

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission Review)	
Of the Capacity Charges of Ohio Power)	Case No. 10-2929-EL-UNC
Company and Columbus Southern)	
Power Company.)	

**RETAIL ENERGY SUPPLY ASSOCIATION, DIRECT ENERGY BUSINESS, LLC,
AND DIRECT ENERGY SERVICES, LLC'S
POST-HEARING BRIEF**

May 23, 2012

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
A.	Background and Procedural History.....	3
II.	Jurisdiction of the Ohio Commission.....	7
A.	The Commission has the authority under Title 49 of the Ohio Revised Code to set the State Compensation Mechanism...	7
III.	A Capacity Rate Based on AEP Ohio’s Embedded Costs is not appropriate under the RAA and will destroy Ohio’s growing competitive retail electricity market.....	10
A.	Under the Plain Language of the RAA, AEP Ohio is not Entitled to a capacity rate based on embedded cost.....	10
B.	AEP Ohio’s proposed \$356 MW-day rate based on its Embedded costs as the State Compensation Mechanism is Contrary to the intent of the RAA.....	12
C.	Allowing AEP Ohio to collect its embedded costs would give AEP Ohio a higher Return on Equity than has been granted to any other AEP utility in any other state.....	15
D.	Setting the State Compensation Mechanism at \$356 MW-day Will Halt the Development of Retail Competition in this State...	17
IV.	The Two-Tier Capacity Rate Currently In Place is inequitable and Inefficient and should not be adopted.....	19
V.	The Commission should set the State Compensation Mechanism at RPM priced capacity.....	22
A.	RPM is the Most Transparent, Market-Based Price.....	22
B.	RPM Priced Capacity is Necessary As Part of AEP Ohio’s Transition to Market.....	24
VI.	Suppliers would accept RPM rates, with an RSR as proposed In the ESP II.....	26
VII.	Conclusion.....	27

INTRODUCTION

Now comes the Retail Energy Supply Association (“RESA”)¹, Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, the “Suppliers”)² and pursuant to the procedural schedule established by the Attorney Examiners, submits its initial post-hearing brief in the above styled docket.

On December 8, 2010 the Commission, by Entry issued in this proceeding, declared that it had established a State Compensation Mechanism (“SCM”) by which AEP Ohio would charge competitive retail electric service (“CRES”) providers serving retail customers in its service area the Reliability Pricing Model (“RPM”) price for capacity. That order did not alter the then status quo as AEP Ohio had charged CRES providers the RPM price since the inception of the RPM market in 2007. The SCM was amended though with the effective date of the AEP ESP II decision³ which established a two tier SCM rate. The two tiers consisted of a tier one rate of the RPM capacity price for those previously shopping, and \$255 per MW/d⁴ for all new shoppers.⁵ In March of this year, AEP Ohio committed to bid its capacity into PJM’s Base Residual

¹ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus; Reliant Energy Northeast LLC and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

² Teresa L. Ringenbach presented testimony jointly on behalf of both RESA and Direct Energy in this proceeding (RESA Exhibit 101).

³ Case No. 11-346-EL-SSO Opinion and Order, December 14, 2011, pp. 54-55.

⁴ MW/d = Megawatt per day.

⁵ A set aside was also established for government aggregation for communities that previously passed ordinances and residential customers until the class equaled the set aside for year one of the Stipulation. See the December 14, 2011 Opinion and Order in Case No. 11-346-EL-SSO at p. 54.

Auction⁶ thus precluding the continued use of the Fixed Resource Requirement (“FRR”) and establishing RPM pricing for capacity for the five year period commencing June 1, 2015 through May 31, 2020.⁷

Thus, the matter at bar presents the Commission with a single determination, what shall the SCM for AEP Ohio be for the period June 1, 2012 through May 31, 2015? The record before the Commission in this proceeding provides three options. AEP Ohio has asked for a SCM of \$356 MW/d for each customer that shops. The Suppliers and virtually every other of the 22 intervenors in this proceeding favor a return to competitive market based RPM pricing.⁸ Finally, the Staff’s consultant has determined that if the Commission wishes to establish a cost based SCM, the proper cost based rate should be \$146 MW/d.⁹

To make its decision of the proper SCM, the Commission has to answer two legal questions and one factual question. The first legal question is: does the Commission have authority to set the SCM?¹⁰ The Commission initially found it did pursuant to its General Supervisory Authority.¹¹ The Suppliers believe that was an accurate determination in December 2010 and remains so today. Further, as articulated below, the Suppliers also believe that Section 4928.141, Revised Code and Section 4928.143, Revised Code as it applies to AEP Ohio as a

⁶ FirstEnergy Solutions (“FES”) Ex. 101, Direct Testimony of Robert B. Stoddard, p. 3; Exelon Generation Company, LLC (“Exelon”) Ex. 101, Direct Testimony of David I. Fein, p. 6. Cross of AEP Ohio witness Dana E. Horton, Tr. Vol. II, pp. 494-499.

⁷ Exelon Ex. 101, p. 6.

⁸ The Commission’s March 7, 2012 Entry continued the two tiered pricing of RPM capacity fee for tier one retail customers and \$255 MW/d for tier two retail customers, which previously had been established as part of the December 14, 2011 Opinion and Order. The March 7th Entry, though, explicitly called for a reversion to RPM pricing for everyone as of June 1, 2012.

⁹ See the Direct Testimonies of Staff Witnesses Ryan Harter, Ralph Smith, Emily Medine, Staff Exs., 101, 103, and 105.

¹⁰ See Section II of this Initial Brief. See IEU motion to dismiss and RESA memorandum contra. AEP Ohio is also actively pursuing an appeal at the Federal Energy Regulatory Commission on the use of the SCM.

¹¹ See the December 8, 2010 Entry, Finding (2).

holder of an electric security plan, gives the Commission the authority to set the SCM rate. The second legal question is what criteria should be followed to establish the SCM. AEP Ohio takes the position that Section 8.1 of the Reliability Assurance Agreement (“RAA”) mandates that the SCM be based on the embedded cost of its generation fleet.¹² IEU believes that the SCM must be determined by a cost of service rate pursuant to Section 4909.18, Revised Code.¹³ The Suppliers believe the SCM should be a market based rate, and that if a market based rate would be confiscatory the Commission may make adjustments to assure that AEP Ohio receives a reasonable return on its dedicated facilities fairly applied to both shopping and non-shopping customers. The one factual question is whether the SCM will fulfill the tenants of the State Energy Policy contained in Section 4928.02, Revised Code.

