, including any deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code (statutory test).

The Signatory Parties contend that the proposed ESP, including its pricing and all other terms and conditions, is more favorable in the aggregate as compared to the expected results under an MRO. According to the Signatory Parties, there are three aspects to the ESP test, the first being price comparison. AEP-Ohio witness Thomas estimated the ESP impact as compared to a price of an MRO amounts to $0.71/MWH, which AEP-Ohio witness Allen quantified as the proposed ESP being less favorable than the results that would otherwise apply under the statutory test by $108 million for non-shopping customers (Signatory Parties Br. at 137-38, citing to AEP-Ohio Ex. 4 and Ex. 5).

The Signatory Parties provide the second part of the test involves the evaluation of other quantifiable non-price benefits that would result from the proposed ESP that are unavailable under results that would otherwise apply as set forth in the statutory test. In support of this part of the test, Mr. Allen's testimony provides that the discounted capacity provided to CRES providers is an $856 million benefit, the reduced carrying cost rate for the PIRR is a $104 million benefit, and the net present value of the PWO and OGF initiatives is $27 million. Mr. Allen also believes that the SEET ROE threshold is a potential benefit, noting the last AEP-Ohio SEET threshold approved by the Commission was 4.1 percent higher than the threshold agreed to in the Stipulation (AEP-Ohio Ex. 4 at 18-20).

Third, the Signatory Parties explain that there are benefits of significant value that are not yet quantifiable. In support of the non-quantifiable benefits, the Signatory Parties provide that the ESP creates an earlier transition to market than is otherwise possible, and allows for the elimination of POLR charges. The Signatory Parties also assert that the commitment to pursue distribution revenue decoupling and alternative customer-sited generation resources are additional benefits. (Signatory Parties Br. at 145-147.)

FES counters that AEP-Ohio has failed to meet its burden of proving the proposed ESP is more favorable in the aggregate as compared to the results that would otherwise apply under Section 4928.142, Revised Code. In support of its assertion, FES points out that every witness, including AEP-Ohio witness Thomas and Staff witness Fortney, along with the Non-Signatory Parties' witnesses, found the proposed ESP price is higher than the projected MRO price. FES further claims that the Signatory Parties attempt to distort the statutory test by ignoring certain terms of the proposed ESP. (FES Br. at 7-12.)

FES also believes that, although AEP-Ohio witness Thomas's ESP vs. MRO price test correctly indicated that an MRO would cost less than the proposed ESP, it contains several material flaws. Specifically, FES claims that she failed to include values for the GRR, PMR, DIR, and MTR, did not use AEP-Ohio's own estimates of fuel costs, and assumed above market capacity prices, resulting in the competitive benchmark price being overstated. In addition, FES claims that Staff witness Fortney incorrectly calculated the market price in his statutory price test by using the wrong comparable market rate. (*Id.* at 13-20).

FES also opines that the benefits that AEP-Ohio uses to support the proposed ESP are non-existent. First, FES claims that AEP-Ohio cannot use the fact that it agrees to provide capacity to CRES providers at a significant discount as a benefit. FES states that this is not a benefit, as AEP-Ohio has not shown that it would have ever been entitled to use the original capacity charge as proposed in its application, and no Signatory Party, including Staff, found the reduction from the original capacity price to be a benefit to the proposed ESP (*Id.* at 43-45). FES also asserts that the Mr. Allen's claim that the PIRR's effect of lowering carrying costs is incorrectly calculated, as were the benefits associated with the PWO and OGF. FES also believes that the transition to market cannot be considered a benefit, as the Commission has the authority to waive any blending after two years under an MRO option. Further, FES states that the benefits associated with AEP-Ohio's investment in natural gas and solar generation are speculative, as there is no guarantee they will ever happen. (*Id.* at 80.)

IEU expresses similar concerns, stating that Ms. Thomas, as well as Mr. Fortney's comparison analyses are flawed (IEU Br. at 21-29). In addition, IEU and OCC/APJN claim that the non-price benefits touted by the Signatory Parties either do not exist or are speculative (OCC/APJN Br. at 34-35). Specifically, OCC/APJN claim the Signatory Parties' assertion that the removal of POLR charges from the ESP is a benefit is incorrect. OCC/APJN explain that both the Court and the Commission found there was no evidentiary support for the POLR charges (*Id.* at 37, citing to *In re Application of Columbus S. Power Co.* (2011), 128 Ohio St. 3d 512; Remand Order at 22-24).

Staff provides that the Non-Signatory Parties are incorrect in arguing that the Stipulation is not more favorable in the aggregate than the MRO option. Staff notes that its witness, Mr. Fortney, testified that while the Stipulation would fail on a strictly quantitative basis, the Stipulation provides numerous benefits that are impossible to quantify. Specifically, Mr. Fortney explains that the change in AEP-Ohio's business model which would allow for a competitively bid SSO by 2015, as well as the possibility of a new generation plant in Ohio that operates on Ohio shale natural gas are tremendous benefits of the proposed ESP. (Staff Br. at 19-20, Tr. Vol. X at 1714, 1751-1752.)

RESA asserts that the differences in methodologies and projected prices calculated under the statutory test, even from Non-Signatory Parties' experts, demonstrate that the pure numeric price analysis is too imprecise and uncertain to be conclusive. These differences, RESA notes, are useful and informative, but, because of the vast differences, it cannot be the sole determinative factor in this proceeding's outcome. Further, pursuant to Section 4928.143(C)(1), Revised Code, the Commission should consider a number of factors, both qualitative and quantitative, to determine in the aggregate whether the proposed ESP is more favorable than an MRO. Thus, RESA proclaims, that the Non-Signatory Parties fail to understand that the statutory test requires the Commission to weigh a number of factors, and thus it should not base its decision on a single strict numeric test. (RESA Br. at 19-24.)

In response to criticisms by the Non-Signatory Parties, the Signatory Parties explain that it is not necessary to include forecasted fuel charges in the price test, noting that Section 4928.142(D), Revised Code, provides the option of adjusting 2011 prices for changes in fuel and note that the Commission has not required forecasted data to be reflected in the price test (Signatory Parties Br. at 148 citing to Opinion and Orders in Case Nos. 08-917-EL-SSO et al. (AEP-Ohio SSO Case), and 08-920-EL-SSO (Duke Energy Ohio SSO Case). The Signatory Parties argue that the Stipulation's capacity prices are appropriate to use in the competitive benchmark price, as they represent a negotiated price for capacity available to CRES providers and CBP bidders. Further, the Signatory Parties explain that it is not necessary to include the 2015-2016 auction year in the price test, as all SSO generation in this period is being supplied through wholesale power purchased through competitive markets. The Signatory Parties also believe it is not necessary to include the GRR and PMR in the test, as both are placeholder mechanisms that would be established with initial rates of zero. (*Id.* at 149-159.)

The Commission finds that, pursuant to Section 4928.143, Revised Code, modifications must be made to the Stipulation for the proposed ESP to be more favorable in the aggregate than the expected results that would occur under Section 4928.142, Revised Code. In order to determine what modifications need to be made, we must first analyze which ESP/MRO comparison to use as the foundation for our analysis. Witnesses providing testimony on the statutory test include AEP-Ohio witnesses Thomas, Allen and Hamrock, Staff witness Fortney, FES witnesses Lesser and Schnitzer, IEU witness Murray, and OCC witness Duann.

We believe there are several material flaws in AEP-Ohio's testimony for determining whether the proposed ESP meets the statutory test. First, we believe Ms. Thomas erred by failing to include a cost for the GRR in her price comparison. As Staff witness Fortney testified, it is reasonable to include an estimated charge for the GRR, as AEP-Ohio has produced a revenue requirement for the Turning Point project, and AEP-Ohio has claimed the Turning Point project as a benefit of the proposed ESP (Tr. X at 1694-1695).

Second, we find that AEP-Ohio wrongly identified the removal of POLR charges as non-quantifiable benefit, as this was mandated the Commission in the remand proceeding. Third, we believe the Signatory Parties and AEP-Ohio cannot claim the discounted capacity price to CRES providers as a benefit. As Mr. Fortney appropriately stated in his testimony, AEP-Ohio's requested capacity price in its application was never certain, and therefore, it cannot be considered as either a benefit or meaningful number for the purposes of conducting the statutory test (Tr. X at 1707-1708).

Although we note the Non-Signatory Parties concerns that the PMR was not included in the price analysis, we believe it would have been speculative because there is no estimate on what the potential PMR costs could be (Tr. V at 678-679). We also agree with the Signatory Parties in their assertion that forecasted fuel costs do not need to be included in the price test based on Section 4928.143(D), Revised Code, as well as Commission precedent in the ESP 1 case and Duke Energy SSO Case (*In Re AEP Ohio*, Case Nos. 08-917 and 08-918-EL-SSO, Staff Ex. 1A, and Opinion and Order, at 71-72; *In Re Duke Energy Ohio*, Case No. 08-920-EL-SSO, Opinion and Order, at 11-13 and Attachment 2). Regarding the MTR, while Ms. Thomas did not include it in her cost analysis, AEP-Ohio appropriately recognized it as a cost when considering other non-price benefits from the proposed ESP (AEP-Ohio Ex. 4 at 18). Further, we note that the Non-Signatory Parties concerns about the DIR not being present in the price analysis are unwarranted, because AEP-Ohio would otherwise be entitled to seek an increase in distribution rates pursuant to Section 4909.19, Revised Code.

As Staff witness Fortney testified in this proceeding, due to the elimination of POLR charges out of the current generation rate as a result of the remand proceeding, the numeric price analysis changed in the statutory test (Tr. X at 1695-1697). As a result, Mr. Fortney explained that an MRO was more favorable than the proposed ESP by approximately $276 million (*Id.*). While many Signatory Parties correctly point out that the numeric price test is only a factor and should not be the sole consideration pursuant to Section 4928.142, Revised Code, the fact that there is a gap of over $325 million between the proposed ESP and MRO is significant enough that we believe it is necessary to make modifications to the proposed ESP.

The Stipulation provides that the proposed ESP includes automatic annual adjustments to the bypassable base generation rate to achieve average rates of $0.0245/kWh in January 2012, $0.0257/kWh in January 2013, and $0.0272/kWh in January 2014, to be in effect through May 31, 2015 (Stipulation at IV.1.f). Based on Mr. Fortney's testimony in the record and in looking to Mr. Fortney's statutory test Attachment A, it is apparent that the base generation rates are a significant factor in the MRO being more favorable than the proposed ESP in the numeric price test (Staff Ex. 4).

The Commission finds that we must modify the Stipulation to adjust the proposed automatic base generation rate increases in order for the proposed ESP to meet the statutory provisions of Section 4928.143, Revised Code. While FES correctly points out that the market price errors in Mr. Fortney's test reflect the proposed ESP being less favorable by approximately $325 million as opposed to $276 million, we note that FES's Table 3 reflects that in the June 2014 to May 2015 period, the proposed ESP is actually more favorable than results that would otherwise apply under the statutory test (FES Br. at 19). Using the values established by Mr. Fortney in the record in this proceeding, and noting FES's corrections, if we reduce the proposed increase in base generation rates by half to achieve annual average annual rates of $0.0227/kWh in January 2012, $0.0233/kWh in January 2013, and to $0.0241 for January 2014, the proposed ESP will be more favorable than the MRO by $42,453,616. Accordingly, with these modifications to the base generation rate adjustments, we find that the proposed ESP is quantitatively better than the results that would otherwise apply under Section 4928.142, Revised Code. However, as RESA correctly pointed out in their brief, we are required, pursuant to Section 4928.143(C)(1), to consider other factors, including qualitative factors, as the pure numeric test should not be conclusive of our analysis.

As we previously stated, the Commission agrees with the Non-Signatory Parties that the removal of POLR charges and the discounted capacity rate cannot be considered benefits of the Stipulation's proposed ESP. However, the Commission finds that Staff, along with the Signatory Parties and AEP-Ohio, are correct in their assertions that the ESP, as proposed, creates an earlier transition to market than is otherwise possible. The record demonstrates that the redesign of AEP-Ohio's corporate structure will be smoother if steps are taken prior to the transition to a competitively bid SSO. Further, the MR6 and Turning Point projects contribute the diversity of supply as is consistent with Section 4928.02, Revised Code, and allow the Commission to determine the need for construction of additional generation facilities in the event needed capacity additions are not developed by the market. In addition, the PWO and OGF initiatives are significant benefits that should be included when considering this proposed ESP in the aggregate. Further, our modification to remove the contingency relating to AEP-Ohio's ten percent on equity, as described below, removes any doubt that these initiatives will occur. PWO and OGF, are significant benefits that should be included when considering this proposed ESP in the aggregate. These benefits, coupled with the additional modifications to the Stipulation discussed below and with the fact that the quantitative analysis now favors the proposed ESP by over $35 million, ensure that, in the aggregate, the proposed ESP is more favorable than the results that would otherwise apply under Section 4928.142, Revised Code.

IV. STIPULATION THREE PRONG TEST

A. Is the Stipulation the Result of Serious Bargaining Among Capable, Knowledge Parties?

The first prong of the Commission's test in evaluating the reasonableness of a Stipulation requires an analysis of whether the settlement is a product of serious bargaining among capable, knowledgeable parties. There is disagreement among the Signatory Parties and Non-Signatory Parties as to whether the first prong was met.

