BEFORE THE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

FIRSTENERGY SOLUTIONS CORP.'S APPLICATION FOR REHEARING OF THE COMMISSION'S MARCH 7, 2012 ENTRY

Pursuant to R.C. § 4903.10 and O.A.C. 4901-1-35, Ohio Administrative Code, FirstEnergy Solutions Corp. ("FES") hereby applies for rehearing of the Entry issued in the above-captioned case on March 7, 2012. As demonstrated in the attached Memorandum in Support, the Entry is unreasonable and unlawful in that the Entry sets an unreasonable, unlawful and unsupported "two tier" state compensation mechanism for capacity charges to CRES providers. Specifically, the Entry is unreasonable and unlawful because it:

(1) effectively allows AEP Ohio to avoid the statutory procedures to seek the relief granted by the Entry;

(2) authorizes AEP Ohio to recover a capacity rate allegedly based on its full embedded costs, which costs are not authorized by PJM, are not recoverable under Ohio law, and do not properly reflect AEP Ohio's offsetting revenues;

(3) is not based on probative or credible evidence that AEP Ohio will suffer immediate or irreparable financial harm under RPM market-based capacity prices; and,

(4) establishes an interim state compensation mechanism that imposes on certain customers a capacity price that is two-times more than other customers will pay, violating the state's policy to ensure non-discriminatory pricing and an effective competitive market.

Thus, the Commission should modify its March 7, 2012 Entry to maintain the true *status quo* pending a determination in this case: *i.e.,* continue to use RPM market-based prices for capacity

charges to CRES providers – which have been used by AEP Ohio for years – as the interim state compensation mechanism.

To the extent the Commission does not establish market-based prices as the interim state compensation mechanism for capacity, the Entry also is unlawful and unreasonable in that it can be interpreted – and, in fact, AEP Ohio *has interpreted* the March 7, 2012 Entry – to allow RPM-based capacity pricing to be taken away from a significant number of customers who were shopping with a CRES provider at the time the Stipulation was filed. Prior to AEP Ohio's recent actions, no party ever supported charging customers shopping as of September 7, 2011 (who were paying for capacity based on RPM pricing), a much higher, non-market-based, discriminatory pricing "tier" of $255/MW-day created by the Stipulation. Nor has the Commission. Both the Stipulation and the Commission's December 14, 2011 Opinion and Order recognized that all shopping customers qualifying for RPM-based capacity pricing as of September 7, 2011 would be entitled to continue to receive such pricing. As a result, approximately 26% of commercial customers that were taking service from CRES providers as of September 7, 2011, continued to receive RPM-based capacity pricing through March 6, 2012. Relying upon the March 7, 2012 Entry, however, AEP Ohio intends to revoke RPM-based capacity pricing for nearly one fifth of these commercial customers and more than double the capacity price to $255/MW-day. This is unreasonable and unlawful.

The Commission should grant this Application to establish an interim state compensation mechanism based on RPM market prices. In the alternative, the Commission should grant the Application to confirm that, during application of a two-tiered interim state compensation mechanism, all customers shopping as of September 7, 2011 should receive RPM market prices.

Respectfully submitted,

s/ Mark. A. Hayden

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MEMORANDUM IN SUPPORT OF FIRSTENERGY SOLUTIONS CORP.'S APPLICATION FOR REHEARING

I. INTRODUCTION

In its March 7, 2012 Entry (the "March 7, 2012 Entry"), the Commission established an interim state compensation mechanism for AEP Ohio's capacity pricing: "We implement the two-tier capacity pricing mechanism proposed by AEP-Ohio in its motion for relief, subject to the clarifications contained in our January 23, 2012, entry."[1] In doing so, the March 7, 2012 Entry implements a $255/MW-day capacity price that is unreasonable, unlawful, and unsupported in a number of respects.

The Entry is unlawful because it was issued in response to AEP Ohio's Motion for Relief and Request for Expedited Ruling. Because neither Ohio law nor the Commission's rules allow for such motions, the Entry was procedurally deficient. If AEP Ohio wanted relief from the Commission's prior orders, then it was required to file an Application for Rehearing and thus be subject to the rules and requirements of such applications. By granting relief requested via a motion, the Commission allowed AEP Ohio to avoid filing an application for rehearing.