For the reasons presented below the Suppliers believe that as per the March 7, 2012 Entry in this proceeding, AEP Ohio should return to the RPM price effective June 1, 2012 and that capacity price should remain at the RPM price throughout the ESP II period.

A. Background and Procedural History

AEP Ohio’s load is part of the regional electricity market operated by the regional transmission organization PJM Interconnection, LLC (“PJM”). PJM operates a capacity market called the Reliability Pricing Model (“RPM”) in which PJM requires load serving entities (“LSEs”), such as AEP Ohio, to purchase adequate capacity to meet PJM’s forecasted demand and reserve margin. The RPM has a capacity auction, the Base Residual Auction (“BRA”), which sets rates for capacity at the market price three years prior to the delivery year.

¹² See the Testimony of Kelly D. Pearce (AEP Ohio Exhibit 102), p. 20 and the Testimony of Richard Munczinski (AEP Ohio Exhibit 101), pp. 8-15.

¹³ See the April 10, 2012 IEU Motion to Dismiss in this docket, p. 9.

An LSE's capacity obligation is governed by the RAA, a tariff approved and adopted by the Federal Energy Regulatory Commission ("FERC"). The RAA provides LSEs an option to choose to not participate in the RPM auctions and instead may satisfy their capacity obligation in another way: the Fixed Resource Requirement ("FRR") Alternative. This allows an LSE to submit a plan that delineates the specific capacity resources that will meet the capacity obligation for its load rather than participating in the RPM auction. The FRR Entity must designate resources to meet the capacity obligation for its entire load, including any load served by an alternative LSE (such as a CRES provider), that has not officially selected to self-supply its capacity obligation, requiring the alternative LSE to pay the capacity rates set by the RAA.

A CRES provider/alternative LSE may choose to supply its own capacity in order to avoid the FRR capacity charges. However, this election must be made three years in advance, consistent with the timing of the BRA. At this point in time, no current CRES providers have made such an election, and in order to avoid AEP Ohio's requested price increases, or any other capacity price increases imposed by the Commission, CRES providers must have made this election no later than November 2010. As a result, CRES providers and their customers *must* take capacity service from AEP Ohio at the rates set under the RAA.

The capacity rates that CRES providers and their customers pay the FRR Entity are governed by Schedule 8.1, Section D.8 of the RAA. This section provides for three different alternatives for capacity pricing: the RPM auction price, a state compensation mechanism (SCM) set by the state regulatory body, or a cost-based rate that the FRR Entity may apply for at the FERC. If a SCM is put into place by the state regulatory agency, it will control. In 2007, AEP

Ohio elected to be an FRR Entity under Section 8.1 of the RAA.¹⁴ Since that date, alternative LSEs operating in AEP Ohio's service territory (CRES providers) have been charged for capacity based upon the prevailing RPM auction price. Ohio is a retail choice state as is referenced in Schedule 8.1, Section D.8 of the RAA, and thus may set the SCM. The Public Utilities Commission of Ohio (the "Commission"), at least implicitly, approved the RPM-based price as the capacity price charged to CRES providers and shopping customers as part of AEP Ohio's first ESP at Case Nos. 08-917-EL-SSO, et al ("ESP I").

As the number of shopping customers increased, AEP Ohio attempted to change the capacity rate charged only to shopping customers by filing an application at the FERC in Docket No. ER11-2183 requesting compensation for capacity costs through a cost-based mechanism under Section D.8 of Schedule 8.1 of the RAA. In response, the Commission in its December 8, 2010 order in this docket explicitly adopted the RPM-based capacity price as the SCM for shopping customers, making clear that this rate was, and has been, the SCM, precluding AEP Ohio's request at the FERC. The FERC recognized the Commission's authority to set the SCM by Order dated January 20, 2011 in ER11-2183, in which the FERC found "...the Ohio Commission has adopted such a state mechanism and we therefore reject the AEP Ohio Companies' filing."¹⁵

The Commission, pursuant to the December 8, 2010 order, opened this docket for investigation of AEP Ohio's capacity charges. By entry on August 11, 2011, the Commission set

¹⁴ However, AEP Ohio has given notice to PJM as of April 2012 that it intends to participate in the BRA for delivery years 2015-2016. As a result, AEP Ohio's status as an FRR Entity will expire on May 31, 2012 and capacity will be available to CRES providers and/or their customers at the RPM auction price.

¹⁵ Order, p. 4. The Order additionally noted that because the state set the SCM, AEP Ohio did not have the right to file a Section 205 application for a cost-based rate.

a procedural schedule and evidentiary hearing to determine the SCM.¹⁶ Concurrently, the Commission and interested parties are considering AEP Ohio's second electric security plan ("ESP II"), which proposes certain capacity charges for both shopping and non-shopping customers.¹⁷

AEP Ohio has continued in this hearing, as it has at the FERC, to request a \$356 MW-day rate for capacity, which AEP Ohio claims will recover its embedded costs. Every single intervenor opposes this request, and urges this Commission to set the rate at the RPM auction price. The Commission should reject AEP Ohio's request for a capacity rate based on embedded costs because an embedded cost rate is not appropriate under the RAA. In addition, AEP Ohio accepted RPM pricing as the SCM as implicitly endorsed by the Commission since 2007. AEP Ohio's acceptance and the Commission's implicit and then explicit endorsement of RPM pricing as the SCM are the basis upon which CRES providers and their customers relied when entering into contracts for competitive electric supply. A change to a \$356 MW-day rate for CRES capacity, largely unforeseen due to AEP Ohio's previous reliance on RPM pricing, will destroy the growth of the competitive retail electricity market. Further, while AEP Ohio is claiming a dubious right to significantly escalate the price it charges for CRES capacity after years of reliance on RPM pricing, the CRES providers themselves cannot now claim the right to self-supply capacity at current market rates due to the three year notice requirement.

Alternatively, the RPM based price is a transparent price that is market-based and necessary for the proper transition of AEP Ohio's service territory into a fully competitive retail

¹⁶ December 8, 2010 Entry. The Commission put up for consideration the "appropriate capacity cost pricing/recovery mechanism including, if necessary, the appropriate components of any proposed capacity cost recovery mechanism."

¹⁷ See Case Nos. 11-346-EL-SSO et al.

market. The Commission should reject AEP Ohio's request, and adopt, as it has previously done, the RPM based rate as the SCM.