The Signatory Parties provide that the Stipulation is the result of an extensive process involving experienced parties with diverse interests ranging from "industrial, commercial, and residential customers, to competitive generation suppliers, CRES providers, municipalities, alternative and advanced energy providers, curtailment service providers, and environmental groups," (Signatory Parties Br. at 19). The Signatory Parties explain that the discovery process enabled parties to gather extensive information about issues relating to the cases in this matter, noting that AEP-Ohio responded to over 2,187 requests for discovery (*Id.* at 20). The Signatory Parties provide that the creation of the Stipulation was the result of a process that was transparent and included representatives from all intervening stakeholders (Exelon Ex. 1 at 2). In addition, parties met five times throughout the month of August to resolve disputes among parties, with Staff conducting meetings several times with intervening parties without the Companies present, to facilitate the negotiation process (AEP-Ohio Ex. 8 at 8-9). Staff notes that the Signatory Parties have an extensive history of participating in matters before the Commission (Staff Ex. 4 at 2). Further, when emphasizing the seriousness of the bargaining that occurred among parties, Mr. Fortney explained that it was also very lengthy and extensive (*Id.*).

Following the August 30, 2011, joint motion for continuance, the Signatory Parties maintain that OCC, IEU, and FES were in opposition to the motion, and chose to stop participating in settlement negotiations. These parties established a joint defense agreement following the motion, while the resulting Signatory Parties continued to meet and circulate draft proposals until the Stipulation was filed on September 7, 2011 (AEP-Ohio Ex. 8 at 8-10, Tr. VII at 1284). AEP-Ohio also maintains that it continued to reach out to all parties even after some of the Non-Signatory Parties chose not to participate in settlement negotiations (Signatory Parties Br. at 22, citing to AEP-Ohio Ex. 8 at 9-10, Tr. VI at 941-942). Further, the Companies assert that prior to the Stipulation being finalized, a draft of the Stipulation was sent to all parties, including those who entered into a joint defense agreement, and solicited all parties to provide input (*Id.* at 22).

OCC disputes that all of the Signatory Parties were knowledgeable about the contents of the Stipulation. As an example, OCC notes that Signatory Party Grove City, did not perform an independent analysis but rather relied on analysis provided by other parties (Tr. IV at 508-512). OCC also points to Exelon's use of financial analysts to formulate its opinion on the Stipulation (Exelon Ex. 1 at 7, Tr. VI at 1016-1034). OCC opines that these examples indicate that not all parties were knowledgeable to the effects of the Stipulation, but rather were focused on their own parochial interests (OCC Br. at 22-24).

IEU raises similar concerns, noting that multiple Signatory Parties did not perform an independent analysis on whether the proposed ESP was more favorable in the aggregate than what would otherwise apply under the statutory test (IEU Ex. 9A at 6-7). In addition, IEU states some of the parties were not knowledgeable on all parts of the

Stipulation as evidenced by several parties having differing interpretations on key provisions, such as the pool modification or termination rider (Tr. IV at 492-494, 554, Tr. V at 708, Tr. IX at 1639). IEU also argues that some of the Signatory Parties committed to provisions in the Stipulation without any knowledge of the provisions (IEU Ex. 14).

FES states that the first prong cannot be met because the Stipulation was the result of exclusionary settlement discussions, and the Signatory Parties conducted little analysis of the actual terms of the Stipulation. FES witness Banks asserts that it, along with OCC and OPAE, were excluded from settlement negotiations after August 30, 2011 (FES Br. at 139-140, citing to FES Ex. 1 at 57-59, FES Reply Br. at 70-71). FES maintains that its exclusion from negotiations is significant because while some CRES providers support the Stipulation, FES is the only CRES provider currently active in AEP-Ohio's service territory (*Id.*). FES maintains that this is the type of situation that the Supreme Court was concerned with in *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 233 fn.2 (1996), in which the Court expressed concerns about the Commission adopting a partial Stipulation arising from exclusionary settlement meetings in which an entire customer class was excluded. FES contends that a similar situation arose in the creation of the partial Stipulation in this matter, because while the Signatory Parties contained CRES providers, none of their interests are comparable to FES's interests (FES Ex. 1 at 57-59).

The Signatory Parties counter that all parties, including FES, were kept engaged in the settlement process, even after they stopped participating in negotiations (Signatory Parties Br. at 24-25). Further, in response to IEU's argument that each signatory party focused on its own area of self-interest, Exelon notes that "the fact that each of the various settling parties focused on and fought for the particular items about which it was most knowledgeable and in which it was most interested, makes the overall settlement better, not worse, as it assures that detailed attention and consideration were given to all pertinent issues," (Exelon Br. at 5, citing Exelon Ex. 1 at 1-2, Staff Ex. 4 at 2).

The Commission finds assertions that the Stipulation was not the result of serious bargaining among capable, knowledgeable parties, to be unpersuasive. The Signatory Parties are represented by experienced counsel, who have appeared before the Commission in many cases. Further, the Signatory Parties represent a diversity of interests including the Companies, CRES providers, industrial and commercial customers, and Staff. While certain parties to the Stipulation are more experienced on certain provisions and subject matters within the Stipulation, this does not indicate that parties were not capable or knowledgeable on the Stipulation. It is inevitable that when multiple diverse parties with differing interests and objectives come together to bargain and negotiate a Stipulation such as the one proposed in this proceeding, various settling parties may have more background knowledge and experience in particular parts of the Stipulation than others. We agree with the assertion that this is a benefit to the negotiation process, as it allows for detailed analysis on the individual provisions within the

Stipulation by those parties who are experts on it, while allowing parties who may not be as familiar with a certain subject matters to provide new insights, raise questions, and challenge the product as it evolves. Thus, it appears insincere for some parties to proclaim that there were not diverse enough interests involved in the negotiation process, but then in turn state that the Stipulation should not be adopted because not all of the parties were knowledgeable on every specific aspect of the Stipulation.

Further, there is sufficient evidence in the record to support that the Stipulation is the product of serious bargaining. Numerous meetings were held throughout the month of August by both Signatory and Non-Signatory Parties, and additional discussions were conducted by Staff without the Companies present. In addition, the record supports that these discussions were open and transparent, and the settlement dialogue remained open even after some parties determined that the likely result would not be in their best interests.

With respect to the concerns raised by FES, the Commission believes there is insufficient evidence to determine that FES was actually excluded from settlement discussions or that the concerns the Court had in *Time Warner* are applicable here. FES's claim that other parties, including OCC and OPAE, were excluded from settlement negotiations, is inaccurate and misleading. In their initial brief[14], the Customer Parties acknowledge that "...it became apparent to several intervenors, including Customer Parties, that the proposed settlement would not result in an acceptable resolution...These intervenors expressed their desire to no longer participate in the negotiations at various stages of the process," (OCC/APJN Br. at 3). Such misleading statements undermine FES's credibility in presenting its arguments on all issues in this proceeding rather than just this issue.

The Court's language in *Time Warner* is inapplicable to this proceeding. The fact that other CRES providers were actively engaged in this proceeding provides ample support CRES providers as a group were not excluded from the negotiations that led to the Stipulation. Further, while FES may feel their interests are significant in comparison to the multiple CRES providers that signed the Stipulation, FES has not demonstrated that its interests are unique from other CRES providers.

Accordingly, the Commission finds that the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties and meets the first prong of our test for considering the Stipulation.

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[14] The Initial Brief filed by Customer Parties on November 10, 2011, was prior to OPAE's motion to withdraw from this proceeding.

B. Does the Stipulation Violate Any Important Regulatory Practices or Principle?

1. Market Transition Rider

The Commission finds that the Signatory Parties provide sufficient support for the MTR, however, we believe a modification is necessary. The Signatory Parties state the MTR's rate design will facilitate the transition from the Companies' current generation rates to the market-based SSO generation service rates by limiting the first, second, and third year changes in rates in a uniform manner to all customer classes, ultimately accomplishing 50 percent of the transition from current to market-based rates (AEP Ex. 2 at 9). The Signatory Parties also note that the interruptible credit reflects the Companies' efforts to restructure its interruptible service offering to aid in the transition to the Companies' participation in the competitive bid process (*Id.* at 6). Further, AEP-Ohio witness Roush claims that the MTR will actually result in a reduction in rates when compared to the change in rates before the MTR (AEP-Ohio Ex. 22 at Ex. DMR-R4). The Signatory Parties believe that, rather than waiting until the market transition in June 2015, which could subject customers to abrupt rate changes, the MTR design provides a reasonable glide path, and is reasonable based on both cost and market relationships (Signatory Parties Br. at 40).

The Signatory Parties assert that the MTR is designed to create stability for commercial and industrial customers, as is appropriate under Section 4928.143(B)(2)(d), Revised Code (OEG Ex. at 7-9). AEP-Ohio witness Roush maintains that this certainty is essential to commercial and industrial customers, as it will keep pricing consistent during the transition towards the deregulation of generation service pricing (AEP-Ohio Ex. 2 at 9). Further, OEG witness Baron proclaims that the stability in pricing for these customer classes will encourage economic development in these industries (OEG Ex. at 7-9). The Signatory Parties explain that the MTR will actually result in a reduction in rates when compared to the change in rates before the MTR, by uniformly transitioning any above or below average charges (AEP-Ohio Ex. 22 at Ex. DMR-R4). Further, Mr. Roush explains that GS-1 and GS-2 customer schools taking service under the standard service offer are not subject to the MTR and that such schools, as well as other GS-2 customers, may be eligible for shopping credits of $10/MWh (AEP-Ohio Ex. 2 at 11-12). Mr. Roush explained that the exemption from the MTR will reduce schools' rates (Tr. I at 95).

Regarding the LFP, the Signatory Parties maintain that the Companies have authorization to implement the provision pursuant to Section 4928.143(B)(2), Revised Code, and the results of the LFP are consistent with state policy by allowing for rate certainty for retail electric service (Signatory Parties Br. at 41). The Signatory Parties claim the stability created by the LFP also promotes state economic development (OEG Ex. 1 at 6-7). Mr. Baron points out that, as AEP-Ohio does not earn any profit from the LFP, it is appropriate for it to be nonbypassable, and it will not effect residential customers." (*Id.*)

The Signatory Parties also note that the LFP is not discriminatory towards Ormet, as Ormet has historically been treated differently than other AEP-Ohio customers, and thus, it is not discriminatory to continue to do so in this case (OEG Ex. 1 at 7-8). Further, Mr. Baron notes because Ormet's peak demand is 530 MW and its load factor is typically around 98 percent, to apply the LFP to Ormet would significantly skew results and result in a significant rate increase to every other GS-2, GS-3, and GS-4 customer in Ohio (*Id.*).

IEU asserts that the MTR design, which lowers rates for customers more likely to shop and raises rates for those less likely to shop, is an attempt by AEP-Ohio to restrict customer choice and limit competition (IEU Br. at 31 citing to FES Ex. 2 at 39 and Tr. IV at 532-39). FES believes this is unreasonable in that it subsidizes customer classes in an unfair manner (FES Ex. 42-44). Specifically, FES witness Lesser explains that the school shopping provision of the MTR creates an incentive for customers that may be less profitable to the Companies to switch to CRES providers, allowing AEP-Ohio to focus on its more profitable customers. This incentive, FES argues, is anti-competitive, and forces one set of ratepayers to subsidize shopping by another set of ratepayers (*Id.* at 43-44). FES witness Banks argues that the shopping credit for GS-2 customers and GS-1 and GS-2 schools of $10/MWh for the first 1,000,000 MWh, may potentially harm customers who would be eligible for the credit, but may never receive it because it is capped at 1,000,000 MWh of usage per calendar year (FES Ex. 1 at 19-20). Mr. Banks states that this limit may also discriminate against any new customers to AEP-Ohio's territory (*Id*).

Ormet argues that the LFP is discriminatory, explaining the rate structure of the LFP deliberately exclude Ormet from its benefits. The LFP, Ormet asserts, would leave Ormet as the only GS-3 or GS-4 customer to pay a rate that other parties consider to be unjust and unreasonable to high load factor customers (Tr. V at 648-649, Ormet Exs. 4, 5, and 13). Ormet points out that if the LFP is approved, it would be required to subsidize other customers, including competitors, at a cost of $17 million per year (Ormet Ex. 7, Tr. I at 125). Ormet cites to two Court cases, which provide that for there to be an inequality in rates, the difference must be based upon an actual differences in furnishing services to a customer, and the reasonableness must be determined from evidence within the Commission's record. (Ormet Br. at 9 citing to 388 N.E.2d, 739, 742, Ohio 1979, and 592 N.E.2d 1370, 1373, Ohio 1992). In addition, Ormet states that under Section 4905.33, Revised Code, a utility is forbidden from charging different rates to like customers (Ormet Br. at 8). Ormet believes that the record indicates that the Signatory Parties have not provided a reasonable justification for the discriminatory treatment. Further, Ormet stresses that the LFP undermines the current reasonable arrangement the Commission approved in Case No. 09-919-EL-AEC (Ormet Unique Arrangement Case).

The Commission finds that the proposed MTR is consistent with state policy by providing rate certainty and stability to AEP-Ohio customers while AEP-Ohio transitions its rate structure. The Commission believes that rate stability is an essential tool in order to promote economic development and ensure business retention in Ohio and the MTR ensures that customers will not face any uncertainty or abrupt changes through June 2015. However, we believe a modification to the Stipulation is necessary. The record indicates the shopping credit for GS-1 and GS-2 schools who are currently shopping and GS-2 customers that switch, is too small and has the potential to exclude many eligible customers with the 1,000,000 annual MWh limit. This may slow economic development by excluding new customers who move into AEP-Ohio's service territory but are capped out. Accordingly, the Commission finds that the customer credit should be modified to \$10/MWh for the first 2,000,000 MWh of usage per calendar year, with any unused MWh to carry over to the next calendar year. We also note that the increased shopping credit will serve to mitigate the increase to the rates of the GS-2 customers.