Moreover, AEP Ohio's requested $255/MW-day price is unsupported by any evidence submitted in support of the September 7, 2011 Stipulation & Recommendation (the "Stipulation"). Indeed, the inclusion of that price in the Stipulation was justified only by

[1] March 7, 2012 Entry, ¶ 26.

reference to other alleged "benefits" of the Stipulation. In any event, the $255/MW-day price includes alleged costs that are improper, unlawful and unfair to AEP Ohio customers. This two-tier pricing scheme also violates state policy, is discriminatory and anti-competitive.

The Commission's March 7, 2012 Entry also unreasonably and unlawfully provided an opportunity – that AEP Ohio has taken – to impose the $255/MW-day capacity price on customers who were taking service from CRES providers before the Stipulation was even filed and who were always contemplated to have the right to continue paying the RPM-based market prices. In fact, on March 15, 2012, AEP Ohio notified CRES providers that "[e]ffective March 7, 2012 through May 31, 2012, . . . [t]he load that has been granted RPM-priced capacity by the PUCO is the first 21% of each customer class and all customers of governmental aggregations approved on or before November 8, 2011."[2] As recounted by the Retail Energy Suppliers Association ("RESA"), AEP Ohio has informed CRES providers that it would be moving certain of their commercial customers off of RPM-based capacity pricing to the $255/MW-day price.[3] This is unreasonable and unlawful. If the discriminatory two-tiered interim state compensation mechanism remains, the Commission should clarify that AEP Ohio must continue providing capacity at RPM-based prices to those customers who were shopping as of September 7, 2011, even if those customers exceed 21% of their customer class on that date.

II. ARGUMENT

A. The March 7, 2012 Entry Is Unreasonable and Unlawful Because It Is Procedurally Defective.

Parties dissatisfied with an order of the Commission have one remedy: to file an application for rehearing pursuant to R.C. § 4903.10. Neither the Ohio Revised Code nor the

[2] *See* March 15, 2012 e-mail from AEP Ohio Choice Operations, a copy of which is attached hereto as Exhibit A (emphasis added).

[3] *See* RESA Petition for Rehearing to the Commission's March 7, 2012 Entry, p. 1.

Commission's rules provide for any other remedy or procedure to seek a revision of a Commission order. The Commission may modify its order only after granting an application for rehearing. *Discount Cellular v. Pub. Util. Comm.*, 112 Ohio St. 3d 360, 375, 859 N.E.2d 957, 2007-Ohio-53, ¶ 65.[4]

Rather than following the rehearing procedure required by statute, AEP Ohio filed a "Motion for Relief." Pursuant to R.C. § 4903.10, in order for AEP Ohio to obtain relief through an application for rehearing, AEP Ohio would have been required to show that the February 23, 2012 Entry establishing RPM capacity prices was unreasonable or unlawful. In granting AEP Ohio's Motion, the Commission's Entry improperly allowed AEP Ohio to bypass the established appeal procedures and avoid the Commission's February 23, 2012 Entry under a different standard. The Commission made no finding that any part of its prior orders was unreasonable or unlawful. Therefore, the Entry unreasonably and unlawfully arose from a procedurally defective Motion that cannot form the basis for Commission action.

B. The March 7, 2012 Entry Unreasonably And Unlawfully Authorizes AEP Ohio To Recover A Rate Allegedly Based On Its Full Embedded Costs.

1. There is no basis to support AEP Ohio's recovery of full embedded costs.

The Commission's authority to set the interim state compensation mechanism stems from the PJM Reliability Assurance Agreement ("RAA"). Nothing in the RAA authorizes AEP Ohio

[4] Conceivably, pursuant to R.C. § 4909.16, AEP Ohio could have sought emergency relief. Again, Ohio law establishes an appropriate standard for such relief – requiring that the applicant utility prove that, without the requested emergency relief, the utility will be financially imperiled or its ability to render service will be impaired. *In re Akron Thermal, Ltd. Partnership*, Case No. 00-2260-HT-AEM, Opinion and Order at p. 3 (Jan. 25, 2001). The evidence must "clearly and convincingly demonstrate the presence of extraordinary circumstances which constitute a genuine emergency situation. *Id.* AEP Ohio's Motion – even including the improper affidavit submitted in connection with AEP Ohio's Reply Brief – while requesting the relief authorized by R.C. § 4909.16, failed to meet any such standard for supporting evidence. As demonstrated below, AEP Ohio achieved significant earnings during the time that RPM capacity prices were in place. These prices were only $5/MW-day lower than the current RPM capacity price. *See* Testimony of Kelly D. Pearce on behalf of Columbus Southern Power Company and Ohio Power Company, AEP Ex. 3 ("Pearce Direct"), Exh. KDP-5.