II. Jurisdiction of the Ohio Commission.

The threshold issue that must be addressed in this hearing is the Commission's jurisdiction and authority to consider this case. It has been asserted that the Commission has no authority under Ohio law to consider this issue. For the reasons below, this assertion is incorrect, and this is the right venue to set the SCM.

A. The Commission has the authority under Title 49 of the Ohio Revised Code to set the State Compensation Mechanism.

The Commission under its plenary, supervisory authority over rates and service terms charged by electric distribution utilities¹⁸ can initiate an investigation, and if it finds after hearing that the capacity rate is no longer just and reasonable, the Commission can change that rate. Thus, the Suppliers believe the Commission is well within its authority to not only conduct this investigation into the capacity rates that AEP Ohio is charging CRES providers directly, and retail customers indirectly, but that the Commission has broad authority as to the design of such utility rates. In addition, Section 4928.141, Revised Code requires AEP Ohio as an electric distribution utility to provide standard service customers with all their energy needs including setting a capacity rate. AEP Ohio has selected to have an electric security plan ("ESP"), which applies to shopping customers as well as non shopping customers. Furthermore, Section 4928.143 (B)(2)(d), Revised Code permits the Commission to include capacity costs in an ESP and allows those costs to apply to more than just default generation service.

¹⁸ Sections 4905.04, .05 and .06, Revised Code.

i. The Commission has the authority to set the State Compensation Mechanism pursuant to its General Supervisory Powers.

AEP Ohio, as an EDU, is subject to the Commission's general supervisory authority under Sections 4905.04, 4905.05, 4905.06, Revised Code. Section 4905.04 provides that the Commission is "...vested with the power and jurisdiction to supervise and regulate public utilities..." and "to require all public utilities to furnish their products and render all services exacted by the commission or by law...." Section 4905.06, Revised Code provides that the Commission "has general supervision over all public utilities within its jurisdiction... and may examine such public utilities and keep informed as to their general condition, capitalization, and franchises...."

Pursuant to this broad statutory authority, the Commission may open dockets to review charges and rates, as it has done here. Consideration of AEP Ohio's capacity rate falls squarely within the general supervisory power of the Commission. In fact, the Commission recognized that the capacity rate is subject to its general supervisory powers in its earlier entries in this case, stating that "Sections 4905.04, 4905.05, and 4905.06, Revised Code, grant the Commission authority to supervise and regulate all public utilities within its jurisdiction."¹⁹

ii. The Commission has the authority to set the State Compensation Mechanism pursuant to Sections 4928.141, 143, Revised Code.

Not only does the Commission have broad authority pursuant to its general supervisory powers, but Section 4928.143, Revised Code allows the Commission to set rates for certain competitive services through an ESP. As part of the ESP, the Commission may allow AEP Ohio to collect the following charges, without limitation:

¹⁹ See December 8, 2010 Entry; "Section 4905.04, 4905.05, and 4905.06, Revised Code, grant the Commission authority to supervise and regulate all public utilities within its jurisdiction." ¶2.

“Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service.” Section 4928.143(B)(2)(d).

The SCM, and associated capacity charge, falls under this section as it is a “charge relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service...” and has “the effect of stabilizing or providing certainty regarding retail electric service.”²⁰ Thus, the Commission has the substantive authority under Section 4928.143 of the Revised Code to set the SCM for CRES providers and their customers. The Commission has recognized this authority by adopting the RPM-based price in AEP Ohio’s ESP I, and explicitly setting that price as the SCM in this docket.²¹

AEP Ohio chose the FRR option and because it initially accepted RPM pricing for CRES providers, no CRES providers opted for capacity self-supply. The outcome of its choices means that AEP Ohio is the only entity that can provide capacity to shopping and non-shopping customers alike, and will remain so until June 2015. Capacity provided by AEP Ohio is an *essential service* to both shopping and non-shopping customers alike, given that neither shopping nor non-shopping customers can look elsewhere to receive capacity supply. Thus, although capacity is a competitive service that is priced in PJM’s RPM auction at a market price, in these limited circumstances, it is the type of “essential service” contemplated by the General Assembly in adopting Section 4928.141(A), Revised Code.

Further, this essential service is a *retail electric service* provided to consumers as generation capacity and is therefore a “service involved in supplying or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the power of

²⁰ R.C. § 4928.143(B)(2)(d).

²¹ See December 8, 2010 Entry.

consumption.”²² Although this service has been characterized as a “sale for resale”, it is in fact a consumer transaction constituting retail electric service.²³ The capacity rate for shopping customers is determined by AEP Ohio on a customer by customer basis.²⁴ As a result, those customers allocated RPM capacity under the current Two-Tier capacity construct²⁵ will pay that rate regardless of which provider supplies the competitive retail electric service. The capacity service provided by AEP Ohio is a service that is arranged for “ultimate consumers in this state.”²⁶ Thus, the capacity rate charged to CRES providers and their customers is a competitive retail electric service that is necessary to maintain essential electric service to consumers, and is within the authority of this Commission.

III. A Capacity Rate Based on AEP Ohio’s Embedded Costs is not appropriate under the RAA and will destroy Ohio’s growing competitive retail electricity market.

A. Under the Plain Language of the RAA, AEP Ohio is not entitled to a capacity rate based on embedded cost.

The purpose of this hearing, as discussed above, is to determine the State Compensation Mechanism for the rate AEP Ohio will charge CRES providers under the RAA. Schedule 8.1, Section D.8 of the RAA governs the provision of capacity under by FRR Entities, such as AEP Ohio. It provides:

“In a state regulatory jurisdiction that has implemented retail choice, the FRR Entity must include in its FRR Capacity Plan all load, including expected load growth, in the FRR Service Area, notwithstanding the loss of any such load to or among alternative retail LSEs. In the case of load reflected in the FRR Capacity Plan that switches to an alternative retail LSE, where the state regulatory jurisdiction requires switching customers or the LSE to compensate the FRR Entity for its FRR capacity obligations,

²² R.C. § 4928.01(A)(27).

²³ See IEU’s Motion to Dismiss, 10. RESA notes that the FERC has already recognized that the Ohio Commission may determine the rate through the SCM in its January 20, 2011 Order in ER11-2183.

²⁴ Cross of Witness Allen, Tr. Vol. III, pp. 618-22.

²⁵ By Entry, dated March 7, 2012 in this case, the Commission granted AEP Ohio’s motion for relief setting the capacity rate at the Two-Tier capacity construct until June 1, 2012.