In addition, the Commission finds the LFP does not violate any regulatory principle or practice. Pursuant to Section 4928.143, Revised Code, EDUs may create provisions to promote economic development and provide rate stability to high load customers. The record sufficiently establishes that the proposed 250 MW peak threshold was created to ensure that rates would be stable enough to retain existing high load customers and promote economic development, without creating a dramatic provision that would actually lead to a rate increase for AEP-Ohio's industrial and commercial customers. The LFP, as proposed in the Stipulation, appropriately strikes such balance.

The Commission finds Ormet's arguments to be without merit. While it is true that Ormet is not eligible to receive the LFP, the provision is not discriminatory towards Ormet, as Ormet's rates are set pursuant to its Unique Arrangement Case, not AEP-Ohio's SSO rates that other high load industrial and commercial customers fall under. Accordingly, as Ormet has its own unique arrangement plan which runs through the entire term of the proposed ESP, it is disingenuous for Ormet to proclaim it is being treated differently from similarly situated customers when there are no similarly situated customers. Further, as a result of Ormet's Unique Arrangement Case, Ormet is already a beneficiary of the rate stability benefits the LFP is designed to create. Therefore, the Commission finds that the MTR provision of the Stipulation, including the LFP contained within the MTR, does not violate any important regulatory principle or practice.

2. <u>Generation Resource Rider</u>

AEP-Ohio witness Allen explains that the inclusion of the GRR in the Stipulation will provide AEP-Ohio with a placeholder mechanism to recover, if necessary, for costs associated with either the Turning Point solar project and the MR 6 shale gas project (AEP-Ohio Ex. 4 at 4-5). The Signatory Parties state that Sections 4928.143(B)(2)(b) and (c), Revised Code, make it permissible for the Commission to establish the GRR with an initial rate of zero, and it will only change if the Commission later approves a project-specific charge in a separate proceeding. The Signatory Parties reiterate that all of the parties to the Stipulation will reserve the right to oppose or support the establishment of any charge to be included in the GRR, and the costs would ultimately be subject to Commission review and approval under Section 4928.143(B)(2)(b) and (c), Revised Code (Signatory Parties Br. at 51, OEG Ex. 1 at 12-13). The Signatory Parties note that the rejection of the GRR would preclude the Commission from later deciding on the MR 6 shale gas project or Turning Point solar project (*Id.* at 52).

FES asserts that AEP-Ohio has failed to provide evidence to establish that costs associated with MR 6 and Turning Point meet the requirements in Section 4928.143(B)(2)(b) or (c), Revised Code (FES Ex. 2 at 45-46). FES opines that the approval of a placeholder rider like GRR would "cast a cloud of uncertainty over competitive markets." (*Id.* at 55). Accordingly, FES believes that based on the record, the GRR cannot be approved. Similarly, IEU asserts that the Companies have made no attempt to justify the GRR, but simply noted that the recovery under the rider is subject to future Commission proceedings (IEU Br. at 47 citing Tr. IV at 598).

Upon review of the record, we agree with the Signatory Parties that the language of Section 4928.143(B)(2), Revised Code, allows for a reasonable allowance for construction of an electric generating facility, and the establishment of a nonbypassable surcharge for the life of an electric generation facility. The Commission also notes that in order to consider the Turning Point and/or MR 6 projects we need to approve the placeholder mechanism pursuant to Section 4928.143, Revised Code. However, the Commission explicitly notes that in permitting the creation of the GRR, it is not authorizing the recovery of any costs for the Companies but is allowing for the establishment of a placeholder mechanism, and, as the Signatory Parties correctly assert in the Stipulation and in their brief, any recovery under the GRR must be authorized by the Commission. The Commission cannot and will not approve any recovery unless the Companies meet their burden set forth in Section 4928.143(B)(2), Revised Code, nor are any of the Signatory Parties obligated to take a position in support or opposition to any potential nonbypassable charges by sponsoring the Stipulation. The concerns expressed by FES and IEU are premature and will be addressed in a subsequent hearing if and when the Companies request a charge through the GRR. Accordingly, the Commission finds the establishment of the placeholder mechanism, GRR, does not violate any important regulatory principles or practices.

We are not persuaded by claims that the GRR casts a cloud of uncertainty over competitive markets in Ohio. Although we will first look to the market to build needed capacity, the proposed GRR provides a lifeline in the event that market-based solutions do not emerge for this state's generation needs. While Section 4928.143(b)(2), Revised Code, provides the Commission with authority to order construction of new generation facilities in Ohio, such new generation or capacity projects will only be authorized when generation needs cannot be met through the competitive market. Therefore, generation projects under the GRR, or any other surcharge authorized by Section 4928.143(b)(2), Revised

Code, must be based upon a demonstration of need under the integrated resource planning process and be narrowly tailored to advance the policy provisions contained in Section 4928.02, Revised Code, or the statutory mandates contained in Section 4928.64, Revised Code.

For example, with respect to Turning Point, AEP-Ohio will have the opportunity in subsequent proceedings to demonstrate that the Turning Point project is necessary to comply with the solar renewable energy resource provisions contained in Section 4928.64, Revised Code, and that sufficient solar energy resources are not available through competitive markets. The Commission notes that we have previously determined that solar energy resources have not been available through competitive markets in sufficient quantities in Ohio to comply with the statutory mandates. *In re Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company* , Case No. 11-2479-EL-ACP, Finding and Order (August 3, 2011) (granting *force majeure* determination for in-state solar energy resource requirement for 2010); *In re FirstEnergy Solutions Corp.*, Case No.10-467-EL-ACP, Finding and Order (February 23, 2011) (granting *force majeure* determination for in-state solar energy resource requirement for 2009). Regarding the proposed MR6 facility, AEP-Ohio will need to demonstrate, in subsequent proceedings, that the proposed facility is necessary to meet policy directives contained in Section 4928.02, Revised Code, such as maintaining adequate, reliable, efficient, and reasonably-priced retail generation service and ensuring the diversity of supply, and that the policy mandates cannot be met through market-based solutions.

Finally, the concerns expressed by FES and IEU are premature and will be addressed in a subsequent proceeding if and when the Companies request a charge through the GRR. Accordingly, the Commission finds the establishment of the placeholder mechanism, GRR, does not violate any important regulatory principles or practices.

3. Base Generation Rates

The Signatory Parties support the proposed fixed base generation rates during the pre-auction term of the proposed ESP. In support of the base generation rates, AEP-Ohio witness Hamrock testifies that the implementation of a fixed base generation rate will shift the risk from customers to the Companies. Mr. Hamrock opines that the plan will allow for rate stability and predictability for customers, noting there are no variable rate mechanisms (AEP-Ohio Ex. 8 at 14). Further, Mr. Hamrock explains that AEP-Ohio's significant environmental compliance investments will not be associated with a rider designed to track those investments (*Id.*). In addition, Mr. Hamrock notes that AEP-Ohio will not have a nonbypassable rider for the recovery of plant closure costs. The Signatory Parties also point out that the establishment of fixed base generation rates is consistent with the state policy goals in Section 4928.02, Revised Code.

The Signatory Parties provide that the proposed base generation rates were established by determining the market-based price relationship for customer usage, and then total generation rates were subsequently designed to produce prices consistent with the Stipulation. In Mr. Roush's testimony, he asserts that the base generation prices in the Stipulation rationalize the rate relationships "based upon the manner in which the market would price such loads..." Further, Mr. Roush explains that the proposed generation rates not only allow for transition into market-designed rates, but also eliminate historical cross-subsidization among tariff classes (AEP-Ohio Ex. 2 at 4-6, 8-9, Tr. XIII at 2308).

In support of the base generation rates, the Companies compare the proposed base generation rates to FirstEnergy's generation service rates. Mr. Roush asserts that the proposed generation rates in the Stipulation are much more closely aligned with FirstEnergy's market based pricing rates than are AEP-Ohio's rates before the Stipulation. As the Stipulation will result in a competitive bid process being used to determine SSO rates in June 2015, the Companies emphasize the importance of adjusting its generation rates to create an efficient transition to market based pricing (AEP-Ohio Ex. 22 at 3).

IEU asserts there is no justification for the proposed base generation rate increases. In support of its assertion, IEU claims there is no cost basis for the increase, rather, the only justification the Signatory Parties provide is that the proposed generation rates would be similar to market rates. Further, IEU states that the Companies have made no efforts to establish a cost basis for an increase in rates and revenues, thus failing to show the rates are reasonably priced (IEU Br. at 35-37, citing Tr. I at 113-114).

OCC/APJN provide that the Signatory Parties have not met their burden of showing the proposed generation rates are reasonable, but rather have only shown that the proposed base generation rates in the Stipulation are lower than what was proposed in the original application (OCC/APJN Br. at 39, citing Grove City Ex. 1 at 2, OHA Ex. 1 at 2). In addition, OCC/APJN provide that not only are the rates unjustified, but they harm residential customers in that they increase rates for CSP customers by 5.68 percent for winter usage and 7.89 percent for summer usage, based on 1,000 kWh of usage per month, by 9.23 percent for OP customers (OCC/APJN Br. at 25 citing to Tr. I at 59-61).

FES witness Lesser argues that the base generation rates proposed by the Signatory Parties are an attempt to foreclose market competition by reducing allocated costs to large commercial and industrial customers who are more likely to switch to a CRES supplier, and increasing costs to residential customers who are less likely to switch (FES Ex. 2 at 39-40). While AEP-Ohio claims the proposed generation rates are market based, FES believes the proposed generation rates do not represent actual market prices (FES Br. at 114).

The Commission finds the proposed fixed base generation rates, as we modified in accordance with statutory requirements contained in Section 4928.143, Revised Code, by cutting the proposed revenue increases in half to reflect annual average annual rates of $0.0227/kWh in January 2012, $0.0233/kWh in January 2013, and to $0.0241 for January 2014 are reasonable and do not violate any important regulatory principle or practice. The Commission has the authority to approve these modified automatic rate changes pursuant Section 4928.143(B)(2)(e), Revised Code, and believes the record demonstrates the automatic base generation rate increases are reasonable. The Non-Signatory Parties' arguments that the base generation increases lack justification are meritless, as there is not a statutory requirement nor is there a Commission mandate to require that the Companies conduct a cost of service study.

Furthermore, the automatic increases replace the provisions of the EICRR and are fully bypassable, which should promote competition in conformance with the state's policies set forth in Section 4928.02, Revised Code. We believe the proposed base generation rate increases will also ensure rate stability and certainty for customers throughout the transition period. In addition, OCC's concerns about harm to residential customers are meritless, as the Commission has reduced the automatic rate increases in the Stipulation half in order to meet the statutory requirements within Section 4928.143, Revised Code. Accordingly, based on our modifications to the base generation rates, as well as the elimination of historical subsidies and provisions of the EICRR, we find this section does not violate any important regulatory principle or practice.

4. Timber Road

The Signatory Parties provide that AEP-Ohio conducted a diligent and thorough RFP process to competitively bid and secure additional renewable resources. Due to AEP-Ohio's need for in-state renewables, AEP-Ohio witness Simmons explains that the Companies only considered bids for Ohio sited projects, and ultimately selected the proposal from Paulding, for its Timber Road wind farm. Specifically, AEP-Ohio witness Simmons explains that the REPA will supply a 99 MW portion of Timber Road's attributes for 20 years. AEP-Ohio witness Simmons testified that the REPA is necessary in order for the Companies to meet their increasing renewable energy benchmarks (AEP-Ohio Ex. 1 at 9-13).

The 20-year agreement, according the Signatory Parties, secures long-term financing, reduces up front costs, and allows for price certainty (*Id.*). While Paulding witness Irvin notes that the project is capital intensive, the fact that there are no fuel costs equates to no significant cost variables creating long-term risk for customers (Paulding Ex. 1 at 5). The Signatory Parties believe that its RFP process and 20-year term, as well as furthering the Companies' compliance with the renewable energy benchmarks, represents that the costs incurred are prudent (AEP-Ohio Br. at 61).

IEU asserts that the approval of up-front of costs associated with Timber Road violates Rule 4901-1-35-09(C), O.A.C., which requires that the Companies conduct an annual review demonstrating the costs are prudently incurred. IEU claims that, as the rule requires an annual review, the Signatory Parties are essentially asking for a suspension of the rule without providing any support for such action (*Id.*). Thus, IEU believes Commission approval of this provision would be unreasonable and unlawful. (IEU Br. at 65.)

The Commission finds that the Timber Road REPA does not violate any regulatory principle or practice by allowing for approval of a long-term agreement. IEU-Ohio's claim that the long-term agreement be subject to annual prudence reviews is impractical and misapplies Rule 4901-35-09(C), O.A.C. Further, we find that this long-term agreement promotes diversity of supply, as is consistent with state policies set forth in Section 4928.02, Revised Code. Accordingly, the Commission finds that the Timber Road REPA does not violate any regulatory principle or practice.

5. Distribution Investment Rider

In support of the DIR, the Signatory Parties offer that an ESP may include charges relating to carrying costs, pursuant to Section 4928.143(B)(2)(d), Revised Code, which the Commission recognized in the Entry on Remand, for environmental carrying costs.[15] The Signatory Parties state that the DIR will enable AEP-Ohio to target infrastructure investment to improve reliability for customers (AEP-Ohio Ex. 19 at 3-4). In addition, the Signatory Parties contend that after the Commission examines an electric utility's reliability to ensure that the electric utility's customers and service expectations are aligned, an ESP may include cost recovery and a reasonable return on distribution infrastructure modernization, pursuant to Section 4928.143(B)(2)(h), Revised Code.

Witnesses for IEU and OCC testified that neither the Companies nor Staff examined the reliability of AEP-Ohio's distribution system as a part of the ESP 2 proceeding. IEU and OCC also claim the record lacks support that the alignment of the service expectations of AEP-Ohio's customers and the electric utility are sufficient to meet the requirements of Section 4928.143(B)(2)(h), Revised Code. (OCC Ex. 1 at 31, IEU Ex. 8 at 7, IEU Ex. 9A at 22.)