or any other Load Serving Entity ("LSE") to recover its full embedded cost of capacity on which AEP Ohio's $255/MW-day is allegedly based.[5] As FES has previously shown, the RAA addresses default pricing options in Fixed Resource Requirement ("FRR") regions for LSEs operating under retail access programs, such as AEP Ohio, to receive some capacity payments from migrating load.[6] In the absence of a specific state designation, this capacity payment for migrating load defaults to the PJM RPM auction results for the unconstrained RTO area.[7] The RAA makes no mention of full embedded costs.[8] Indeed, AEP Ohio has recognized that the default price under the RAA is the RPM price.[9] At most, in the absence of a state compensation mechanism, the alternatives to this default rate are to have a cost basis (but certainly not full embedded costs) or other just and reasonable compensation.[10] Thus, the Commission lacks any legal justification to adopt AEP Ohio's claimed full embedded cost basis for the state compensation mechanism.

2. The $255/MW-day price is unsupported and unreasonable.

The $255/MW-day capacity price is neither cost-based nor market-based. It is unrelated to historical PJM RPM prices.[11] Instead, this price was created as part of the Stipulation "package" that has now been rejected. Thus, it is an arbitrary negotiated number.[12] The

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[5] Testimony in Opposition to Stipulation of Roy J. Shanker ("Shanker Direct"), p. 9.

[6] Shanker Direct, p. 9.

[7] Shanker Direct, p. 9-11.

[8] Shanker Direct, p. 11.

[9] Hearing on Stipulation Transcript ("Tr. Vol. V"), pp. 746-747.

[10] Shanker Direct, p. 11.

[11] Tr. Vol. XII, p. 2183 (at no time since RPM came into effect through May 2015 has the RPM price been at or above $255/MW-day in the PJM unconstrained region).

[12] Tr. Vol. V, p. 740 (AEP Ohio witness Nelson admitting that $255/MW-day is not a cost-based rate but a negotiated rate).

Signatory Parties agreed to the Stipulation, and specifically to the $255/MW-day price, only because other purported benefits of the Stipulation made it acceptable. Thus, evidence supporting the Stipulation could not and does not support the use of the $255/MW-day capacity price once the Stipulation has been rejected. Indeed, several Signatory Party witnesses testified that, outside of the Stipulation package, AEP Ohio's capacity price should be based on RPM market prices.[13]

Now that the Stipulation has been rejected, the Commission lacks a record basis to approve $255/MW-day as an element of the state compensation mechanism. Rather, the record evidence demonstrated that AEP Ohio's alleged capacity costs (which reflect a level more than six times above the average market level for the term of the proposed ESP) are significantly overstated because AEP Ohio's "costs" include investments that were required to be recovered through the market[14] and pre-2001 stranded costs.[15] Further, AEP Ohio's calculations provide no offset for energy revenues.[16] When the appropriate adjustments are made, AEP Ohio's actual capacity cost is $57.35/MW-day.[17] Thus, there is no credible factual support for the $255/MW-day capacity price incorporated into the March 7, 2012 Entry.

The Commission's reliance on the Pool Agreement's distribution of a portion of off-system sales margins to customers of non-AEP Ohio utility affiliates also is unreasonable and unlawful.[18] The Pool Agreement is the creation of AEP Ohio and/or its parent and affiliates.

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[13] Tr. Vol. IV, pp. 539-540 (RESA); Tr. Vol. III, p. 236 (OEG); Tr. Vol. VI, pp. 970-971, 982-983 (Constellation); Tr. Vol. VI, pp. 1043-1044 (Exelon); Direct Testimony of Hisham M. Choueiki on behalf of the Staff of the Public Utilities Commission of Ohio, Staff Ex. 2 ("Choueiki Direct"), p. 4, 7-8; Tr. Vol. X, p. 1707 (Staff witness Fortney).