²⁶ R.C. § 4928.01(A)(27).

such state compensation mechanism will prevail. In the absence of a state compensation mechanism, the applicable alternative retail LSE shall compensate the FRR Entity at the capacity price in the unconstrained portions of the PJM Region, as determined in accordance with Attachment DD to the PJM Tariff, provided that the FRR Entity may, at any time, make a filing with FERC under Sections 205 of the Federal Power Act proposing to change the basis for compensation to a method based on the FRR Entity's cost or such other basis shown to be just and reasonable, and a retail LSE may at any time exercise its rights under Section 206 of the FPA." (emphasis added).

AEP Ohio argues that it is entitled to a rate based on the embedded costs of capacity under the RAA by filing at the FERC under Section 205 of the Federal Power Act for a cost-based rate.²⁷ In fact, AEP Ohio admits the only reference to "cost" in Section 8, or any other controlling document relating to AEP Ohio's capacity charge, is in the context of the Section 205 FERC filing.²⁸ Again, as noted by Witness Horton in Examination by Commissioner Porter:

Q. "In Section D.8, I believe it's second full sentence, it says 'In the case of load reflected in the FRR capacity plan that switches to an alternative LSE where the state regulatory jurisdiction requires switching customers to compensate the FRR entity for its FRR capacity obligations, such compensation mechanism will prevail.' Where is the cost mentioned there?"

A. "I don't see it."

Q. ... "Are you aware that it's mentioned somewhere else? ...[I]f it's mentioned somewhere else or if there's some other controlling agreement or rule that would require the Ohio Commission to approve costs for the FRR entity, maybe you can just let me know of that provision."

A. "I guess we've always thought that the last part of that Section 8 always provided for whatever there was a state recover mechanism in place or an RPM there was always the cost-based option that AEP could—or the FRR entity, not AEP could file. So that's where we pick up the cost base."²⁹

²⁷ Cross of Witness Horton, Tr. Vol. II, p. 548; Witness Horton states: "If I could just read the sentence, I'm looking at provided that the FRR Entity May at any time make a filing with FERC under Section 205 of the Federal Power Act proposing to change the basis for compensation to a method based on the FRR entities cost or other such basis shown to be just and reasonable. ... So that's where we've always thought that the cost based thought was always an option."

²⁸ Tr. Vol. II, p. 547.

²⁹ Tr. Vol. II, p. 547-48.

However, based on the clear language of the RAA, AEP Ohio may apply for this cost based rate at the FERC *only if* there is no state compensation mechanism in place. Witness Horton could not dispute this clear reading of Section 8 of the RAA in questions from Commissioner Porter:

Q. “If you read the sentence, it’s in the middle of that paragraph, it says ‘In the absence of a state compensation mechanism,’ then it continues on to [the sentence regarding filing for a cost-based rate at the FERC]. So if there is no state compensation mechanism, would you agree that then you could do the things that you just referenced in your prior statement [that is, file for a cost-based rate]?”

A. “Yes. And I don’t know what to say ... if there’s a state compensation mechanism already in place. I don’t know if there is a legal interpretation...it’s beyond my expertise on that.”³⁰

The Ohio Commission made clear in its December 8, 2010 Entry³¹, that the RPM rate was the state compensation mechanism, and opened this docket for further consideration of the appropriate *state compensation mechanism*³²--precluding AEP Ohio’s request for a cost-based rate at the FERC.³³ AEP Ohio could point to no language in the RAA, or any other agreement or controlling document that states that the state compensation mechanism must be a rate based on embedded costs. In fact, as discussed below, an embedded cost-based SCM is contrary to the intent of the RAA.

B. AEP Ohio’s proposed \$356 MW-day rate based on its embedded costs as the State Compensation Mechanism is contrary to the intent of the RAA.

Even though AEP Ohio is precluded from requesting a cost-based rate under the RAA when a state compensation mechanism has been set, AEP Ohio Witness Horton claims that “embedded cost” was what the parties to the settlement agreement at FERC (which resulted in

³⁰ Tr. Vol. II, Pp. 548-49.

³¹ See the December 8, 2011 Entry in Case No. 10-2929, at Finding (4).

³² In response, the FERC issued an order in that proceeding stating that a state compensation mechanism was in place and as such, AEP Ohio was precluded from filing for a cost-based rate under Section 205.

³³ Tr. Vol. II, 545-549.

the RAA) intended AEP Ohio to recover.³⁴ AEP Ohio's interpretation of the RAA is incorrect. First, as noted by FirstEnergy Solutions Witness Stoddard, "the RPM Settlement agreement itself *never* mentions recovery of embedded costs...." and "[n]owhere in the Settlement Agreement or its attachments does the term 'embedded cost' appear...."³⁵ The fact that the term "embedded cost" is not mentioned anywhere in the RAA or the Settlement Agreement is consistent with the intent and purpose of the RAA.³⁶

Not only is the plain language of the RAA inconsistent with AEP Ohio's request, but it was not contemplated by the parties to the RAA that the State Compensation Mechanism was intended to allow AEP Ohio to collect its embedded costs for capacity. Witness Stoddard was an active participant in the stakeholder discussions that led to the RAA and is intimately familiar with the purposes and intent of the RAA.³⁷ Witness Stoddard states,

"Allowing an FRR Entity to recoup its embedded costs from other LSEs in its zone would deviate from the theory and practice underlying the entire RPM design. It was understood that any state compensation mechanism would be part of a larger regulatory framework in a state to implement competitive retail access. The state compensation mechanism should, therefore, operate so as not to discriminate against competitive retail suppliers or to discourage competition. But if competitive retail suppliers had to pay embedded costs for capacity to the FRR Entity, while also having to pay market prices for *energy*, these suppliers would have been at a sharp and discriminatory cost disadvantage to the utility. Consequently, the default rate for capacity set in the RAA is such a price: the RPM RTO price."³⁸

³⁴ Dana Horton, Direct Testimony (AEP Ohio Exhibit 103), p. 10. "So, the stakeholders agreed upon another method under which the level of capacity compensation would be based on the FRR's embedded capacity costs."

³⁵ FES Ex. 101, pp. 16-17 (emphasis added). Additionally, Stoddard notes, that the Settlement Agreement itself made "clear that the entire agreement between the parties was included within the four corners of the RPM settlement Agreement." *Id.*

³⁶ FES Ex. 101, p. 17.

³⁷ FES Ex. 101, 16. See also Tr. Vol. VIII, p. 1647 ("I was in the settlement process on behalf of GenOn, and in settlement, the judge then asked I join one of the small committees that actually drafted this section of the RAA.").