On rebuttal, AEP-Ohio and Staff offered testimony that the reliability of the Companies are under constant review by Staff through performance standards and compliance filings (AEP-Ohio Ex. 19 at 3, Staff Ex. 5 at 4). The Signatory Parties emphasize that the Commission is statutorily required to examine the utility's reliability. AEP-Ohio claims aging infrastructure is the primary cause of customer outages and reliability issues, and the current level of funding is insufficient to improve increasing failure rates. As part of the DIR, AEP-Ohio states it will analyze its pole inspection, underground cable diagnostics and detection for deteriorated distribution facilities and equipment to target infrastructure investments to improve the distribution system and reliability for customers

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15 In re AEP-Ohio, Remand Order at 13 (October 3, 2011).

(AEP-Ohio Ex. 19 at 4.; Staff Br. at 13-15; Signatory Parties Reply Br. at 43-44, Tr. XII at 2005-2006).

OCC/APJN, FES, and IEU oppose the adoption of the DIR as set forth in the Stipulation. The Non-Signatory Parties argue that there is potential for double recovery of capital investments, given that AEP-Ohio has a pending distribution rate case wherein the Companies have requested the opportunity to collect a return on incremental net plant-in-service post-2000 through the date certain, August 31, 2010 (OCC Ex. 1 at 30, FES Ex. 2 at 49). *OCC/APJN contend that the DIR costs of $314 million over the term of the ESP is in* excess of any cost-based analysis presented by the Companies in its pending distribution rate case. The Non-Signatory Parties believe that approving the DIR will result in unreasonable and excessive rate increases for customers in conflict with the state policy in Section 4928.02(A), Revised Code (OCC/APJN Br. at 54, IEU at 55-56; FES Br. at 33).

OCC/APJN and IEU emphasize that the Court has held that if a provision of an ESP does not fit within one of the enumerated categories listed in Section 4928.143(B)(2), Revised Code, it is not authorized by statute. Further, according to OCC/APJN, the Companies have failed to meet the requirements of Section 4928.143(B)(2)(h), Revised Code, as the Companies have not indicated any specific investments to maintain or improvements to reliability performance associated with the DIR in this case. IEU notes that Staff did not perform any analysis for this case regarding AEP-Ohio's distribution system reliability (Tr. IX at 1656-1657).

OCC/APJN recommends that the Commission reject the Staff and the Companies' use of customer reliability surveys to demonstrate the alignment of their expectations and compliance with the statutory requirements. OCC/APJN reason that based on the survey results for 2009, 2010, and 2011, the vast majority of residential and commercial customers surveyed, 64 percent, stated that their reliability needs over the next five years would either stay the same, decrease, or decrease significantly. IEU states that the surveys did not include any information regarding the expectations of the industrial class. OCC/APJN reason that the Companies have met the more stringent reliability standards in 2010, with $140 million included in current rates, along with $24 million per year approved in ESP I for vegetation management. Thus, OCC/APJN opine, the additional funding requested via the DIR is unnecessary and should be rejected by the Commission. IEU argues that the requirements set forth in Rule 4901:1-35-03(C)(9)(g), O.A.C., have not been met and, therefore, request that the DIR be rejected (OCC/APJN Br. at 42-56; IEU Br. at 52-55; FES Br. at 33).

According to OCC/APJN, the DIR is authorized pursuant to Section 4928.143(B)(2)(d), Revised Code, and, this permits the recovery of carrying cost for provisions that have the effect of stabilizing or providing certainty of retail electric service. OCC/APJN contend that the Companies have not met their burden of demonstrating that the DIR carrying charges will provide certainty of service for the Companies and their customers (OCC/APJN Br. at 56-58).

IEU explains that the DIR carrying costs are excessive and unrelated to the Companies' risks, especially as the DIR is proposed to be a single-issue nonbypassable rider based on investments already made by the Companies. IEU argues that the carrying charge based on the weighted average cost of capital (WACC) is excessive in light of the fact that the DIR reduces the Companies' financial and business risk. IEU recommends that if the Commission approves the DIR, a carrying cost based on the cost of debt would be more commensurate with the Companies' risk including a lower equity component, if any, require that the Companies properly demonstrate and quantify distribution investments and to adjust DIR investment balances on which a utility earns a return to reflect accumulated deferred income taxes (ADIT) liabilities or assets (IEU Br. 56-58.)

AEP-Ohio admits that if the DIR is approved, a revenue credit in the distribution case would be appropriate such that only incremental distribution investments after the date certain would be excluded from the DIR cap. The Companies' support that the DIR does not violate any regulatory principle or practice, as it is the Companies intent, as supported by the Stipulation and testimony in the distribution rate case proceeding, to only recover the associated investment in one proceeding. The Signatory Parties reiterate that the Stipulation includes annual recovery limits on the DIR and a rate application stay-out provision such that the Companies can not file a distribution rate case to take effect prior to June 1, 2015. (Tr. XII 2055-56; Signatory Parties Reply Br. at 34-36).

The Commission recognizes that Section 4928.143(B)(2)(h), Revised Code, permits an ESP to include provisions regarding the utility's distribution service. These include single issue ratemaking or any other incentive ratemaking, and provisions regarding distribution infrastructure and modernization incentives. A provision for distribution infrastructure and modernization incentives may, but need not, include a long-term energy delivery infrastructure modernization plan. We find that the DIR is an incentive ratemaking to accelerate recovery of the Companies' investment in distribution service. It is not and need not be a "long-term energy delivery infrastructure modernization plan." In deciding whether to approve an ESP that contains any provision for distribution service, Section 4928.143(B)(2)(h), Revised Code, directs the Commission, as part of its determination, to examine the reliability of the electric utility's distribution system and ensure that customers' and the electric utility's expectations are aligned and that the electric utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system.

AEP-Ohio claims Staff has confirmed, that in 2010, the Companies were in compliance with their CAIDI and SAFI performance standards established in the Reliability Standards Cases. As the Companies and Staff emphasized, Staff continuously monitors each electric utility's distribution system reliability through service complaints, electric outage reports, and compliance with Rule 4901:1-10-10, O.A.C., among other provisions of Chapter 4901:1-10, O.A.C. The record supports that for 2011 to present, 20 percent of AEP-Ohio residential customers surveyed and 21 percent of commercial customers surveyed expected their future electric service reliability expectations to increase. The Commission has also been presented extensive testimony at the local public hearings that reliable electric service is crucial to attracting large commercial and industrial business to the state. Reliable service is also critical to the service satisfaction of residential customers.

The Commission finds that, upon examination of the reliability of the Companies' distribution system and upon consideration of the customers' and utility's expectations, the Companies are placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system. Having made such a finding, the Commission approves the DIR as an appropriate incentive to accelerate recovery of the Companies' prudently incurred costs.

Nonetheless, Commission finds that granting such an incentive requires enhanced Commission oversight. We believe that it is detrimental to the state's economy to require the utility to be reactionary or allow the performance standards to take a negative turn before we encourage the electric utility to proactively and efficiently replace and modernize infrastructure and permit the recovery of prudently incurred costs. Companies are correct to aspire to move from a reactive to a proactive distribution service. Companies are directed to work with staff to develop a plan to emphasize proactive distribution maintenance that focus spending on where it will have the greatest impact on maintaining and improving reliability for customers. Accordingly, Companies shall work with Staff to prepare this plan by June 1, 2012. Further, Companies shall submit its plan for Commission review in a separate docket.

Finally, the Commission understands the concerns relating to the potential for double recovery through the DIR and the pending rate distribution case. However, the possibility of double recovery can best be addressed as an adjustment in the pending distribution rate case because double recovery will not occur unless and until the Commission approves the Companies application in the pending rate case. Accordingly, as that the matter will be addressed in the pending distribution rate case proceeding, the policy concerns are without merit in consideration of the Stipulation.

Accordingly, we find that approval of the DIR does not violate ay important regulatory principle or policies and therefore approve the DIR as proposed in the Stipulation and direct Staff to monitor, as part of the prudence review of an independent auditor for in-service net capital additions.

6. Competitive Bidding Process

AEP-Ohio witness LaCasse explained there would be two unique processes within the stakeholder process. The first would deal with issues relating to rate design, treatment of the GRR and EDU owned generation, as well as the procurement of renewables. The second process would relate to the procurement process and details in the SSO (AEP-Ohio Ex. 6 at 16-18).

There is no material opposition by any Non-Signatory Parties to the incorporation of a CBP as part of an auction-based SSO. However, FES asserts that, while there are clear benefits to the CBP, it creates an unnecessary delay, as there would not be any competitive market supply in Ohio until June 1, 2015. FES proclaims that there is no need to delay the process, as the record does not reflect any evidence that AEP-Ohio cannot hold a CBP for its load beginning in 2012. FES argues that AEP-Ohio's unjustified delay of an additional three and half years, in addition to a potential contingency in the auction process caused by the pool termination provision, violates state policy by preventing AEP-Ohio's customers from accessing the benefits of wholesale competition (FES Br. at 92-94, 150).

The Signatory Parties retort that FES fails to understand the need for a transition period to restructure AEP-Ohio's business model (Signatory Parties Reply Br. at 56-61). Exelon witness Dominguez explains that while he would have preferred an early auction date, it is not feasible for AEP-Ohio to have entered the PJM market, as the PJM auctions are held three years in advance of the delivery date of capacity, and thus while it would have been preferable for AEP-Ohio to participate in PJM's competitively bid auctions as opposed to its FRR plan, it cannot change what happened in the past (Exelon Ex. 1 at 3). AEP-Ohio witness Nelson notes that conducting an auction before corporate separation occurs may create financial exposure for the Companies by displacing cost recovery for generation assets that currently exist, and would remove the Companies generation from participating in the auction, as the post-separation generation affiliate would not yet own the assets to be able to support bids (AEP-Ohio Ex. 7 at 24).

After reviewing the record, the Commission finds that the Signatory Parties' CBP proposal contained within the Stipulation is consistent with state policy under Section 4928.02, Revised Code. The Commission believes that it is reasonable for AEP-Ohio to utilize a transition period in order to adapt its corporate structure to achieve an auction based SSO. However, the Commission notes that we reserve the right to modify and alter any feature of the CBP process for future auctions as the Commission deems necessary based upon our continuing review of the CBP process, including the reports on the auctions provided to the Commission by the third party bid manager, the Companies, and Staff. Further, with regard to the CBP process, the Commission may reject the results of the auction upon a recommendation from the third party bid manager that the auction violated the competitive bidding process rules. The Commission notes that this provision does not circumscribe the authority which the Commission possesses to oversee the CBP process.

As we have already established in this opinion and order, in order to promote competition, AEP-Ohio should first divest its generation assets, begin to modify or terminate its membership in the AEP generation pool, and transition into PJM. While the Commission understands FES's interest in expediting the process, it is appropriate to allow AEP-Ohio the opportunity to change its corporate structure. However, to ensure a smooth transition to market based rates, we believe the Stipulation should be modified to require AEP-Ohio to file its next SSO application by June 1, 2014. Accordingly, the Signatory Parties' agreement in the Stipulation to establish a CBP under the timeframe set forth is appropriate and not inconsistent with state policy, nor does it violate any important regulatory principle or practice.

7. CRES Provider Information

The Signatory Parties opine that these improvements will promote competition in AEP-Ohio's service territory (Constellation Ex. 1 at 11, RESA Ex. 1 at 10). Constellation witness Fein states the provisions within the Stipulation will remove barriers to retail competition and facilitate the ability of CRES providers to provide service for retail customers (Constellation Ex. at 11). Further, the Signatory Parties provide that AEP-Ohio's 12-month minimum stay and switching fee cannot be classified as barriers to competition, as they were reflected in Commission approved tariffs. The Signatory Parties cite to Commission precedent, noting that the Commission has refused to establish a general prohibition of shopping rules (Signatory Parties Reply Br. at 61-62).

FES asserts that the Stipulation allows AEP-Ohio to maintain its barriers to competition until at least June 2015. FES witness Banks states that these minimum stay requirements will continue to make it difficult for customers to switch, and ultimately hinders competition (FES Ex. 1 at 53-54). Mr. Banks also explains that not only is AEP-Ohio's switching fee higher than any other Ohio EDU, but also that the Stipulation lacks any language to ensure that the switching fee is reduced or eliminated (*Id.*). FES also expresses concerns that AEP-Ohio does not offer rate ready consolidated billing, and does not propose to offer it in the Stipulation (*Id.* at 55-56).

The Commission takes concerns of anti-competitive behavior seriously, but finds that FES's arguments do not indicate any violation of Commission or state regulatory requirements. Regarding FES's concerns about the minimum stay requirements, we find that the proposed provisions in the Stipulation are not excessive when compared with those of other electric distribution utilities. *In re Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company,* Case No. 10-388-EL-SSO, Opinion and Order (August 25, 2010) (granting application for electric security plan); *In re Duke Energy Ohio,* Case No. 08-920-EL-SSO, Opinion and Order (December 17, 2008) (granting application for electric security plan). While the provisions providing for the removal of shopping barriers may not be to FES's liking, the Commission notes that they appear to be the result of good faith negotiations between the parties, and the compromise set forth within the Stipulation will promote competition in Ohio. Therefore, we find this provision to be reasonable.

8. Pool Modification and Termination

AEP-Ohio witness Nelson testifies that this provision in the Stipulation is necessary, as pool termination or modification and corporate separation are imperative when AEP-Ohio separates its generation function, and for AEP to conduct its auction based SSO (AEP-Ohio Ex. 7 at 23). Further, Mr. Nelson provides that an auction based SSO cannot be established as long as it owns generation assets and is a member within the AEP family generation pool (*Id.* at 24).