[14] Post-Hearing Brief of FirstEnergy Solutions Corp. filed Nov. 10, 2011 ("FES Brief"), pp. 61-64, 67-68.

[15] FES Brief, pp. 66-67.

[16] FES Brief, pp. 68-70.

[17] FES Brief, pp. 69-73.

[18] Entry, p. 16.

AEP Ohio should not be allowed to charge its customers an above-market capacity price simply because AEP Ohio and its affiliated utilities have agreed among themselves to shift AEP Ohio's profits out of state. Indeed, AEP Ohio and the other Pool members already have agreed not to subject capacity sales to CRES providers resulting from retail shopping in Ohio to the sharing mechanism in the Pool Agreement.[19] This simply required a meeting of the Pool's operating committee and was done because the Pool Agreement did not envision customer shopping when it was developed.[20] The Commission's reliance on the Pool Agreement ignores the operating committee's ability to alter Pool procedures to take into account customer shopping.

There is no support for a capacity price of $255/MW-day. Indeed, the record evidence supports a much lower price. Thus, the Commission should issue an entry on rehearing re-establishing RPM market-based prices as the interim state compensation mechanism, pending the proceedings in this docket.

C. The March 7, 2012 Entry Is Unreasonable And Unlawful Because It Not Based On Probative Evidence.

The Commission's Entry appears to adopt AEP Ohio's unsupported and vague suggestion that it will suffer immediate and irreparable harm if it is required to charge the RPM market-based prices that it charged shopping customers just three months ago. However, AEP Ohio waived that argument by failing to assert it in its Application for Rehearing of the Commission's Dec. 8, 2010 Entry in which the Commission first established RPM market-based prices as the interim state compensation mechanism.[21] AEP Ohio's failure to raise this argument

[19] Tr. Vol. V, p. 718 (AEP Ohio witness Nelson describing operating committee meeting in which Pool Agreement was modified, for the period until termination is completed, to provide that customer shopping does not affect allocation of capacity charges).

[20] *Id.*

[21] *See* Ohio Power Company's and Columbus Southern Power Company's Application for Rehearing filed Jan. 7, 2011.

at that time, at a minimum, significantly undercuts any claim that AEP Ohio will suffer such harm now, or over the limited span of three months in which the interim mechanism is in place. In fact, AEP Ohio enjoyed significant return on equity ("ROE") in 2010, when it was charging RPM-based prices to shopping customers: 18-20% for Columbus Southern Power Company and 10-11% for Ohio Power Company, plus hundreds of millions of dollars for off-system sales.[22] During that time, AEP Ohio was charging a price which was only $5/MW-day lower than the final RPM zonal price in place now until May 31, 2012 – *i.e.*, today's RPM price of approximately $116/MW-day.[23] Thus, the current RPM price cannot be said to be confiscatory given that AEP Ohio enjoyed significantly excessive earnings when charging a price not far off from the current RPM price.

Notably, even AEP Ohio's own earnings estimates for 2012 and 2013 show significant earnings, irrespective of the unsupported and unrealistic assumption on which the estimates are based.[24] There is no reasonable basis on which to conclude that a 7.6% ROE for 2012 would be somehow confiscatory – particularly when AEP Ohio sought approval of the Stipulation based on an estimated ROE of 7.71%.[25] AEP Ohio's claims of immediate and irreparable financial harm are not credible.

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[22] *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code*, Case No. 10-1261-EL-UNC, Opinion and Order at pp. 22, 35 (hereinafter, "2009 SEET Order"); *In the Matter of the 2010 Annual Filing of Columbus Southern Power Company and Ohio Power Company Required by Rule 4901:l-35-10, Ohio Administrative Code*, Case No. 11-4571-EL-UNC et al., Direct Testimony of Joseph Hamrock filed July 29, 2011, at p. 6.

[23] *See* Pearce Direct, Exh. KDP-5; Testimony of Philip J. Nelson on behalf of Columbus Southern Power Company and Ohio Power Company, AEP Exh. 7, p. 7.