³⁸ FES Ex. 101, p. 17.

Stoddard's testimony is consistent with the stated purpose of the RAA: "Further, it is the intention and objective of the Parties to implement this Agreement in a manner consistent with the development of a robust competitive marketplace."³⁹ To allow AEP Ohio to collect a rate for capacity that is over two times the current RPM capacity rate, over eight times the RPM capacity rate for the 2012-2013 delivery year, and higher than the RPM rate has even been, will halt the development of a robust competitive marketplace. Such an outcome is clearly inconsistent with the purposes of the RAA, as approved by FERC.

Consistent with the purpose and intent of the RAA, the use of the word "cost" in the RAA was meant to reference *avoided cost*, not embedded cost.⁴⁰ The "Avoided Cost Rate" or the "ACR" is the cost that AEP Ohio could avoid by mothballing or retiring a resource.⁴¹ Witness Stoddard states that the appropriate "cost metric should be based on the same calculations used to determine the maximum offer price from AEP Ohio's capacity resources, namely the 'to go' costs of each resource, minus the expected value of the energy and ancillary services generated by each resource in excess of the variable cost to generate that energy or ancillary service."⁴² As noted by Witness Stoddard,

"My view...is that ...this RAA was filed as part of a larger settlement agreement. If you go through and look, every time the word 'cost' is mentioned in that whole settlement agreement, it's always in the context of an avoidable cost. Even when we're looking at new projected in the APIR term..., it's the avoidable project investment.
So...my view of it as we wrote this, we are talking about just avoidable costs. We are trying to set up a market structure that didn't turn the FRR into some way that

³⁹ FES Ex. 110-A, Reliability Assurance Agreement, Article 2 "Purpose".

⁴⁰ FES Ex. 101, p. 28. "As an economist who had direct responsibility for negotiating the RPM design, it is my professional opinion that AEP should only be allowed to recover costs that are consistent with how that term is used elsewhere in Section 8 of the RAA, and as used in the parallel Attachment DD of the PJM Tariff: the ACR net of the E&AS Offset."

⁴¹ FES Ex. 101, p. 4.

⁴² FES Ex. 101, p. 29.

a regular entity could get a really big number, whereas if they were going to be in the RPM, they would do poorly.

What we would have done then is create an exception that swallowed the rule. Everyone that could have taken that option would have chosen to get some high value. The point of this market was to be comprehensive. The point of the FRR was to allow very limited carve-out for firm that has regulatory reasons and state reasons to seek a different structure.”⁴³

The purpose of the RAA is to promote a robust competitive market. Consistent with that purpose, capacity prices charged by AEP Ohio to CRES providers should be a market-based price, the RPM prices, not a price based on AEP Ohio’s embedded costs.⁴⁴ This outcome promotes economic efficiency and is consistent with Ohio’s state policy to promote competition and AEP Ohio’s own transition to market.⁴⁵ For these reasons, and the reasons discussed below, AEP Ohio’s request for an SCM based on embedded costs should be denied and the Commission should continue an SCM based on the RPM pricing.

C. Allowing AEP Ohio to collect its embedded costs would give AEP Ohio a higher Return on Equity than has been granted to any other AEP utility in any other state.

AEP Ohio requests a capacity rate to charge CRES providers set at \$356 MW-day, its calculated embedded cost, in order to avoid “significant financial harm.”⁴⁶ Yet, in all of its initial filings, AEP Ohio not once disclosed what its return on equity would be if it received this embedded cost, nor did it provide the information necessary to make this calculation. In addition, the Commission should be clear that this ROE is only on those customers who choose to shop which creates an additional barrier to the competitive market. As stated in Witness Allen’s examination through questions from Commissioner Porter:

⁴³ Tr. Vol. VIII, pp. 1648-49.

⁴⁴ FES Ex. 101, p. 47. “As I discussed above, competition intrinsically means that consumers will pay *market-based* prices, not *cost-based* prices.”

⁴⁵ See R.C. § 4928.02.

⁴⁶ AEP Ohio Ex. 104, Direct Testimony of William A. Allen, p. 3.

Q: ... “I can’t speak for all the commissioners, but how am I to understand, if you could help me, before a decision is made what the ROE would be at the 355 rate? Is that in the record anywhere?

A: “No, other than through the discussion we’ve had here that we would expect that total return to be about 11 percent plus the off-system sales margins in the currently depressed market.”⁴⁷

As noted by Commissioner Porter, it is important to consider the return on equity AEP Ohio would receive under their proposed \$356 MW/day capacity rate.⁴⁸

In apparent response to this criticism and noted deficiency, Witness Allen provided rebuttal testimony that specified that AEP Ohio would receive a 12.2% return on equity in 2013 if it received \$356 MW/day capacity rate.⁴⁹ Witness Allen refers to this rate as “reasonable.”⁵⁰ Yet, on review of AEP’s 10-K filing with the SEC, no other AEP utility has been granted a return on equity this high, and is over 1% higher than any return on equity requested by AEP Ohio in 2011.⁵¹ Even in AEP Ohio’s more recent distribution rate case, 11-351-EL-AIR et al, AEP Ohio requested a return on equity over 1% lower—11.15%, and the Commission ultimately granted a return on equity of 10.2%.⁵² AEP Ohio is thus requesting a capacity rate that would grant them a return on equity that is a full 1/5 higher than what this Commission granted it in its last rate case.

It has become clear, once AEP Ohio presented a more complete picture of its request, the \$356 MW/day request is not for the purposes of preventing severe economic distress, but the

⁴⁷ Cross of Witness Allen, Tr. Vol. III, pp. 722. See also pp. 649-51.

⁴⁸ Cross of Witness Allen, Tr. Vol. III, p.724: Commissioner Porter: “...I would just suggest if the record were more complete with details regarding the ROE and the 355.72 rate, it would be helpful for at least one of the commissioners, myself, to understand what we would be approving as a reasonable rate of return.”

⁴⁹ AEP Ohio Ex. 142, Rebuttal Testimony of William A. Allen, p. 21.

⁵⁰ AEP Ohio Ex. 142, p. 21.

⁵¹ RESA Ex. 103, AEP Co., Inc.’s 10-K filed on 2/28/2012.

⁵² See the December 14, 2011 Opinion and Order in Case No. 11-351, et al., at pp. 5 and 12.

request is to compensate AEP Ohio at an excessive and unreasonable rate, at the expense of CRES providers , CRES customers, and the competitive market. AEP Ohio’s excessive requests must be denied, and the Commission should reject AEP Ohio’s proposed \$356 MW-day rate.