Mr. Nelson further testified that the PMR is reasonable in that it will be set an initial rate of zero, and cannot be triggered unless the impact of the pool modification/termination on AEP-Ohio exceeds $50 million prior to May 31, 2015. Further, Mr. Nelson explains that, as the Stipulation sets out, the Signatory Parties and any parties may oppose any such request for recovery of these costs, and whether AEP-Ohio can ever ultimately recover these costs is the subject of a future Commission proceeding, if necessary (AEP-Ohio Ex. 7 at 25). The Signatory Parties assert that Section 4928.143(B)(2)(d), Revised Code, supports the recovery of pool costs during the ESP, and notes that arguments to the contrary are not ripe and would be addressed accordingly should AEP-Ohio seek recovery any of pool modification impact (Signatory Parties Reply Br. at 55).

FES asserts that the PMR is unauthorized under Section 4928.143(B)(2), Revised Code, as it does not relate to any construction or work in process costs, environmental investments, or new generating facility surcharges. In addition, FES opines that the record lacks evidence indicating that the PMR will stabilize its retail electric rates or provide rate certainty. Therefore, FES concludes that as there is no statutory basis for the PMR (FES Br. at 131-135).

Similarly, IEU opposes the PMR, noting the Companies have failed to link it to any of the categories contained in Section 4928.143(B)(2), Revised Code. IEU expresses concerns that the PMR may lead to unintended consequences, noting that the Companies have not presented an estimate of the expected costs associated with the pool modification/termination (IEU Br. at 59, citing to Tr. Vol. V at 710). IEU also raises arguments that the consideration of the pool termination/modification costs in this proceeding is premature (*Id.* at 59).

Upon consideration of the evidence in the record, the Commission finds that the PMR should be approved pursuant to Section 4928.143(B), Revised Code. As such, the PMR placeholder mechanism at a zero rate level does not violate any regulatory principle or practice.

However, we believe that the language in the Stipulation regarding the PMR needs to be modified. The Stipulation states that if the impact of the pool modification or termination exceeds $50 million, AEP-Ohio may pursue cost recovery of the *entire* impact *during the ESP term. For example, if costs of the pool modification impact were* $55 million, the Stipulation, as proposed, would permit AEP-Ohio to request recovery of $55 million, not $5 million. The Stipulation, as proposed, appears to create a disincentive to AEP-Ohio to minimize the costs related to pool modification. Accordingly, we believe this section should be modified to permit AEP-Ohio to request cost recovery of potential pool modification or termination costs in excess of $50 million, as opposed to the entire pool modification or termination impact.

Accordingly, as modified, the Companies may file a request to recover costs of any pool modification or termination impact over $50 million. The Commission notes that in permitting the creation of the PMR, it is not authorizing the recovery of any costs for the Companies, but is allowing for the establishment of a placeholder mechanism, and, as the Signatory Parties correctly assert in the Stipulation and in their brief, any recovery under the PMR must be authorized by the Commission. If and when AEP-Ohio seeks recovery under the PMR, it will maintain the burden set forth in Section 4928.143, Revised Code. In addition, the Commission finds that in the event AEP-Ohio seeks recovery under the PMR, AEP-Ohio must first demonstrate the extent that the pool modification or termination benefitted the ratepayers and the extent that these costs and/or revenues should be allocated to Ohio ratepayers. Further, AEP-Ohio must demonstrate to the Commission that any recovery it seeks under the PMR is based upon costs which were prudently incurred and are reasonable.

9. Capacity Plan

OCC/APJN argue that the percentage of capacity set-aside at the RPM rate as proposed in the Stipulation, is insufficient, as the set aside for 2012 has already been surpassed. OCC/APJN, FES, and IEU claim the capacity charge of $255/MW-day will deter customers from shopping. (OCC/APJN Br. at 30; FES Ex. 1 at 10; IEU Ex. 9A at 9, 14, 17-18; AEP-Ohio Ex. 4 at 14; Tr. at 918-919.)

The Signatory Parties assert that these claims, overlook the potential headroom available to CRES providers to make an offer, and the ability to offer long-term contracts. The Signatory Parties note that at least one CRES provider is making competitive offers in the market based on the capacity price in the Stipulation. (Tr. IV at 544; Tr. at XI 1863, 1886-1887.)

(a) Capacity price

The bulk of the opposition to the capacity plan is in regard to the capacity price for all shopping above the designated set-aside percentages. FES argues that this Commission specifically adopted RPM pricing as the state compensation mechanism. In FES's opinion, capacity should always be priced at RPM, as it is economically efficient, avoids the distortion of incentives, encourages the development of new CRES providers, and does not give AEP-Ohio a competitive advantage. While FES acknowledges that AEP-Ohio can pursue, under Section 205 of the Federal Power Act, a change in the capacity compensation mechanism, FES reasons that PJM's Reliability Assurance Agreement (RAA) does not authorize AEP-Ohio, as an Fixed Resource Requirement (FRR) participant, to recover its full embedded cost. Rather, FES claims that capacity rates are usually set using the RPM auction process for PJM's capacity market subject to price caps based on what FES terms avoidable costs. FES acknowledges that under certain requirements an eligible load serving entity (LSE), including a CRES provider, may establish its own FRR plan but only after AEP-Ohio's FRR plan ends on May 31, 2015. Accordingly, FES reasons that the capacity price proposed in the Stipulation is unreasonable. FES estimates the RPM clearing price for June 2011-May 2012 to be approximately $116.16/MW-day; $16.52/MW-day for June 2012-May 2013; $27.73/MW-day for June 2013-May 2014; $125.94/MW-day for June 2014-May 2015. (FES Ex. 14 at 7-8, 11; FES Ex. 3 at 20-21; FES Br. at 43-57.)

FES contends that AEP-Ohio has historically charged CRES providers RPM pricing and, as part of the Stipulation, seeks to change the system to charge a capacity rate above RPM from January 1, 2012 through May 31, 2015. FES argues that this aspect of the Stipulation is anti-competitive and discriminatory against shopping customers, particularly since CRES providers no longer have the ability to make their own FRR election and supply their own capacity until June 1, 2015. CRES providers, according to FES, will be effectively precluded from offering savings to customers in AEP-Ohio's service territory. Further, FES asserts that AEP-Ohio is not entitled to its claimed full embedded costs nor does any capacity charge below AEP-Ohio's embedded cost mean a subsidy to CRES providers. (Tr. at 236, 539-540, 970-971, 982-983, 1043-1044; FES Ex. 14 at 17; FES Br.at 57-60.)

Finally, FES states that, even if cost based capacity pricing were permissible, AEP-Ohio has overstated its embedded capacity cost. FES reasons that under Amended Substitute Senate Bill No. 3 (SB 3) all generation plant investments after January 1, 2001 were to be recovered in the market. The transition period implemented in SB 3 to allow the electric utility to recover stranded costs has passed making AEP-Ohio's stranded generation costs no longer recoverable. Therefore, FES reasons that the Commission is prohibited from authorizing recovery of any transition revenues in accordance with Sections 4928.38 and 4928.141, Revised Code. FES notes that in the Companies' electric transition plan proceedings, CSP and OP waived the recovery of stranded generation costs through generation transition costs (GTC) or other equivalent recovery mechanisms other than competitive market pricing.[16] FES also argues that AEP-Ohio's calculation of its capacity costs is overstated to the extent that it fails to adjust for that portion of its embedded capacity costs recovered from off-system sales. FES witness Lesser calculates AEP-Ohio's capacity costs to be $57.35/MW-day (on a combined company basis, $179.60/MW-day for CSP and ($44.88)/MW-day for OP) which eliminates post-2000 investments, eliminates depreciation of existing generation plant in service as of January 1, 1 2001, adjusting income tax and accounting for any investment tax credit to be received. However, FES witness Schnitzer admitted that if he accounted for deferred fuel cost in his computation his maximum capacity rate would increase to more than $200/MW-day (Tr. VII 1457-1459; FES Ex. 2 at 23-29; FES Br. at 68-69).

AEP-Ohio admits that, since it has been a part of PJM, the Companies have been an FRR entity. The Signatory Parties emphasize that, as an FRR entity, AEP-Ohio has three options for pricing capacity provided to CRES providers: (a) a retail state compensation mechanism and in the absence of such a mechanism; (b) default rates based on the PJM RPM capacity auction price; or (c) a method based on the FRR entity's costs or such other cost basis shown to be just and reasonable. Historically, AEP-Ohio has been compensated at the adjusted PJM RPM auction price. The Companies argue that with the increased level of shopping and the falling auction prices over the next several years, the Companies are prevented from recovering from CRES providers the Companies' capacity costs. The Companies reason that CRES providers are utilizing AEP-Ohio's capacity resources but are avoiding paying the embedded generation capacity costs on the Companies books. Utilizing a formula method accepted by FERC to establish wholesale prices, in the Capacity Charges Case, AEP-Ohio advocates a capacity charge of $355/MW-day, as a merged company, based on FERC form 1 data for 2010. (AEP-Ohio Ex. 3 at 8-10; Signatory Parties Br. at 87-95.)

According to the Signatory Parties, the proposed RPM price capacity set-asides preserve and expand retail shopping, and result in a fully competitive standard service offer earlier than could otherwise be achieved under a MRO. AEP-Ohio considers the availability of capacity at the RPM rate as part of the Stipulation to be significant concession. AEP-Ohio witness Nelson calculated that in total, considering the RPM priced capacity with the $255/MW-day capacity price under the Stipulation, the blended capacity price is $201/MW-day. The Signatory Parties note that, as FES witness Shanker admits, CRES providers who utilize AEP-Ohio's capacity avoid the risk of certain penalties and charges. The Signatory Parties argue that while FES witness Shanker acknowledges AEP-Ohio's position as a FRR entity and ultimately wants an auction-based SSO, as offered by the Stipulation, immediately. Further, the Signatory Parties argue that FES witness Shanker's rationale regarding capacity resources and pricing is flawed and ignores the

[16] *In re AEP-Ohio*, Case Nos. 99-1729-EL-ETP and 99-1730-EL-ETP, Order at 15-16, 18 (September 28, 2000).

prospect of encouraging investments in capacity resources in Ohio. Signatory Parties claim that FES witness Lesser's energy credit is grossly overstated and incorporates several mistakes, including a reduction to include actual expenditures for fuel, and an adjustment to reflect only that portion of the off-system sales margins retained by AEP-Ohio, inappropriately crediting OSS margins to capacity sales. Thus, the Signatory Parties endorse the energy credit calculation of the Companies of $7.73/MW-day for CSP, $9.94/MW-day for OP, and $17.58/MW-day as a merged company. (Signatory Parties Br. at 96- 107; AEP-Ohio Ex. 3 at Ex. KPD-3, KPD-4; AEP-Ohio Ex. 7 at 13-14; AEP-Ohio Ex. 21 at 6; Tr. VI at 1094-1097; Tr. VII at 1308-1311, 1368-1369.)

As to FES's and IEU's claims that the cost-based capacity charge conflict with the requirements of SB 3 and the Companies electric transition plan cases, the Signatory Parties answer that FES witness Lesser admitted that capacity charges are wholesale transactions and that any generation transition charges established in the ETP cases would have been retail charges. As such, the Signatory Parties argue that SB 3 and the ETP cases have no bearing on the wholesale capacity charge in the Stipulation consistent with Commission proceedings since the ETP cases. Further, the Signatory Parties note that AEP-Ohio, as an FRR, avoided the volatility and uncertainty of the RPM for capacity, which the Commission applauded at the time, since market prices were relatively high and reason that it would be unfair for the Commission to now find that AEP-Ohio's cost-based capacity charge is barred by virtue of the Non-Signatory Parties' out-of-date analysis under the previously-effective provisions of SB 3. (Tr. VII at 1338-1339; AEP-Ohio Ex. 21 at 2-3, 7-11; Signatory Parties Br. at 118-123.)

FES witness Schnitzer estimated a cost-based capacity price maximum of $162/MW-day for AEP-Ohio based on 2009 data (FES Ex. 3 at Ex. MMS-5). The Signatory Parties challenge this estimate arguing that, like the other calculations by the Non-Signatory Parties, this computation fails to account for deferred fuel costs, ignored the shared margins under the existing pool agreement between AEP-Ohio and its affiliates, and incorrectly credited AEP-Ohio with all the capacity payments from other pool members. Correcting for such oversights, the Signatory Parties assert that cost-based capacity would be $303/MW-day, which is more than the $255/MW-day in the Stipulation and supports the reasonableness of the capacity price in the Stipulation. (Signatory Parties Br. at 108-109; AEP-Ohio Ex. 21 at 4-6.)

The Signatory Parties advocate that as an FRR entity, AEP-Ohio has the option to seek cost-based capacity pricing. Further, RESA notes the Stipulation provides for a transition to a competitive wholesale procurement of capacity and energy faster than could be achieved under an MRO. RESA, Exelon, and Constellation emphasize that the Stipulation resolves the capacity pricing issue pending before the FERC and the Commission bringing regulatory certainty. Constellation reasons that the two-tiered pricing will not, as asserted by FES, eliminate "meaningful opportunities" for customers to save money. Constellation admits that while the two-tiered capacity prices might tend to limit shopping to some extent, customers consider more than price when making a decision to shop including the length of the contract and other services or options offered by the CRES provider. Further, AEP-Ohio argues that the Commission's decision in ETP cases affected retail rates not wholesale rates and, therefore, the ETP case is of no effect on the wholesale rate to be charged to CRES providers. (RESA Br. at 5; Exelon Ex. 1 at 5; Constellation Ex. 1 at 8-9; AEP-Ohio Ex. 21 at 2; AEP-Ohio Ex. 7 at 3-7; Signatory Parties Br. at 118-121).