[24] *See* Motion, pp. 5, 9. Further, AEP Ohio's projected positive earnings appear to be Ohio jurisdictional only, which means they do not reflect the hundreds of millions of dollars AEP Ohio will earn in off-system sales and through its retail arm if shopping does increase. *See* Direct Testimony of Tony C. Banks on behalf of FirstEnergy Solutions Corp., FES Ex. 1 ("Banks Direct"), Exh. TCB-11.

[25] Direct Testimony of William A. Allen on behalf of Columbus Southern Power Company and Ohio Power Company, AEP Ex. 4, p. 20 and Exh. WAA-5.

The Commission appeared to justify the $255/MW-day capacity based on the claim that "AEP Ohio is no longer receiving any contribution towards recovery of capacity costs from the POLR charges" it sought in Case Nos. 08-917-EL-SSO *et al.*[26] AEP Ohio's loss of any right to recover alleged POLR costs does not support a higher than market capacity price. The Supreme Court held that AEP Ohio failed to provide sufficient support for the alleged costs that formed the basis for those charges: "We have carefully reviewed the record, and we can find no evidence suggesting that AEP's POLR charge is related to any costs it will incur."[27] Thus, AEP Ohio "is no longer receiving" those charges because it provided no evidence that it incurred any associated costs and, thus, charges are not authorized by Ohio law. AEP Ohio was never entitled to recover POLR charges. Accordingly, the March 7, 2012 Entry's reliance on the "loss" of an unlawful revenue stream is unreasonable and unlawful.

D. The March 7, 2012 Entry's Interim State Compensation Mechanism Also Is Unlawful Because It Violates State Policy.

1. The Entry's two-tiered state compensation mechanism is discriminatory.

The Commission has established a state compensation mechanism that discriminates amongst shopping customers (through two different price classes) and between shopping and non-shopping customers (including the unknown price charged to SSO customers).[28] There can be no dispute that different customers are paying different prices for the same service. This is unlawful discrimination.

The Signatory Parties may have tried to justify the discriminatory impact of the two-tiered structure for shopping customers based on other alleged benefits of the Stipulation. But

[26] Entry, p. 16.

[27] *In re Application of Columbus Southern Power Co.*, 128 Ohio St.3d 512, 518 (2011).

[28] Tr. Vol. VI, p. 844; Tr. Vol. I, pp. 85-86 (AEP Ohio witness Roush); Tr. Vol. V, pp. 730-731 (AEP Ohio witness Nelson).

any off-setting "benefits" from the Stipulation no longer exist after the Commission's rejection of the Stipulation in the February 23, 2010 Entry on Rehearing. Thus, the discriminatory and arbitrary classification of shopping customers violates State policy to "ensure the availability to consumers of . . . nondiscriminatory, and reasonably priced retail electric service."[29]

The discriminatory state compensation mechanism also violates R.C. § 4905.33, R.C. § 4905.35 and R.C. § 4928.17. An analogous case is *In the Matter of the Complaint of Westside Cellular, Inc. dba Cellnet*, Case No. 93-1758-RC-CSS, in which the Commission determined that providers of wholesale cellular service discriminated against a reseller (Cellnet) and in favor of the providers' own retail arm.[30] Because one of the providers was unable to identify the rate which it charged its retail arm, the Commission assumed for purposes of the discrimination analysis that the rate was zero.[31] Thus, the Commission determined that the provider violated both R.C. § 4905.33 and R.C. § 4905.35 by charging the reseller more than it charged its own retail customers.[32] Similarly, AEP Ohio cannot identify what it charges its own retail SSO customers for capacity,[33] but it seeks to recover its alleged full embedded costs from shopping customers. Under the precedent of *Cellnet*, AEP Ohio's discrimination against shopping customers (through its grossly above-market capacity charges to CRES providers) is a violation of R.C. §§ 4905.33 and .35. It also violates R.C. § 4928.17 by failing to prevent unfair competitive advantage.

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[29] *See* R.C. § 4928.02(A).

[30] *In the Matter of the Complaint of Westside Cellular, Inc. dba Cellnet*, Case No. 93-1758-RC-CSS, Opinion and Order at pp. 50-51 (Jan. 18, 2001).