D. Setting the State Compensation Mechanism at \$356 MW-day Will Halt the Development of Retail Competition in this State.

Competition in the electricity market promotes lower generation prices for consumers and shifts certain risks away from customers leading to greater productivity and efficiency in the market.⁵³ In recognition of these benefits, Ohio’s General Assembly has made it the policy of this state to support the development of a robust competitive retail market for electricity.⁵⁴ Ohio’s customers have taken advantage of the competitive retail market as over 1.7 million Ohio customers have chosen to shop.⁵⁵

Despite the recognized advantages of competitive retail market for electricity, AEP Ohio is requesting a substantial increase in capacity fees for shopping customers in this proceeding, where no similar increase is requested for tariff customers in the AEP ESP II proceeding (Case No. 11-346-EL-SSO).⁵⁶ In fact, it is unknown what AEP Ohio is charging its tariff customers for capacity. The base generation rates charged to tariff customers is an amalgamation of old cost of service calculations, and no AEP Ohio witness can demonstrate the exact capacity cost.⁵⁷ Instead, AEP Ohio witnesses simply point to a comparison of SSO revenues it collects today to revenues it would expect to recover if it charged the \$356 MW-day capacity charge to estimate

⁵³ Banks (FES Exhibit 102), pp. 4-5.

⁵⁴ R.C. § 4928.02.

⁵⁵ Banks (FES Exhibit 102), 4-5.

⁵⁶ Ringenbach (RESA Exhibit 101), 12.

⁵⁷ Cross of Muncinski, Tr. Vol. I, pp. 64-67; Cross of Allen, Tr. Vol. III, pp. 659- 661. Witness Allen notes that the capacity rate is in the base generation rate, but a distinct capacity component cannot be determined because the last cost of service study occurred back in the early 1990s. He states, “There is not a distinct capacity component in the rates but the recovery of the capacity costs would be in the base generation rates, but it’s not a distinct element.” Id. at 659.

the cost of capacity to SSO customers is \$356/MW-day.⁵⁸ As a result, it is possible that AEP Ohio's request for the increased capacity for CRES providers and their customers only, will result in shopping customers subsidizing non-shopping customers for capacity.

The rate that AEP Ohio requests will destroy the development of a robust competitive market, "not only because it assesses shopping customers a non-transparent capacity price, but AEP Ohio is effectively diminishing the advantages of shopping by raising capacity costs only for shopping customers."⁵⁹ A \$356 MW/day capacity price prevents CRES providers from making appealing offers in AEP Ohio's service territory, affecting both CRES providers and their customers.

Witness Fein testified that at the \$356MW-day capacity charge level he does "not believe [Exelon and Constellation] would be able to make offers that would be viewed as attractive" by *any* customers.⁶⁰ As noted by Witness Banks, the \$356 MW-day price, or any price above RPM for that matter, will constrain CRES providers from offering contracts with savings. Mr. Banks correctly notes that,

"If capacity pricing to suppliers is artificially high, as is the case with the Proposed Capacity Pricing, suppliers will be unable to offer products that can compete head-to-head on a fair and level playing field with AEP Ohio's SSO, which includes a wholly unknown capacity price."⁶¹

Preventing CRES providers from making these sales will also raise the costs for numerous shopping customers, and eliminate any cost savings that are associated with a competitive market. Several currently shopping businesses, who are members of the Ohio

⁵⁸ Cross of Allen, Tr. Vol. III, pp. 715-719. ("What I did, I compared the revenues we received today and based upon those comparisons determined if the revenues we received today are essentially equivalent to the capacity rate that Witness Pearce calculated."). *Id.* at 718.

⁵⁹ Ringenbach (RESA Exhibit 101), 12.

⁶⁰ Tr. Vol. VIII, 1564.

⁶¹ Banks (FES Exhibit 102), pp. 5-6.

Manufacturers Association Energy Group, have filed testimony to demonstrate to this Commission the seriousness of AEP Ohio's proposed change and the detrimental impact the proposal will have on their businesses and the local economy. The impacts on these businesses if AEP Ohio implements a \$356 MW-day charge over the next three years are as follows:

- Lima Refining Company will experience losses of approximately \$51.7 million.⁶²
- Whirlpool Corporation will experience losses of approximately \$3.4 million.⁶³
- AMG Vanadium, Inc. will experience losses of approximately \$2.34 million.⁶⁴
- OSCO Industries, Inc. will experience losses of approximately \$2.57 million.⁶⁵
- Belden Brick Company, LLC will experience losses of approximately \$896,270.⁶⁶

Simply put, implementing AEP Ohio's proposed rate will bring to a halt the development of the robust market in AEP Ohio's service territory, at a time when AEP Ohio's historically low shopping rates have finally risen to the levels seen in other service territories.⁶⁷ This result is wholly contrary to the goals of this state's energy policy, and is also contrary to AEP Ohio's move and transition to market. The Commission must reject AEP Ohio's proposed capacity rate.

IV. The Two-Tier Capacity Rate Currently In Place is inequitable and inefficient and should not be adopted.

On September 7, 2011, a number of parties to this proceeding, which was previously combined with AEP Ohio's ESP II case, signed a Stipulation and Recommendation that contained a Two-Tier pricing structure for capacity.⁶⁸ The structure, which was agreed to in the

⁶² Walters (Testimony of Lima Refining Company, OMA Exhibit 103A), p. 3.

⁶³ Siefker (Testimony of Whirlpool Corporation, OMA Exhibit 102A), p. 3.

⁶⁴ Forshey (Testimony of AMG Vanadium, Inc., OMA Exhibit 101A), p. 3.

⁶⁵ Burke (Testimony of OSCO Industries, Inc., OMA Exhibit 104A), p. 3.

⁶⁶ Belden (Testimony of Belden Brick Company, LLC, OMA Exhibit 105A), p. 3.

⁶⁷ Banks (FES Exhibit 102), pp. 10-11.