The Commission finds section IV.2.a of the Stipulation is reasonable. The Companies' commitment to Ohio shale gas development and use will support Ohio's resources and the state's economy. The Non-Signatory Parties did not offer any significant opposition to this provision of the Stipulation. Accordingly, we find that this aspect of the capacity plan is reasonable and does not violate any important regulatory principle or practice.

However, the Commission finds it necessary to modify the capacity set-asides during the term of this ESP in two respects: to accommodate governmental aggregation and to ensure a fair share of RPM capacity for the residential class. AEP-Ohio admits that most, if not all, of the capacity set-aside available for 2012 has already been assigned. Significant testimony was presented in the evidentiary hearing that the RPM set-asides for 2012, for the commercial and industrial classes had been surpassed such that the commercial and industrial customer classes were cutting in to the residential class pro-rata share of the RPM set-asides. Although currently shopping customers will not be adversely affected by the capacity set-aside provisions, the Commission is greatly concerned that governmental aggregations approved by communities across the state in the November 2011 election will be foreclosed from participation by the September 7, 2011 Stipulation. It is the state policy to ensure the availability of unbundled and comparable retail electric service to all customer classes, including residential customers, and governmental aggregation programs have proven to be the most likely means to get substantial numbers of residential customers to become the customer of a CRES provider. For these reasons, we find it necessary to modify the proposed Stipulation to adjust the RPM set-aside levels to accommodate the load of any community that approved a governmental aggregation program in the November 8, 2011, election to ensure that any customer located in a governmental aggregation community will qualify for the RPM set aside, so long as the community or its CRES provider completes the necessary process to take service in the AEP-Ohio service territory by December 31, 2012. The RPM set-aside level shall be adjusted to accommodate such governmental aggregation programs for each subsequent year of the Stipulated ESP, to the extent, and only, if necessary. We note that customers in a non-governmental aggregation communities still have the ability to pursue a shopping rate within the RPM set aside to the extent it is available. (OCC Ex. 5; Tr. 111 at 331-340).

We also find it necessary to modify the Stipulation to ensure that residential customers are not foreclosed from their share of the capacity at RPM rates. To that end, the Commission notes that the Stipulation provides "any kWhs of RPM-priced capacity that have not been consumed by a customer class will be available for customers in any customer class based upon the priority as set forth in Appendix C." (Stipulation IV.2.b.3.) We are modifying the Stipulation such that RPM-priced capacity allocation determined for each customer class is only available for customers in the particular customer class, no RPM-priced capacity can be allocated to a customer in another customer class.

Further, we reject the Non-Signatory Parties' claims that SB 3 or the ETP cases foreclosed or conflicts with AEP-Ohio's ability to pursue cost-based capacity rates, at this time. We agree with the Signatory Parties that the ETP cases affected retail transactions rather than wholesale transactions. The Stipulation resolves pending litigation at the Federal Energy Regulatory Commission. Moreover, the Commission is persuaded that the \$255/MW-day capacity price negotiated in the Stipulation is a reasonable compromise given the evidence presented in this proceeding. It is clear from FES's arguments challenging the interim capacity price included in the Stipulation that they endorse the continuation for all CRES capacity at the RPM price. We note that several of the Signatory Parties are CRES providers active in AEP-Ohio's service territory as is FES. Among the Signatory Parties, the CRES providers as well as other Signatory Parties endorse the two-tiered capacity pricing and the transition to market faster than could otherwise be accomplished as part of an MRO, as part of the rationale for entering into and supporting the Stipulation. Further, the record in this proceeding provides a range of possible capacity costs, from a low of \$57.35/MW-day, according to FES, to a high of \$355/MW-day, claimed by AEP-Ohio. However, one of the key aspects of the record evidence demonstrating the reasonableness of the \$255/MW-day interim capacity charge of the Stipulation is the testimony of one of FES's witness. The witness specifically acknowledges that with an adjustment for deferred fuel his "maximum" capacity charge for AEP-Ohio would be more than \$200/MW-day (Tr. VII at 1457-1459). Thus, the evidence presented at hearing demonstrates that the \$255/MW-day interim capacity charge is within the range of reasonableness, particularly in light of the fact that it is one component of an extensive settlement package that includes components which benefit the public and could not otherwise be achieved in a fully litigated proceeding.

(b) <u>Customer-sited combined heat and power</u>

IEU argues that the Stipulation creates a placeholder rider that cannot be lawfully authorized as part of an ESP because the costs of customer-sited combined heat and power, waste energy recovery, and distributed energy resources are not mentioned within any of the nine provisions that may be addressed pursuant to Section 4928.143(B)(2), Revised Code. Additionally, IEU contends that the failure to attribute likely costs associated with these 350 MW of customer-sited resources unreasonably biases the ESP versus MRO analysis in favor of the proposed ESP.

Upon review of the record, the Commission agrees with the Signatory Parties that this provision of the Stipulation encourages the development and implementation of distributed and small generation facilities pursuant to the state policy directives set forth in Section 4928.02(C) and (K), Revised Code. Further, we find that IEU's reliance on Section 4928.143(B)(2), Revised Code, is misplaced. There is nothing which precludes recovery of generation costs through Section 4928.143(B)(1), Revised Code, provided such costs are necessary to serve SSO customers and that such costs are recovered solely from SSO customers. In any event, the Stipulation does not propose a recovery mechanism at this time. We also note that it is a benefit of the Stipulation that likely could not have resulted from litigation.

Accordingly, the Commission will approve this aspect of the Stipulation. We emphasize, however, that approving this aspect of the Stipulation is not authorizing the recovery of any costs for the Companies but is allowing for the establishment of a placeholder mechanism. The legal basis and any recovery must be established and authorized by the Commission in a separate proceeding. We find the concerns expressed by IEU are premature and may be addressed in the subsequent application proceeding for authority to established customer-sited distributed and small generation facilities. The Commission finds the establishment of the placeholder mechanism for customer-sited combined heat and power does not violate any important regulatory principles or practices and encourages the development of distributed generation in compliance with state policy.

10. Authority to Merge

The Companies assert that the merger will promote the public interest by eliminating the need for separate records, financial statements, tax returns, and other financial and regulatory reports, reduce administrative costs and fees, and reduce labor expense. Further, the Companies reason that the merger will not adversely rates as the pre-merger distribution rates, terms, and conditions of service presently in effect for each company will continue until otherwise ordered by the Commission. The Companies explain that the consolidation of transmission and generation rates, as of January 2012, will not adversely affect any customer class of either company. (AEP-Ohio Ex. 8 at 30-31.)

None of the commenters to the Merger Case, nor the Non-Signatory Parties to the Stipulation offer any substantive challenge to this provision of the Stipulation recommending approval of CSP and OP's authority to merge.

The Commission has considered the comments and reply comments in the Merger Case and the merger provision of the Stipulation. In consideration of the issues raised, the Commission concludes, pursuant to our general supervisory authority, that the merger will not adversely affect any customer class of CSP or OP within the Commission's jurisdiction, and will promote the public interest. Accordingly, we find this provision of the Stipulation reasonable.

11. Phase-in Recovery Rider and Securitization

IEU raises four issues in regard to the phase-in recovery rider (PIRR). First, IEU states, as AEP-Ohio acknowledges, that the fuel deferral expense to be recovered through the PIRR as of December 31, 2011, has been accumulated by OP customers, and the fuel cost deferral accrued by CSP customers over the term of ESP 1 has been paid off (IEU Br. at 60). IEU argues that collecting the PIRR on a merged company basis (from both CSP and OP) is unjust and unreasonable, as it misaligns cost responsibility and benefits between OP and CSP customers (IEU Ex. 9A at 21-22).

The Companies and other Signatory Parties reiterate that with the adoption of the Stipulation as proposed, CSP will be merged with and into OP, to become a merged, single entity. The Signatory Parties reason that recovery of the PIRR from all customers of the merged entity is no different than the merger of the Monongahela Power Company into CSP, where the Litigation Termination Rider and the Power Acquisition Rider were charged to all post-merger CSP customers.[17] Further, the Companies offer that CSP customers will likely benefit from a reduced fuel adjustment clause (FAC) as a result of the merger which will offset any perceived burden imposed by the PIRR (AEP-Ohio Ex. 22 at 7).

As a part of the proposed Stipulation, the Commission recognizes that the Signatory Parties support the merger of CSP and OP. As such, OP, as the surviving entity, will succeed to the rights, privileges, and powers of CSP as well as be subject to all of the restrictions, disabilities, liabilities, and duties of CSP. It is not uncommon or unreasonable for the new entity to levelize the liabilities and benefits of the merger across all former CSP and OP customers.

Second, IEU argues that the PIRR fails to address the requirements of Section 4928.20(I), Revised Code, that requires nonbypassable charges arising from a phase-in deferral, and applicable to customers in governmental aggregation programs, be proportionate to the benefit customers derive from the phase-in (IEU Ex. 9A at 22).

IEU's claim that the PIRR violates Section 4928.20(I), Revised Code, is misdirected, according to the Signatory Parties. We agree. As the Signatory Parties argue, the phase-in is not part of this proceeding but was the order of the Commission in the Companies' previous ESP case. Therefore, the Commission reasons that Section 4928.144, Revised

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17 See, *In the Matter of the Transfer of Monongahela Power Company's Certified Territory in Ohio to the Columbus Southern Power Company*, Case No. 05-765-EL-UNC, Order at 18-20 (November 9, 2005).

Code, is irrelevant to this ESP proceeding and the merger of CSP and OP is the salient issue.

Third, IEU claims the proposed PIRR is excessive, as the carrying charge is not reduced to a proper debt rate during the amortization period. IEU asserts that newly issued seven-year BBB rated corporate bonds are being issued at an interest rate of 3.75 percent. Thus, according to IEU, there is no valid reason to authorize the higher carrying charge rate recommended in the Stipulation (IEU Ex. 8 at 14-15).

The Companies offer that the carrying charge rate on deferred fuel expense was argued extensively by the parties to the ESP 1 case, and the Commission ultimately decided that the WACC, as proposed by the Companies, was reasonable. The Signatory Parties contend that the Companies concession to the 5.34 percent debt carrying charge as compared to the WACC, adds value to the Stipulation. As such, Signatory Parties ask the Commission to reject IEU's attempt to further compromise the positions reflected in the Stipulation.

The Commission agrees with the Signatory Parties that the carrying charge on the deferred fuel expenses accrued was established in the ESP 1 proceeding. Thus, the 5.34 percent debt carry charge represents a significant compromise by the Companies as a part of the Stipulation as a package which we will not revise based on IEU's claims that there exists a basis for arguing for a better deal.

Finally, IEU notes that the Stipulation provides that the "carrying charge will be calculated with no adjustment to the book balance as of year-end 2011." IEU argues that the carrying charge on the deferral balance should be net of accumulated deferred income taxes (ADIT) (IEU Ex. 8 at 14-15; IEU Ex. 4).

The Signatory Parties state that the order of the Commission in the ESP 1 case did not require that the deferral balance be adjusted for ADIT. As such, Signatory Parties ask the Commission to reject IEU's attempt to further compromise the positions reflected in the Stipulation.

The Commission considered similar arguments of the intervenors in AEP-Ohio's ESP 1 case. In the ESP 1 order, the Commission rejected request to calculate the deferrals net of taxes. We again reject the request in this case. As we concluded in ESP 1, if carrying charges on the FAC deferrals are calculated on a gross of tax rather than a net of tax basis, it violates the clear directive to the Commission. Section 4928.144, Revised Code, states that if a phase-in is ordered, the order shall provide for the creation of regulatory assets pursuant to generally accepted accounting principles by authorizing the deferral of incurred costs equal to the amount not collected, plus carrying charges on that amount.

Finally, the Commission clarifies that prior to securitization of the PIRR, if the Commission or the Court issues a decision that impacts the amount of PIRR regulatory assets, AEP-Ohio shall appropriately adjust the book balance of the PIRR regulatory assets or use a mechanism to make the appropriate adjustment ordered by the Commission or the Court that prospectively adjusts rates through a credit or charge of the PIRR. With this clarification the Commission finds that the provisions of the Stipulation are reasonable and should be approved.

12. Generation Asset Divestiture

On September 30, 2011, AEP-Ohio filed an application to amend the corporate separation plan, in Case No. 11-5333-EL-UNC, *In the Matter of the Application of Ohio Power Company for Approval of an Amendment to Its Corporate Separation Plan* (Corporate Separation Case). In addition, the Signatory Parties filed a joint motion to consolidate the amendment to its corporate separation plan in its Corporate Separation Case, with the cases in the Stipulation. On October 11, 2011, the Attorney Examiners denied the motion to consolidate, and provided that there needs to be additional review on the amendment to the corporate separation plan.

The Signatory Parties maintain that the Commission's approval of a full corporate separation by the Companies is a necessary requirement to several provisions within the Stipulation. Specifically, the Signatory Parties explain that the divesture of generation assets will lead AEP-Ohio to amend or dissolve AEP's generation pool. Therefore, the Signatory Parties assert that the approval of the corporate separation as proposed by the Stipulation is essential to begin the transition of AEP-Ohio into an auction-based SSO (Signatory Parties Br. at 69-70, Constellation Ex. 1 at 12).

While other parties may request extensive details of the process prior to approving the corporate separation, the Signatory Parties assert that the details are not necessary to proceed. In support of this assertion, the Signatory Parties maintain that, as the ESP rates are known and established through the transition period until 2015, the impact of generation divesture on ratepayers will be established between the requirements of Section 4928.17, Revised Code, and the adoption of the Stipulation. The Signatory Parties argue the Commission has the necessary information it needs to approve corporate separation under Section 4928.17, Revised Code. Therefore, the Signatory Parties' state, Commission approval of corporate separation does not violate any regulatory practice or principle (Signatory Parties Br. at 70-74).