[31] *Id.*

[32] *Id.* Although federal law preempted state regulation of the rate charged for cellular service, the Commission nevertheless determined that state anti-discrimination law applied. *See id.*, p. 32. *See also New Par v. Pub. Util. Comm.*, 98 Ohio St. 3d 277, 781 N.E.2d 1008, 2002-Ohio-7245, ¶ 9.

[33] Tr. Vol. I, pp. 84-86.

2. The Entry's interim state compensation mechanism is anti-competitive.

The record evidence presented in connection with the Stipulation confirmed that the $255/MW-day capacity price adopted by the Entry will unreasonably constrain shopping and will only further AEP Ohio's admitted "thought and . . . theory" to limit its competition.[34] Witnesses sponsored by FES and the Signatory Parties established that an increase in capacity price – such as was adopted in the Entry – would limit CRES providers' ability to make competitive offers to customers.[35] The $255/MW-day price is over twice as high as the current RPM-based capacity price. That price would significantly limit CRES providers' ability to make competitive offers. As a result, AEP Ohio's customers will be forced to stay on AEP Ohio's standard service offer and will be unable to receive the advantages of a fully competitive market. Thus, the March 7, 2012 Entry violates state law and policy and the Commission's mission to foster a competitive market for retail electric service.

E. In The Alternative, The March 7, 2012 Entry Unreasonably And Unlawfully Permits AEP Ohio To Charge Previously Shopping Customers, Who Have Always Paid RPM-Based Prices, The Arbitrary $255/MW-Day Price.

1. Customers who were shopping at the time the Stipulation was filed have consistently been deemed to have the right to continue receiving RPM-based capacity pricing.

Despite the limitations on shopping in AEP Ohio's service territory, a number of its customers – primarily commercial customers – shopped for retail electric service in 2011. According to AEP Ohio's data, substantially more than 21% of its commercial customers were actively shopping as of September 7, 2011.[36] Thus, by the time the Stipulation was submitted

[34] Banks Direct, p. 36, Exs. TCB-8, TCB-9.

[35] Tr. Vol. IV, p. 543, 544; Tr. Vol. VI, pp. 970-971; Tr. Vol. X, pp. 1693-1694.

[36] Banks Direct, Exh. TCB-1; FES Exh. 18; Tr. Vol. XII, pp. 2071-78. AEP Ohio had awarded allotments to approximately 29% of commercial load as of September 7, 2011. *Id.* AEP Ohio's awards were based on Group 1,

for approval, these commercial customers were under contract with CRES providers and qualified for RPM-based market prices for capacity. All through 2011, and for years prior, AEP Ohio had charged such shopping customers RPM-based market prices for capacity. *All* of the Signatory Parties agreed that those customers who were shopping as of September 7, 2011 would continue to receive RPM-priced capacity:

> With regard to customers who are receiving generation service from a CRES provider as of the time that the Stipulation is filed, the capacity rate to be paid by the CRES provider to AEP Ohio for that customer's load **will continue to be charged the otherwise applicable RPM rate** for the remaining period that the contract remains effective (including renewals).[37]

Similarly, the Commission recognized in its December 14, 2011 Opinion and Order (the "Order") that "**currently shopping customers will not be adversely affected by the capacity set-aside provisions** . . . ."[38]

Likely because of the uniform agreement as to the protection of previously shopping customers, the right of previously shopping customers to RPM-based capacity pricing was not directly at issue, and thus not directly affected by, subsequent filings and entries, including: AEP Ohio's proposed Revised Detailed Implementation Plan ("Revised DIP"), filed December 29, 2011; or the Commission's January 23, 2012 Entry clarifying the Order. Indeed, AEP Ohio's Revised DIP confirms that previously shopping customers were entitled to RPM-priced capacity. Such customers would fall in either Group One or Group Two, which groups "**shall be included**

(continued…)

Group 2 and Group 4 customers. *See* Banks Direct, Exh. TCB-1. Groups 1 and 2 were taking service from CRES providers as of September 7, 2011. Stipulation, Appx. C, pp. 1-2. Group 4 customers had given 90-day notice to AEP Ohio prior to September 7, 2011, of their intent to take service from a CRES provider. Stipulation, Appx. C, p. 2. FES believes that the Group 1 and Group 2 customers as of September 7, 2011, were approximately 26% of commercial load.

[37] Stipulation, § IV.2(b)(2) (emphasis added).