⁶⁸ See the September 7, 2011 Stipulation (Joint Exhibit 1) in Case No. 11-346, et al. at pp. 19-23.

context of a much broader settlement, created two tiers of capacity pricing—one tier at RPM based prices, and a second tier at \$255/MW-day.⁶⁹ A Detailed Implementation Plan was also submitted, which was intended to properly allocate costs among the consumers. The percentage of customers allocated tier one pricing increased by class each year until it was 100% RPM based pricing on June 1, 2015.⁷⁰ By Opinion and Order dated December 14, 2011, this Commission adopted the two tier pricing structure for capacity and the Detailed Implementation Plan.⁷¹ By Entry on Rehearing dated February 23, 2012, this Commission overturned its prior order and rejected the Stipulation, but by Order dated March 7, 2012, retained the Two-Tier pricing.⁷²

RESA and Direct Energy were signatories to the Stipulation, and were heavily involved in the negotiations of both the Two Tier pricing structure and the complex Detailed Implementation Plan (and its predecessor, Appendix C). Although RESA and Direct Energy supported this capacity plan in the greater context of the Stipulation as a whole, after almost six months of attempting to operate under the Two-Tier Structure, it has become painfully clear that this system is inherently inequitable and inefficient.

In order to qualify for the opportunity to receive RPM-based capacity pricing on a first-come-first-served basis, customers first had to enter a queue for capacity.⁷³ The effective and efficient operation of the queue was essential for the effective operation of the two tiered system.⁷⁴ The Stipulation required AEP Ohio to build a website that would allow customers to

⁶⁹ Id.

⁷⁰ Ibid., at pp. 22-23.

⁷¹ See the December 14, 2011 Opinion and Order in Case No. 11-346-EL-SSO, et al., at pp. 54-55.

⁷² See the February 23, 2012 Entry on Rehearing, pp. 11-13; See the March 7, 2012 Entry, at p. 4.

⁷³ Ringenbach (RESA Exhibit 101), 16-17.

⁷⁴ Id. at 17.

enter the queue.⁷⁵ The website was intended to provide transparency to CRES providers and customers as to which customers would be receiving RPM priced capacity.⁷⁶ Additionally, CRES providers were supposed to receive an electronic notice alerting them of which “tier” their customers fell into.⁷⁷

The reality versus the theory of the implementation plan of this two tiered system was fraught with inefficiencies and confusion for CRES providers and their customers. Instead of sending electronic notices, AEP Ohio used email to process notice for thousands of customers—resulting in extensive manual work from CRES providers to determine what price their customers were allocated.⁷⁸ Additionally, AEP Ohio’s billing system sent a total lump sum bill for capacity, without breaking out which customers received RPM and which customers received the \$255 MW/day price.⁷⁹ This led to more inefficiencies and work for CRES providers who had to individually verify each bill.⁸⁰

Finally, the interpretation and application of the complex Detailed Implementation Plan led to numerous disagreements among the parties, including those who signed the Stipulation. RESA previously filed an Application for Rehearing in this docket to determine the intent and application of the Detailed Implementation Plan, demonstrating this confusion.⁸¹ Continuation

⁷⁵ Ringenbach (RESA Exhibit 101), 16-17.

⁷⁶ Id. at 17.

⁷⁷ Id.

⁷⁸ Ringenbach (RESA Exhibit 101), 17. On the eve of Witness Ringenbach’s testimony, AEP Ohio began to implement electronic systems of notification. However, because AEP Ohio made this change in the middle of the hearing, the record is incomplete as to how these changes have in any way improved the system—if at all. Tr. Vol. IV, pp. 791-92.

⁷⁹ Ringenbach (RESA Exhibit 101), 17-18.

⁸⁰ Ringenbach (RESA Exhibit 101), 18.

⁸¹ See the January 15, 2012 RESA Application for Rehearing, at pp. 4-10.

of this complex pricing structure will only lead to more disagreements among AEP Ohio, the CRES providers and shopping customers.

The two-tiered system has been in place now for almost six months—and the evidence clearly demonstrates that the system is ineffective and inefficient. While AEP recently upgraded their system, the issue of disputes on receipt of RPM, customer confusion, and invoicing lump sum amounts are not corrected by simply no longer having email confirmation. The Commission should learn from the experiences of CRES providers and consumers that have attempted to operate under the two tier system, and implement a single price for all shopping customers—the RPM auction price.

V. The Commission should set the State Compensation Mechanism at RPM priced capacity.

The Commission must set a state compensation mechanism that takes into account the policy of this state and the stated purpose of the RAA to promote a robust competitive market.⁸² The RPM price is the only appropriate price to further these policies, and to provide a transparent and reasonable rate for both consumers, and for AEP Ohio. AEP Ohio has recognized the importance of transition to a competitive market—setting a capacity price that is anything other than RPM will hinder this process and prevent CRES providers from making attractive offers, and thus customers from shopping. In recognition of this fact, every intervenor in this case has advocated for RPM based pricing. For the reasons discussed below, the price for capacity must be based on the RPM auction price.

A. RPM is the Most Transparent, Market-Based Price.

Ohio is a retail choice state, and it is the policy of this state to promote the development of a retail market. RESA Witness Teresa Ringenbach, who has worked for CRES providers in

⁸² R.C. 4928.02; FES Ex. 110-A, RAA, Section 2.

Ohio for over ten years, notes that to make a retail sale, “you must provide the customer with what they want”—“[w]hat customers want is a value proposition they can understand.”⁸³ The opaque approach proposed by AEP Ohio does not give a clear price to compare against which is based on the market.⁸⁴ A competitive market is only viable when it is based on transparent, market based prices.⁸⁵ The RPM price is the only price that is a transparent and market based price.

The RPM price allows for a transparent capacity price across Ohio, and as AEP Ohio transitions to a competitive market and moves to RPM pricing in 2015, education for customers must be a clear part of this transition. Across Ohio, all EDUs, with the exception of AEP Ohio, assess the RPM price to their shopping customers. Implementing the RPM price assures that “customers will have price transparent and market consistency as to what capacity costs across the state.”⁸⁶ Additionally, a consistent price for capacity over all the service territories makes it easier for CRES providers to make offers. As noted by Witness Ringenbach, “[i]n other Ohio service territories, where the prices are transparent, CRES are able to send a flyer, or an internet advertisement that states a comparable price, and such is the case in the non AEP Ohio service areas today.”⁸⁷ If the Commission were to add AEP Ohio to the list of EDUs providing RPM priced capacity, then multisite customers throughout the state could compare similar price components and make more informed decisions about their electricity pricing.⁸⁸

⁸³ Ringenbach (RESA Exhibit 101), 12.

⁸⁴ Ringenbach (RESA Exhibit 101), 7.

⁸⁵ Ringenbach (RESA Exhibit 101), 7.

⁸⁶ Ringenbach (RESA Exhibit 101), 13.

⁸⁷ Ringenbach (RESA Exhibit 101), 14.