IEU claims that approving the full legal corporate separation through the Stipulation would prevent any parties of interest in the corporate separation proceeding to file comments or objections to the plan, as is permitted by Section 4928.17(B), Revised Code. In addition, IEU expresses concerns that the Commission may inadvertently "empower the Companies to fill in the blanks later," if it were to proceed without the necessary terms and conditions of the sale or transfer (IEU Br. at 66-68).

FES fears that the approval of the corporate separation as described in the Stipulation would give AEP-Ohio too much discretion in carrying out the corporate separation. Specifically, FES claims that the Stipulation would allow the Companies to make the corporate separation contingent on pool termination, and that there are no remedies available should AEP-Ohio choose not to meet the corporate separation deadlines set forth in Appendix B to the Stipulation. (FES Br. at 126, citing to Tr. VI at 977-978). FES concludes that too many questions remain in the corporate separation process, and to not fully investigate them would allow AEP-Ohio to structure the transition in its own manner (*Id.* at 126-27). FES witness Banks notes that the manner in which assets are transferred, such as the valuation and accounting procedures, could ultimately hurt competitive markets and customers if done improperly (FES Ex. 1 at 42).

Section 4928.17, Revised Code, provides that a utility shall not sell or transfer any generating asset it owns or partially owns without Commission approval. In considering approval of a corporate separation, the Commission must determine whether an application for corporate separation clearly sets forth the objective and purpose of the sale or transfer and the terms and conditions relating to the sale or transfer, how the sale or transfer will effect the proposed standard service offer proposed by the Companies, how the sale or transfer will affect the public interest, and evaluate the fair market value and book value of the property to be sold or transferred, pursuant to Rule 4901:1-37-09, O.A.C.

There is no dispute that the purpose and objective of the corporate separation provision is to provide competitive retail electric service through a fully separated affiliate of the utility in order to effectuate state policy within Section 4928.02, Revised Code. Nor is there any disagreement among either the Signatory Parties or Non-Signatory Parties that the corporate separation will benefit the public interest by contributing to the creation of a competitive marketplace in Ohio. Further, we understand that the transfer of generation assets will impact the standard service offer through the established rates being in effect through the transition period until 2015, when the generation rates will be determined by the competitive bidding process.

However, as Non-Signatory Parties have correctly asserted, the Commission still needs additional time to determine and understand the terms and conditions relating to the sale and/or transfer of the generation assets from the electric distribution utility to the AEP subsidiary. Further, in the Corporate Separation Case, the Companies requested a waiver of the requirement contained within Rule 4901:1-37-09, O.A.C., which provides that an application should provide the fair market value and book value of the assets to be sold or transferred. In addition, as IEU correctly asserted, Section 4928.17, Revised Code, requires due process for parties with real and substantial interests in the corporate separation plan to provide any comments or objections regarding the corporate separation plan.

Accordingly, the Commission finds that, subject to our approval of the corporate separation plan, the Companies should divest its competitive generation assets from its noncompetitive electric distribution utility to its separate competitive retail generation subsidiary. Further, the Commission directs the Companies to notify PJM that it intends to enter PJM's auction process for the delivery year 2015-2016, as the Stipulation indicates. In addition, as there is still the need for additional analysis of the corporate separation plan's terms and conditions surrounding the sale, the Commission will continue to review the corporate separation plan's remaining issues in an expeditious manner in the Corporate Separation Case. Therefore, with these clarifications, the Commission finds that the corporate separation plan proposal within the Stipulation does not violate any regulatory principle or practice.

13. GridSMART

As part of the Stipulation AEP-Ohio agrees not to file a separate application to initiate Phase 2 of the gridSMART project until Phase 1 has been completed and reviewed. The Commission modifies paragraph IV.1.h of the Stipulation to enable AEP-Ohio to file further applications related to its gridSMART project prior to completion and review of Phase 1 of the project. We find that this provision of the Stipulation is unduly restrictive with respect to the further deployment of successful individual smart grid systems and technologies used in the project and for ensuring effective experimental design in testing consumer acceptance of pricing and program alternatives. Any expansion of the gridSMART project will be considered in future Commission proceedings in which Signatory Parties, and other interested stakeholders, may raise their concerns.

C. Does the Stipulation, Taken as a Package, Benefit Ratepayers and the Public Interest?

The Signatory Parties contend that the Stipulation benefits ratepayers and the public interest. In support, the Signatory Parties explain that AEP-Ohio agreed to drop seven rider proposals as part of the settlement (Signatory Parties Br. at 134). The Signatory Parties state that the agreement to drop the rider proposals transfers substantial risk from customers to AEP-Ohio, while providing rate certainty and stability for customers (*Id.* a 134, citing to AEP-Ohio Ex. 8 at 14-15).

In addition, the Signatory Parties point out that the Stipulation promotes state policy and retail competition by providing a clear path for customers to receive their electricity from fully competitive markets. This, the Signatory Parties claim, achieves a long term result benefiting both competitive markets and customers. Further, the Signatory Parties explain that the Stipulation's market transition process facilitates a competitive market based SSO significantly faster than is possible under an MRO. The Signatory Parties note that the Stipulation moves the SSO process to competitive market in three and half years, while an MRO may take over six years (*Id*. at 133).

The Signatory Parties contend that AEP-Ohio's agreement to provide $3 million annually for the PWO initiative and $5 million annually for the OGF initiative benefits residential customers and promotes economic development. The Signatory Parties also note that AEP-Ohio has committed to provide reliability improvements to hospitals by working with OHA and providing investment commitments of up to $5 million per year throughout the term of the ESP (*Id.* at 133, OHA Ex. 1 at 2).

According to the Signatory Parties, the Stipulation's benefits also include AEP-Ohio's commitment to fleet transformation and fuel diversification, including an endeavor to enter into long-term shale gas contracts for AEP-Ohio generation plants. The Signatory Parties maintain that this will contribute to investment and employment growth in Ohio. The Signatory Parties also note the benefits associated with AEP-Ohio's development and commitment to customer-sited resources in exchange for incentive payments not only benefits AEP-Ohio's energy mandates, but also benefits customers (*Id.* 135).

Staff also provides that the Stipulation taken as a package benefits the public interest and ratepayers. In support of its conclusion, Staff points to the CBP process leading to a fully competitive SSO rate. Staff explains that the transition to full market pricing is not only materially quicker than would otherwise be possible, but also provides for stable and transparent pricing throughout the transition. Staff also asserts that AEP-Ohio's agreement to utilize a long term debt interest rate instead of a weighted average cost of capital will result in a substantially reduced carrying cost on the unamortized balance of deferred fuel cost. Further, Staff agrees that the fuel diversification utilizing shale gas, AEP-Ohio's development of alternate capacity resources, and commitment to work with OHA, PWO, and OGF are benefits resulting from the Stipulation. In addition, Staff finds that the fact that the Stipulation enhances the distribution system, provides rate stability, promotes economic development with commitments to low income residential customers, and promotes energy efficiency in one grouping is extremely advantageous, enhancing stability in the state despite the future market being unknown (Staff Br. at 6-8).

Constellation states that the transition to a competitive market will create a better means for setting the rates for SSO customers, and gives customers options in choosing their electric supply, which may include the opportunity to choose options that may be less costly that AEP-Ohio (Constellation Br. at 7). Further, Constellation expects the transition to competitive market to encourage investment in Ohio by retail and wholesale providers. Constellation notes that the Stipulation rejects AEP-Ohio's automatic recovery for new generation under the GRR, and now requires the Companies to show a need for new generation. (*Id.* at 12)RESA and Exelon also note that the transition to a competitive market is beneficial for ratepayers and the public interest (RESA Br. at 9-13, Exelon Br. at 7-9).

OCC/APJN provide that while the Signatory Parties have quantified various parts of the Stipulation to indicate public benefits, its capacity set-aside plan would actually deter customers. In support of its assertion, OCC/APJN explain that the set-aside for 2012 has been surpassed, thus any new shopping would be priced at the higher capacity charge provided for in the Stipulation, making customers in a race to claim lower priced capacity (OCC/APJN at 30-31). OCC/APJN also respond to the Signatory Parties benefit of dropping seven rider proposals is illusory, as there was no guarantee that any of the riders would have ultimately been approved by the Commission, thus there is no real benefit from dropping them (OCC/APJN Reply Br. at 11).

IEU claims that the Stipulation does not advance the public interest or benefit consumers. IEU asserts that customers and CRES suppliers currently have access to capacity priced at RPM, thus the Stipulation's set capacity price takes away benefits that currently exist (IEU Br. at 27-28, citing IEU Ex. 9A at 44-49). Further, IEU opines that the benefits of the CBP may never fully occur, as the Stipulation does not require the Companies' next ESP application to include a CBP, and no certainty the Stipulation will result in a full transition to a competitive market (*Id.* at 29). IEU also notes that it is speculative to consider a potential shale gas generating facility as a benefit (IEU- Reply Br. at 17).

FES states that the transition to a competitive market is not beneficial to the public interest because it delays competition at least three and a half years (FES Br. at 93-94). FES asserts that the proposed capacity caps contained within the Stipulation would t harm customers, as it would not allow for CRES providers to provide customers with opportunities to shop at prices lower than the Companies SSO (*Id.* at 95-100). FES disagrees that the Stipulation promotes economic development, and states it would actually harm customers by destroying jobs in Ohio (*Id.* at 123 citing to FES Ex. 2 at 61-62). In addition, FES claims the proposed benefits associated with PWO and OGF are contingent on the Companies achieving a ten percent return on equity, and thus uncertain and not a benefit (FES Reply Br. at 28).

The Commission finds that, the Stipulation, as modified, advances the public interest and will benefit ratepayers. The transition to competitive markets in just three and a half years, as opposed to over five years, is beneficial to ratepayers because customers will be able to shop for electric suppliers that may have lower rates than AEP-Ohio. Further, while the Commission notes that market is subject to fluctuations and may be at times unpredictable, the rate design, as modified by the Commission in previous sections, enable for a smooth transition to the market by providing not only reasonable and transparent rates, but also by allowing for rate certainty and stability such that customers know what to expect. Also, the Commission notes that this Stipulation's removal of shopping barriers will not only allow CRES providers to benefit by easier access to customers, but customers potentially benefit from rates lower than the standard service offer.

While, as we stated earlier in this opinion and order, we understand that FES wants this transition to competitive markets to occur as soon as possible, we firmly believe that transition plan as set forth by the Stipulation and modified by this opinion and order, will achieve the end results in a much faster manner than was otherwise possible through an MRO. To the contrary, were we to adopt FES's suggestion to reject this Stipulation in its entirety, the transition to be market would inevitably be longer than the time frame the Stipulation sets forth.

Further, we believe the Stipulation, as modified, will also enhance Ohio's economy and promote economic development opportunities in AEP-Ohio's service region. As discussed above, rate stability and certainty, which is achieved through mechanisms such as the LFP and MTR, will allow for AEP-Ohio's industrial and commercial customers who have been hardest hit by the economic downturn to receive incentives and discounts on their peak loads, and will ensure that when the transition to market is complete, these customers will be less likely to face rate shock. Further, if there is an established need for additional generation in the future, the GRR provides a mechanism to enable the Commission to allow for the construction of generation facilities, while committing to the diversity of state supply, as is consistent with Section 4928.02, Revised Code. In addition, AEP-Ohio's agreement to provide annual contribution of $3 million and $5 million to PWO and OGF, respectively, are beneficial to low income, residential customers, and will aid in economic development by enhancing economic stability for the Companies industrial customers. Further, to ensure these provisions are not speculative, we find it necessary to modify the Stipulation and remove the contingency on the Companies achieving a ten percent return on equity. We find this modification furthers the public interest.

In addition, we note that OCC/APJN's concerns relating to shopping capacity caps were appropriately addressed in the Commission's modification to the capacity case, which addressed these public interest concerns by modifying the Stipulation to include governmental aggregation ballots that passed this November. Moreover, the Stipulation provides the Commission with flexibility to order recovery under the GRR or PMR only if the Commission determines that such recovery is necessary. The testimony in the record also indicates the Stipulation promotes energy efficiency programs and renewable energy resource development. We note that while the Stipulation does not state whether AEP-Ohio's next application will include a CBP, the Commission expects a CBP provision will be included in AEP-Ohio's next application.

In addition, the modifications the Commission has made to the Stipulation further benefit the ratepayers and public interest. First, the automatic base generation rate increases have been lowered to half of what the Stipulation originally proposed. This will benefit ratepayers by having less significantly lower rate increases, while still allowing for a smooth transition to competitive market pricing in 2015. Further, the modification of the capacity plan allows for all of the communities and municipalities that recently passed governmental aggregation initiatives this November to take advantage of CRES suppliers' offers that may be lower than what AEP-Ohio is offering to its customers. The Commission's modification to the Stipulation which extends the credit offered to AEP-Ohio's GS-2 customers to $10/MWh for the first 2,000,000 MWh of usage per calendar year will ensure GS-2 customers are not closed out of the incentive, and will provide the opportunity for new customers in AEP-Ohio's territory to take advantage of the incentive. Further, any unused megawatt hours will be rolled over to the next calendar year.

Finally, in our modifications to the corporate separation plan for the Companies, we believe that a balance was struck as the Commission allows for the process to move forward to ensure no delay in AEP-Ohio's corporate transition, while ensuring there is opportunity for interested parties to provide comments and suggestions to assure the corporate separation plan's details are implemented in a manner that will be in the public and ratepayers best interests. Accordingly, we find that the Stipulation, as modified, benefits the public interest.