[38] Order, p. 54 (emphasis added).

in the calculation of RPM Set-Aside."[39] The Commission's January 23, 2012 Entry, which the Commission's (March 7, 2012) Entry explicitly references and incorporates, clarified certain aspects of the Order and on all other issues affirmed the Commission's approval of AEP Ohio's Revised DIP. It did not remove any protections for previously shopping customers.

To be sure, the Jan. 23, 2012 Entry did state that "the Commission notes that this modification to the Stipulation goes back to the initial allocation among the customer classes based on the September 7, 2011, data, regardless of whether any customer class is now oversubscribed."[40] Yet there is no other language to suggest that any previously shopping customers would lose their RPM-market based capacity pricing. This language simply reinforces that the previously shopping commercial customers, which represented approximately 26% of the commercial class, would not cause the 21% allotment reserved to industrial and residential customers to be reduced. Thus, commercial customers are entitled to a 26% allotment because of the shopping levels in existence prior to the filing of the Stipulation, and industrial and residential customers would be entitled to their own 21% allotment.

2. The Entry should be clarified to confirm that customers shopping as of September 7, 2011 will maintain RPM-based capacity pricing under the interim state compensation mechanism, even if those customers exceed 21% of the customer class.

Based on the March 7, 2012 Entry, AEP Ohio is now denying many of the commercial customers that were shopping as of September 7, 2011 the right to continue receiving RPM-based market prices. Although AEP Ohio has delayed implementing rate changes it does not favor until after the Commission repeatedly orders their implementation, AEP Ohio implemented

[39] *See* Revised DIP, p. 2 of 10. The Revised DIP further provides that allotments will not be awarded to other groups if the Group One and Two allotments exceed the Cap. *Id.*, p. 3 of 10. Thus, the Revised DIP clearly accounts for the possibility that Group One and Two allotments could exceed the 21% cap in year 2012.

[40] Jan. 23, 2012 Entry at pp. 3-4.

the increased capacity pricing for previously shopping commercial customers retroactive to the date of the March 7, 2012 Entry.[41] Such a result is unreasonable and unlawful. It expressly contradicts the Signatory Parties' previous proposal. It is supported nowhere in the record. To the contrary, by virtue of its support of the Stipulation and given the plain language of the Revised DIP, AEP Ohio has represented that it is able to provide, and will provide, RPM-based capacity pricing to all customers shopping as of September 7, 2011. Further, after the Commission's February 23, 2012 Entry denying the Stipulation, AEP Ohio asked that it be allowed to maintain the "*status quo*" and avoid moving all customers to the then-operative RPM-based state compensation mechanism.[42] The *status quo*, as set forth above, would be for all previously shopping customers to receive RPM-based capacity pricing. AEP Ohio cannot self-servingly and unilaterally re-write the "*status quo*" to a proposal never before offered or supported.

The competitive market has already been damaged due to the confusion surrounding AEP Ohio's rate plan and its overly complicated two-tiered capacity pricing structure. Eliminating RPM-based capacity pricing for previously shopping customers already receiving such pricing would only cause more confusion and damage. These customers have operated under contracts with CRES providers and have paid for capacity at RPM-based prices under the contracts for months, if not years. To shift them to the drastically increased price of $255/MW-day would cause significant confusion and harm for these customers. Such a result also is, therefore, illogical, unfair, and anticompetitive.

[41] *See* Exhibit A, attached hereto.

[42] *See* AEP Ohio Motion for Relief, filed Feb. 27, 2012, at p. 2.

FES requests that the Commission clarify this portion of the March 7, 2012 Entry and confirm that all customers who were shopping as of September 7, 2011, are entitled to receive RPM-based capacity pricing during the pendency of the interim state compensation mechanism.

II. CONCLUSION

For the reasons set forth above, FES respectfully requests that the Commission grant rehearing and issue an Entry consistent with this filing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *FirstEnergy Solutions Corp.'s Application for Rehearing of the Commission's March 7, 2012 Entry* and the *Memorandum* in support thereof were served this 21st day of March, 2012, via e-mail upon the parties below.

s/ James F. Lang
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Summary: Application for Rehearing of the Commission's March 7, 2012 Entry electronically filed by Mr. James F Lang on behalf of FirstEnergy Solutions Corp.