⁸⁸ Ringenbach (RESA Exhibit 101), 15.

B. RPM Priced Capacity is Necessary As Part of AEP Ohio's Transition to Market

AEP Ohio has, since the inception of the RPM market in 2007, charged CRES providers the RPM price for capacity, until January 1, 2012.⁸⁹ Starting May 31, 2015, AEP Ohio will charge the RPM price for capacity as AEP Ohio has made the irrevocable decision to terminate the FRR Alternative, and bid its capacity in the Base Residual Auction.⁹⁰ As a result, the Commission's decision in this case is limited to a three year transition period in which AEP Ohio remains an FRR entity from now until May 31, 2015.⁹¹ The Commission should set the capacity price at RPM during this short interim period because it is the only price that will properly transition AEP Ohio to full market for both energy and capacity, and it is the only fair price to charge shopping customers.

Beginning in 2007, AEP Ohio charged the RPM price for capacity up until November of 2010 when it filed at the FERC for a cost-based rate.⁹² In 2007, the RPM priced capacity rate was \$46—two times the 2012-2013 price that AEP Ohio now claims is “free capacity.”⁹³ However, AEP Ohio admittedly did not take action because, as stated by Mr. Muncsinski, “there was very little shopping and energy prices were high.”⁹⁴

Today, in 2012, the energy prices are even lower, and shopping has increased—in accordance with the policy of this state. Now that it is no longer financially advantageous to charge RPM prices, AEP Ohio seeks to implement a cost-based approach to capacity pricing. AEP Ohio should not be allowed to “unilaterally apply ‘better-of-market-or-cost’ pricing”, or,

⁸⁹ Stoddard (FES Exhibit 101), 3; Fein (Exelon Exhibit 101), 6.

⁹⁰ Stoddard (FES Exhibit 101), 3; Fein (Exelon Exhibit 101), 6. Cross of Horton, Tr., Vol. II, 494-499.

⁹¹ Fein (Exelon Exhibit 101), 6.

⁹² Cross of Munczinski, Tr. Vol. I, pp. 82-83.

⁹³ Cross of Munczinski, Tr. Vol. I, p. 136, 153, 155, 160.

⁹⁴ Cross of Munczinski, Tr. Vol. I, p. 84.

choose their pricing based on the number of shopping customers.⁹⁵ The RPM price is the correct price for capacity, as it is the most transparent, efficient, and is based on the market. As noted by witness Stoddard, “[d]uring the transition period, economic efficiency and equity compel the use of the RPM RTO rate, as well.”⁹⁶

Further, AEP Ohio has made the decision to transition to a full market by June 1, 2015, including participation in the RPM auctions. In this context, it is illogical that AEP Ohio would charge RPM pricing up until January 1, 2012, transition to full market and charge RPM in 2015, but in the interim, charge another cost-based rate that is far above the RPM price. Such an outcome will hinder the transition to market, and is simply a last ditch attempt by AEP Ohio to recover its stranded costs before it moves to market. The following discussion between Commissioner Porter and Witness Stoddard drives this point home:

Q. “Let me take a step back. Are you aware that AEP has agreed to participate in the base residual auction in 2015-2016 delivery period?”

A. “Yes.”

Q. “Fast forward through that time frame, is it your opinion or your view that costs that AEP would be permitted to use and when it makes offers into that BRA, that those would be the avoidable costs?”

A. “I’m quite sure the market monitor used the same general methodology that is used in my finding that avoidable costs, you would never look at embedded costs.”

Q. “So if the Commission approved a number prior to that, prior to 2015, that somehow allocated for embedded costs it would be inconsistent with what the company would be permitted to do in the future period 2015-2016.”

A. “Yes.”

Q. “It’s presumably more attractive to the company, or the company would be better off in this interim period, by having the ability to get an embedded

⁹⁵ Fein (Exelon Exhibit 101), 7-8.

⁹⁶ Stoddard (FES Exhibit 101), 3.

cost approved by this application now, and it won't have that ability in the future to do that."

A. "Yes, sir."⁹⁷

Witness Stoddard notes that the "RPM auction price is the 'right price' in terms of economic efficiency appropriately compensating AEP Ohio and is the closest approximation to the market value of the reliability value of capacity."⁹⁸ AEP Ohio has inherently recognized this efficiency in RPM pricing, as it has elected to participate in the RPM auctions.

Allowing AEP Ohio to charge a rate other than RPM to shopping customers only for the three year transition to market, is wholly inconsistent with the state policy, and AEP Ohio's transition to full market for both energy and capacity in 2015. Additionally, allowing AEP Ohio to game the system by charging a cost based rate when shopping is high, and the market rate is low, flies in the face of the stated purpose of the RAA and this state's energy policy. For these reasons, the Commission should set the State Compensation Mechanism at the RPM price.

VI. The Suppliers would accept RPM rates, with an RSR as proposed in the ESP II.

If the Commission finds the RPM price for capacity results in a rate that does not adequately compensate AEP Ohio, or is confiscatory, the Commission should not implement a black box price based on embedded costs that is far above market and wholly unrelated to market forces. Rather, the Commission can remedy any determined confiscatory nature of the rate with a non-bypassable stabilization charge assessed to shopping and non shopping customers alike. As noted before, the current capacity price to shopping customers has not been shown at any point in this case and a non-bypassable rider will ensure no entity is subsidizing the other. AEP Ohio has proposed such a rider in the form of the Rate Stability Rider in the ESP II. The

⁹⁷ Tr. VIII, p. 1648-49.

⁹⁸ Stoddard (FES Exhibit 101), p. 3.

Suppliers believe that to the extent this Commission finds that the RPM rate is not compensatory, an additional stabilization charge or measure should be considered in that case.

VII. Conclusion

For the reasons presented in this Initial Brief, the Suppliers request the Commission to make a finding of law that it has authority to set the SCM for capacity prices charged CRES providers for capacity in the AEP Ohio service area needed to serve retail customers who wish to shop. Suppliers request that the Commission recognize the reality over the theory of a tiered approach and return to a single capacity price. The Suppliers also request the Commission to find that the proper charge for the SCM should be the RPM price established for capacity by PJM as that price is market based and changes from year to year.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served upon the following persons via e-mail this 23rd day of May, 2012.

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5/23/2012 4:54:40 PM

in

Case No(s). 10-2929-EL-UNC

Summary: Brief electronically filed by Ms. Lija K Kaleps-Clark on behalf of Retail Energy Supply Association and Direct Energy Business, LLC and Direct Energy Services, LLC