V. CONCLUSION

As a result of the Commission's adoption of the Stipulation filed in these matters, the stay of the inter-related cases addressed in the Stipulation shall be continued until the Commission specifically orders otherwise or there is a final non-appealable order in the case on the Stipulation.

Furthermore, the Commission finds that the Companies should file revised final tariffs consistent with this order by December 23, 2011. In light of the short timeframe remaining before these tariffs by necessity must go into effect, the Commission finds that the revised final tariffs shall be approved effective January 1, 2012, subject to final review by the Commission.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) CSP and OP are public utilities as defined in Section 4905.02, Revised Code, and, as such, the companies are subject to the jurisdiction of this Commission.

(2) On January 27, 2011, CSP and OP filed applications for an SSO in accordance with Section 4928.141, Revised Code.

(3) On March 8, 2011, a technical conference was held regarding AEP-Ohio's applications.

(4) Pursuant to published notice, public hearings were held in Canton, Lima, Marietta, and Columbus, in which a total of 61 witnesses offered testimony.

(5) On July 6, 2011 and August 9, 2011, prehearing conferences were held in these matters.

(6) The following parties filed for and were granted intervention in AEP-Ohio's ESP 2 proceeding: IEU, Duke Retail, OEG, OHA, OCC, OPAE, Kroger, FES, Paulding, APJN, OMA-EG, AEP Retail, DWEA, P3, Constellation, Compete, NRDC, Sierra Club, Hilliard, RESA, Exelon, Grove City, AICUO, Wal-Mart, Dominion Retail, ELPC, OEC, Ormet, and Enernoc.

(7) On September 7, 2011, a Stipulation was filed in these cases. The Stipulation was signed by AEP-Ohio, Staff, OEG, Constellation, OHA, OMAEG, Kroger, Hilliard, Grove City, AICUO, Exelon, Duke Retail, AEP Retail, Wal-Mart, RESA, Paulding, OEC, ELPC, Enernoc, NRDC, and P3.

(8) On September 19, 2011, the Companies held a public presentation before the Commission on the proposed Stipulation and Recommendation.

(9) The evidentiary hearing on the Stipulation commenced on October 4, 2011, and concluded on October 27, 2011.

(10) Briefs and reply briefs were filed on November 10, 2011, and November 18, 2011, respectively.

(11) The Stipulation presents an ESP pursuant to Section 4928.143, Revised Code, which authorizes the electric utilities to file an ESP as their SSO.

(12) The Commission finds that the Stipulation, as modified, meets the three criteria for adoption of Stipulations, is reasonable, and should be adopted.

(13) The proposed ESP, as modified by this opinion and order, including its pricing and all other terms and conditions is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code.

VII. ORDER:

It is, therefore,

ORDERED, That the Stipulation, as modified by the Commission, be adopted and approved. It is, further,

ORDERED, That DWEA's request to withdraw from AEP-Ohio's ESP 2 and OPAE's request to withdraw from the consolidated Stipulation proceedings are granted. It is, further,

ORDRED, That IEU's motion to dismiss the Stipulation is denied. It is, further,

ORDERED, That the Stipulation is admitted into the record evidence. It is, further,

ORDERED, That IGS's interlocutory appeal for intervention is denied. It is, further,

ORDERED, That FES's and AEP-Ohio's motion for a protective order is granted for 18 months from the date of this Order. It is, further,

ORDERED, That OCC/APJN's request to review the procedural rulings is denied. It is, further,

ORDERED, That FES's request to strike a portion of Staff's brief is granted. It is, further,

ORDERED, That the Companies shall file revised final tariffs consistent with this order by December 23, 2011, and that the revised final tariffs shall be approved to be effective January 1, 2012, subject to final review by the Commission. The new tariffs shall be effective for bills rendered on or after the effective date. It is, further, ORDERED, That the Companies file in final form four complete copies of tariffs consistent with this Opinion and Order. One copy shall be filed with this case docket, one shall be filed with each company's TRF docket, and the remaining two copies shall be designated for distribution to the Rates and Tariffs Division of the Commission's Utilities Department. The Companies shall also update their respective tariffs previously filed electronically with the Commission's Docketing Division. It is, further,

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

ORDERED, That a copy of this opinion and order be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Paul A. Centolella

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

GNS/JJT/vrm

Entered in the Journal

DEC 1 4 2011

Betty McCauley

Betty McCauley
Secretary

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Columbus Southern Power Company and Ohio Power Company's Application for Rehearing and Memorandum in Support was served by U.S. Mail upon counsel identified below this 22nd day of December, 2011.

Matthew J. Satterwhite

Amy B. Spiller
Elizabeth H. Watts
Rocco O. D'Ascenzo
Jeanne W. Kingery
139 E. Fourth Street, 1303-Main
P.O. Box 961
Cincinnati, Ohio 45201-0960
Amy.Spiller@duke-energy.com

Counsel for Duke Energy Ohio

Anne M. Vogel
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
amvogel@aep.com

Counsel for AEP Retail Energy Partners, LLC.

Steven Beeler
John Jones
Assistant Attorney Generals
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215
Steven.Beeler@puc.state.oh.us
John.Jones@puc.state.oh.us

Counsel for Staff, Public Utilities Commission of Ohio

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

Counsel for Industrial Energy Users-Ohio

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

Counsel for the City of Cincinnati

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

Counsel for Ohio Energy Group

Colleen L. Moody
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohi 45839-1793

Counsel for Ohio Partners for Affordable Energy

M. Howard Petricoff
Stephen Howard
Vorys, Sater, Seymour and Pease, LLP
52 East Gay Street
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com

Counsel for the Retail Energy Supply Association

James F. Lang
Laura C. McBride
N. Trevor Alexander
Calfee, Halter & Griswold, LLP
1400 Key Bank Center
800 Superior Avenue
Cleveland, Ohio 44114
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com

Counsel for FirstEnergy Solutions Corporation

Jeffrey L. Small
Joseph P. Serio
Melissa R. Yost
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Ste. 1800
Columbus, Ohio 43215-3485
small@occ.state.oh.us
serio@occ.state.oh.us
yost@occ.state.oh.us

Counsel for the Office of the Ohio Consumers' Counsel

Douglas E. Hart
441 Vine Street, Ste. 4192
Cincinnati, Ohio 45202
dhart@douglashart.com

Counsel for The Greater Cincinnati Health Council

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

Counsel for Ohio Manufacturers Association

Trent Dougherty
Nolan Moser
Ohio Environmental Council
1207 Grandview Avenue, Ste. 201
Columbus, Ohio 43212-3449

Columbus for the Environmental Council

Mark S. Yurick
Zachary D. Kravitz
Chester Wilcox & Saxbe, LLP
65 East State Street, Ste. 1000
Columbus, Ohio 43215-4213
myurick@cwslaw.com
zkravitz@cwslaw.com

Counsel for the Kroger Company

Mary Christensen
Christensen & Christensen, LLP
8760 Orion Place, Ste. 300
Columbus, Ohio 43240
mchristensen@columbuslaw.org

Counsel for People Working Cooperatively, Inc.

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

Counsel for the Environmental Law & Policy Center

David Fein
Vice President, Energy Policy-Midwest
Constellation Energy Group, Inc.
550 West Washington Blvd., Ste. 300
Chicago, IL 60661
David.Fein@constellation.com

For Constellation Energy Group, Inc.

Mark A. Hayden
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308
haydenm@firstenergycorp.com

Counsel for FirstEnergy Solutions Corporation

M. Howard Petricoff
Michael J. Settineri
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com
misettineri@vorys.com

Counsel for Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.

Cynthia Fonner Brady
Constellation Energy Resources, LLC.
550 West Washington Blvd., Ste. 300
Chicago, IL 60661
Cynthia.Brady@constellation.com

For Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.

Allison Haedt
Jones Day
325 John H McConnell Blvd., Ste. 600
Columbus, Ohio 43215-2673
aehaedt@jonesday/com

Counsel for FirstEnergy Solutions Corporation

David A. Kurtik
Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
dakutik@jonesday.com

Counsel for FirstEnergy Solutions Corporation

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

Counsel for EnerNOC, Inc.

Joseph M. Clark
Vectren Retail, LLC d/b/a Vectren Source
6641 North High Street, Ste. 200
Worthington, Ohio 43085
jmclark@vectren.com

Counsel for Vectren Retail, LLC d/b/a Vectren Source

Glen Thomas
GT Power Group
1060 First Avenue, Ste. 400
King of Prussia, PA 19406
gthomas@gtpowergoup.com

For PJM Power Providers Group

Dane Stinson
Bailey Cavalieri, LLC
10 West Broad Street, Ste. 2100
Columbus, Ohio 43215
Dane.Stinson@BaileyCavalieri.com

Counsel for Direct Energy

Douglas E. Hart
441 Vine Street,, Ste. 4192
Cincinnati, Ohio 45202
dhart@douglasehart.com

Cousel for Eagle Energy, LLC.

M. Howard Petricoff
Stephen Howard
Vorys, Sater, Seymour and Pease, LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com

Counsel for PJM Power Providers Group

Laura Chappelle
Chappelle Consulting
4218 Jacob Meadow
Okemos, MI 48864
laurac@chappelleconsulting.net

For PJM Power Providers Group

Teresa Ringenbach
Senior Manager-Government and
Regulatory Affairs
(Midwest)
Direct Energy , LLC
9605 El Camino Lane
Plain City, OH 43064
teresa.ringenbach@directenergy.com

For Direct Energy

M. Howard Petricoff
Special Assistant Attorney General
Vorys, Sater, Seymour and Pease, LLP
52 Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com

Counsel for Miami University and the University of Cincinnati

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

Counsel for COMPETE Coalition

Andrew J. Sonderman
Margeaux Kimbrough
Kegler Brown Hill & Ritter, LPA
Capital Square, Ste. 1800
65 East State Street
Columbus, Ohio 43215
asonderman@keglerbrown.com
mkimbrough@keglerbrown.com

Counsel for Duke Energy Retail Sales, LLC.

Vincent Parisi
Matthew White
Interstate Gas Supply, Inc.
6100 Emerald Parkway
Dublin, Ohio 43016
vparisi@ogsemergy.com
mswhite@igsenergy.com

Counsel for Interstate Gas Supply, Inc.

M. Howard Petricoff
Special Assistant Attorney General
Vorys, Sater, Seymour and Pease, LLP
52 Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com

Counsel for COMPETE Coalition

Joe Malina
Executive Director
COMPETE Coalition
1317 F Street NW, Ste. 600
Washington, D.C.
malina@wexlerwalker.com

Counsel for COMPETE Coalition

John W. Bentine
Chester Wilcox and Saxbe, LLP
65 East State Street, Ste. 1000
Columbus, Ohio 43215
jbentine@cwslaw.com

Counsel for American Municipal Power, Inc.

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

Counsel for the Natural Resources Defense Council

M. Howard Petricoff
Special Assistant Attorney General
Vorys, Sater, Seymour and Pease, LLP
52 Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com

Counsel for Exelon Generation Company, LLC.

David Stahl
Scott Solberg
Arin Aragona
Eimer Stahl Klevorn & Solberg, LLP
224 S. Michigan Avenue, Ste. 1100
Chicago, IL 60604
dstahl@eimerstahl.com
ssolbery@eimerstahl.com
aaragone@eimerstahl.com

Counsel for Exelon Generation Company, LLC.

Anastasia O'Brien
Vice President and Deputy General Counsel
10 South Dearborn Street, 49th Floor
Chicago, IL 60603
Anastasia.obrien@exeloncorp.com

Counsel for Exelon Generation Company, LLC.

Rick D. Chamberlain
Behrens, Wheeler and Chamberlain
6 N.E. 63rd Street, Ste. 400
Oklahoma City, OK 73105
Rdc_law@swbell.net

Counsel for Wal-Mart Stores East, LP and Sam's East, Inc.

Jesse Rodriquez
Public Policy & Affairs Manager
Exelon Generation Company, LLC
300 Exelon Way
Kennett Square, PA 19348
Jesse.rodriguez@exeloncorp.com

For Exelon Generation Company, LLC

Sandy I-ru Grace
Exelon Business Services Company
101 Constitution Avenue, NW
Washington, DC 20001
Sandy.grace@exeloncorp.com

Counsel for Exelon Generation Company, LLC.

Kevin Osterkamp
Roetzel & Andress LPA
155 East Broad Street, 12th Floor
Columbus, Ohio 43215
kosterkamp@ralaw.com

Counsel for Wal-Mart Stores East, LP and Sam's East, Inc.

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

Counsel for Dominion Retail, Inc.

Gary A. Jeffries
Dominion Resources Services, Inc.
501 Martindale Street, Ste. 400
Pittsburgh, PA 15212-5817
Gary.A.Jeffries@dom.com

Counsel for Dominion Retail, Inc.

Jouette Brenzel
221 E. Fourth Street, 103-1280
Cincinnati, Ohi 45202
Jouett.brenzel@cinbell.com

Counsel for Cincinnati Bell, Inc.

Sharon M. Hillman
Executive Vice President
10 South Riverside Plaza
Ste. 1800
Chicago, IL 60606
sharonhillman@mc2energyservices.com

Counsel for RESA

Douglas Hart
441 Vine Street, Ste. 4192
Cincinnati, Ohio 45202
dhart@douglashart.com

Counsel for Cincinnati Bell, Inc.

Tammy Turkenton
Public Utilities Commission of Ohio
Accounting & Electricity Division, Utilities Department
180 East Broad Street
Columbus, Ohio 43215
Tammy.turkenton@puc.state.oh.us

Matthew R. Cox
McDonald Hopkins of Counsel
41 South High Street, Ste. 3550
Columbus, Ohio 43215
mcox@mcdonaldhopkins.com

Counsel for Small Enterprises